IPLRA DEVELOPMENTS

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ILLINOIS PUBLIC LABOR RELATIONS ACT
RECENT DEVELOPMENTS

OCTOBER 2015 – SEPTEMBER 2016

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IPLRA UPDATES
Board and Court Decisions
October 2015 – September 2016

I. Representation Issues

12/31/15
1st District Opinion
Confidential Employees

In *County of Cook (Health and Hospital System) v. Illinois Labor Relations Board, Local Panel, et al., and Local 200, Chicago Joint Board, Retail, Wholesale and Department Store Union, AFL-CIO*, 2015 IL App (1st) 150794, 32 PERI ¶ 102, in an unpublished opinion, the First District affirmed the decision of the Local Panel in *County of Cook (Health and Hospital System),* 31 PERI ¶ 154 (IL LRB-LP 2015) (Case No. L-RC-14-009) granting the Union's petition to add ten recruiting positions to the bargaining unit and rejecting the Employer's contention that these positions were excluded as confidential employees under Section 3(c) of the Act. The court affirmed the Board's finding that the recruitment employees' duties, related primarily to hiring, performance, or promotions, were outside the context of the labor nexus test, as they did not give assistance to a superior who formulated, determined, and effectuated policies directly tied to the department's bargaining positions. Further, the court found that the at-issue employees' access to salary, vacancy, and statistical information reflected access to sensitive information but not information sufficiently related to the employer's collective bargaining strategy to satisfy the authorized access test.

3/9/16
ILRB LP
Revocation of Certification

In *American Federation of State, County and Municipal Employees, Council 31 and Cook County and Sheriff of Cook County and Metropolitan Alliance of Police, Chapter 438*, 32 PERI ¶ 154 (IL LRB-LP 2016) (Case No. L-UC-15-003), the Board affirmed the Executive Director's revocation of a previously-issued certification of a unit clarification naming AFSCME as representative of sheriff's Electronic Monitoring Sergeants. After the certification was issued, another union, Metropolitan Alliance of Police, Chapter 438, notified the Board that it already represented the petitioned-for sergeants. AFSCME appealed the Executive Director's revocation order contending that the revocation order denied it due process and challenged the Executive Director's authority to issue the revocation. The Board rejected AFSCME's appeal and allowed the case to proceed to hearing, with MAP as an intervenor, such that the question of representation could be adjudicated.

3/10/16
ILRB LP
Supervisory Exclusion

In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago, Department of Buildings*, 32 PERI ¶ 155 (IL LRB-LP 2016) (Case No. L-RC-15-008), the Board reversed the ALJ's RDO and found that the Assistant Chief Engineer of Sewers was a supervisory employee under Section 3(r) of the Act. The Board overturned the ALJ's conclusion that the Assistant Chief Engineer did not direct with independent judgment when he reviewed his subordinates' work. Upon review of pertinent case law, the Board found that the position's functions should not be viewed in isolation, but should be compared to the duties of other engineers whose supervisory status has been previously examined. The Board also overturned the ALJ's conclusion that the Assistant Chief Engineer did not spend a preponderance of his work time engaged in supervisory functions. The Board found that there was no dispute as to the percentages of time the Assistant Chief Engineer allocates to certain tasks, because neither party excepted to the ALJ's finding of fact on these matters. Accordingly, from a review of the record the Board determined he possessed the supervisory authority to discipline, reward, and direct his subordinates by reviewing and evaluating their work, and approving time off, while exercising independent judgment. As the record demonstrates that the Assistant Chief Engineer spends a preponderance of his time engaged in supervisory functions, the Board reversed the ALJ's decision to the contrary.

3/10/16
ILRB LP
Appropriateness of Unit Clarification Petition

In *American Federation of State, County and Municipal Employees, Council 31 and Sheriff of Cook County and Cook County*, 32 PERI ¶ 158 (IL LRB-LP 2016) (Case No. L-UC-15-004), the Union filed a unit clarification petition to include County Sheriff's Electronic Monitoring Lieutenants in an existing bargaining unit. The Employer opposed the petition, asserting that the unit clarification petition was procedurally improper, and that the petitioned-for employees are supervisory and managerial. The Board affirmed the ALJ's dismissal of the unit clarification petition and accepted the ALJ's conclusion that the petition was inappropriately filed, because it did not fit within the specified circumstances identified as appropriate for unit clarification under the Board's Rules and case law. The ALJ noted that the Board's approach to unit clarification was a "delicate piecemeal of rules, practice, and precedent" whose modification was properly left to the Board.

3/14/16
ILRB SP
Managerial Employees

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 32 PERI ¶ 163 (IL LRB-SP 2016) (Case No. S-RC-12-006), the Board upheld the ALJ's recommended dismissal of AFSCME's majority interest representation petition, which sought to add administrative law judges at the Department of Financial and Professional Regulation to an existing

bargaining unit. The Board concurred with the ALJ's conclusion that the petitioned-for employees were managerial employees under Section 3(j) of the Act. The Board found that the petitioned-for ALJs were managerial as a matter of fact in that they (1) were engaged predominantly in executive and management functions because they spend most of their work time conducting hearings, responding to motions, ruling on evidentiary issues, and writing ALJ reports; (2) directed the effectuation of agency policies because their ALJ reports help run the employer agency; and (3) the reports are effective recommendations to agency decision-makers concerning a major portion of the agency's work.

5/3/16
ILRB LP
Supervisory Exclusion

In *Water Pipe Extension, Bureau of Engineering, Local 1092 and City of Chicago, Department of Water Management*, 32 PERI ¶ 181 (IL LRB-LP 2016) (Case No. L-RC-15-009), a majority of the Board affirmed the ALJ's decision that the Chief Dispatcher position is not excluded under Section 3(r) of the Act. Although the Chief Dispatcher performed substantially different work from that of his subordinates, and had the authority to evaluate/reward, and grant overtime, while using independent judgment, the ALJ determined that the Chief Dispatcher did not qualify as a supervisor within the meaning of Section 3(r) of the Act, because the preponderance requirement was not met. The ALJ found that the record failed to establish how much time he spends on either task. What the record did establish was he spent the vast majority of time overseeing dispatchers, a function the ALJ was unable to find he performs with the requisite supervisory authority.

Dissenting, Member Anderson indicated he would have reversed the ALJ's decision, because the Chief Dispatcher implicitly has the authority to effectively recommend discipline by being able to choose between selecting a non-disciplinary approach and initiating a formal disciplinary process. Therefore, he has the requisite authority to monitor and instruct his subordinates with independent judgement. As the ALJ concluded that the Chief Dispatcher spends the vast majority of his time overseeing dispatchers and this activity is the most significant task he performs, the preponderance requirement is satisfied. By allowing the Chief Dispatcher into the bargaining unit, Member Anderson found that the result is at odds with the legislative intent that underlies the supervisory exemption, because the Union does not allow members to initiate disciplinary action against other members. Accordingly, the Chief Dispatcher may now be dissuaded or precluded from initiating discipline against fellow union members.

5/3/16
ILRB SP
Amended Definitions of Supervisory and Managerial Employee

In *Secretary of State and Service Employees International Union, Local 73, CTW/CLC*, 32 PERI ¶ 182 (IL LRB-SP 2016) (Case Nos. S-UC-14-006 and S-UC-12-034), the Board's State Panel adopted the ALJ's finding that the Executives and Drivers Facility Managers employed by the Secretary of State should be excluded from an existing unit

pursuant to the 2013 amendments to the Act. The ALJ also found that the Executive positions were excluded as a matter of law without further need for development of a record; therefore, she limited the hearing to adducing evidence as to whether the Drivers Facility Managers met the test for exclusion set out in the amendments. The Board adopted this finding as well.

6/16/16
ILRB LP
Supervisory Exclusion
In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago*, 33 PERI ¶ 4 (IL LRB-LP 2016) (Case No. L-RC-15-007), the Board accepted the ALJ's recommendation to dismiss the Union's petition to represent the Supervisors of Auditing ("SOAs") in an existing bargaining unit because the positions were supervisors within the meaning of the Act. The Board adopted the ALJ's conclusions that the SOAs satisfy the four prong supervisory test, but modified her analysis regarding the SOAs' use of independent judgement to approve time off. The Board held that while the ALJ was correct that SOAs do not use independent judgment when approving time off, she should have relied upon the Employer's failure to offer specific evidence that SOAs grant time off in non-routine cases rather than her reliance an SOAs testimony that he did not think he possessed the authority. As the Board noted, the SOAs belief was not dispositive of his actual authority.

6/29/16
ILRB LP
Timeliness; Successor title; Intervention
In *American Federation of State, County and Municipal Employees, Council 31 and Cook County and Sheriff of Cook County and Metropolitan Alliance of Police, Chapter 438*, 33 PERI ¶ 18 (IL LRB-LP 2016) (Case No. L-UC-15-003), the Board upheld the ALJ's recommended dismissal of AFSCME's unit clarification petition concerning the Sheriff's Electronic Monitoring Sergeants because the petition was untimely. AFSCME's 2014 unit clarification petition sought to clarify an existing bargaining unit of county employees based on a 2011 reorganization that moved electronic monitoring sergeants to another operating department staffed by bargaining unit members represented by AFSCME. MAP intervened and opposed the unit clarification petition, on the basis that it already represented the at-issue sergeants. The ALJ recommended the dismissal of the unit clarification petition as inappropriate, explaining that even if the Board's unit clarification rules were expanded to include the National Labor Relation Board's accretion standards, the ALJ would still have found the petition inappropriate and untimely filed. The Board upheld the ALJ's dismissal with one slight modification that expanded the ALJ's finding to hold that even if the unit clarification petition could be justified under NLRB rules, the petition would be properly dismissed as untimely under Board precedent because it was filed over two years after the events giving rise to it.

6/30/16
ILRB LP
Certification Bar; Exclusionary Clauses

In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago*, 33 PERI ¶ __ (IL LRB-LP 2016) (Case No. L-RC-16-007), the Board certified a bargaining unit of positions that the Union previously agreed to excluded under a general exclusionary clause. The Board affirmed the ALJ's conclusion the parties' previous agreement excluding the now-petitioned-for positions did not bar the instant petition. The Board distinguished general exclusionary clauses, those that exclude positions without reasons, from exclusionary clauses that specifically identify that positions are excluded because inclusion would be inappropriate under the Act (such as the positions are statutorily excluded or lack a community of interest with the positions included in the unit). The Board reiterated that general exclusionary clauses are insufficient to bar a union's petition to represent excluded positions. Even if the general exclusionary clause contains the union's express waiver of its right to represent excluded positions, that bar only exists for a reasonable period of time. On the contrary, when a position is excluded because it would be inappropriate under the Act, and the exclusionary clause specifically identifies that reason, a union may only represent that position if it can demonstrate that there is a change in circumstances such that the reason for the exclusion is no longer applicable.

8/15/16
2nd District Opinion
Threats and Coercion in obtaining Majority Support
Propriety of a 2-2 State Panel Vote

In *the Clerk of the Circuit Court of Lake County v. the Illinois Labor Relations Board, State Panel, et al., and the American Federation of State, County and Municipal Employees, Council 31*, 2016 IL App (2nd) 150849, 33 PERI ¶ 31, (Case No. S-RC-15-049, 32 PERI ¶ 28), the appellate court affirmed the State Panel's 2-2 vote which allowed the ALJ's RDO to stand as a non-precedential order certifying the proposed unit and rejecting the Employer's argument that a hearing was required on its contention that the Union obtained its showing of interest by the use of fraud or coercion. On appeal, the Court affirmed not only the Board's process that, in the event of a 2-2 vote, the ALJ's decision stands as non-precedential decision, but also the ALJ's finding that, when alleging fraud and coercion with respect to a majority interest petition, an employer's response to the petition must include clear and convincing evidence of the alleged fraud and coercion. Based on this finding, the court rejected the employer's contention that it was entitled to a hearing on the alleged fraud and coercion before the Board made a determination as to the underlying petition.

8/24/16
ILRB SP
Unit Appropriateness

In *Metropolitan Alliance of Police, DuPage County Forest Rangers, Chapter 714 and Forest Preserve District of DuPage County*, 33 PERI ¶ 35 (IL LRB-SP 2016) (Case No. S-RC-15-006), the Board certified the petitioned-for bargaining unit of Rangers and

Senior Rangers, finding that a presumption that the unit was inappropriately narrow did not apply, because the Rangers and Senior Rangers did not perform sufficiently similar duties to those performed by nineteen other positions that the Employer argued should be included in the unit. The Board further held that the ALJ did not error in finding that petitioned-for unit of Rangers and Senior Rangers was appropriate because the positions within the unit shared a community of interest as identified in Section 9(b) of the Act.

8/25/16
1st District Opinion
Supervisory Exclusion
In *Chicago Joint Board, 200 v. Ill. Labor Relations Bd., Cook Cnty. Health and Hospital System*, 2016 IL App (1st) 152770-U, 33 PERI ¶ 36 (ILRB Case No. L-RC-14-018, 32 PERI ¶ 55), the appellate court affirmed the Board's order dismissing the representation petition because the petitioned-for Pharmacy Supervisors were supervisors within the meaning of Section 3(r). The parties had stipulated that the principal work of the Pharmacy supervisors was substantially different from that of their subordinates, and the ALJ and the Board 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.

9/2/16
ILRB SP
Hearings on Vacant Positions
In *State of Illinois, Department of Central Management Services and AFSCME Council 31,* 33 PERI ¶ __ (IL LRB-SP 2016) (Case Nos. S-UC-16-032, S-UC-16-033, and S-UC-16-034), the ALJ recommended dismissal of three petitions seeking to exclude Public Service Administrator positions from the bargaining unit, concluding that a hearing on the positions' duties is inappropriate, because the positions were vacant. The Board reversed the ALJ's dismissal and remanded the case for hearing. The Board acknowledged it has previously and historically declined to hold hearings on vacant positions as a matter of policy, but found that the evidence presented during investigation, which clearly and specifically defined the duties that prospective employees will be expected to perform, raised a question of fact as to whether the positions' anticipated duties would support a statutory exclusion. The Board also recognized that this modification in policy with respect to vacant positions necessarily requires a shift toward relying on position descriptions as evidence of a position's duties.

II. Employer Unfair Labor Practices

1/22/16
ILRB SP
Unilateral change, coercion

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 32 PERI ¶ 128 (IL LRB-SP 2016) (Case No. S-CA-16-007) the Board affirmed the Executive Director's Dismissal. AFSCME alleged that one of several FAQs posted to the State's website in June 2015, which indicated that striking employees would be responsible for the full cost of their health insurance, was coercive and was a unilateral change in bargaining unit members' terms and conditions of employment without bargaining. The Board and the Executive Director found that a 10(a)(2) claim was not ripe, that the FAQ, while it could serve as a disincentive to strike, was not coercive. It was also not a unilateral change, as the State merely publicized an existing policy.

1/29/16
ILRB LP
Limitations and Refusal to Arbitrate

In *Debra Larkins and Chicago Transit Authority*, 32 PERI ¶ 130 (IL LRB-LP 2016) (Case No. L-CA-16-006), the Board affirmed the Executive Director's Dismissal of Larkins' charge, filed nearly three years after CTA terminated her for a second time, which alleged that the CTA violated the Act when it terminated her, refused to reinstate her and failed to arbitrate her discharge. The Board's Local Panel affirmed that a failure to reinstate is not a recurring violation, and the failure to arbitrate likewise fails, where arbitration was still pending.

1/29/16
ILRB LP
Retaliation

In *Kenneth Sawyer and City of Chicago (Streets and Sanitation)*, 32 PERI ¶ 129 (IL LRB-LP 2016) (Case No. L-CA-15-046), the Board affirmed the Executive Director's dismissal, finding that there was no evidence that would support a causal connection between Sawyer's grievance and Respondent's action in not assigning him to a particular program. Further, Sawyer failed to produce information sufficient to find that his non-assignment was an adverse employment action. Therefore, the Board found that the charge failed to raise an issue of law or fact sufficient to warrant hearing.

3/4/16
ILRB SP
Unilateral Change

In *City of Park Ridge and International Union of Operating Engineers, Local 150*, 32 PERI ¶ 151 (IL LRB-SP 2016) (Case Nos. S-CA-13-197 and S-CB-13-047), the Employer and Union were engaged in contract negotiations for a successor agreement. The parties did not sign any tentative agreements during negotiations and never signed a successor contract. Nevertheless, the Employer implemented both wage increases and

insurance premium increases. The Board upheld the ALJ's ruling that neither the Employer nor the Union committed an unfair labor practice by failing to sign and/or reduce to writing a nonexistent agreement. The Board also accepted the ALJ's conclusion that the Employer violated Section 10(a)(4) and (1) of the Act when it implemented changes to insurance premiums and caps that were not in accordance with the parties' negotiated language because there had not been a meeting of the minds. In modifying the unfair practice remedies issued by the ALJ, the Board balanced the need to sufficiently sanction the Employer to dissuade them from future unlawful conduct, with the Act's intent to be remedial, not punitive. With that in mind, the Board directed that the bargaining unit members shall retain the wage increases implemented by the Employer, and that the Employer rescind the implementation of the increased healthcare contributions and reimburse the bargaining unit members the additional contributions they paid as a result of the Employer's unilateral implementation. The Board noted that because the parties' behavior was so "factually and substantially anomalous," its decision should be considered as having "little value to other practitioners in the industry."

3/8/16
ILRB LP
Retaliation

In *Kevin Sroga and Forest Preserve District of Cook County*, 32 PERI ¶ 152 (IL LRB-LP 2016) (Case No. L-CA-13-023), the Board dismissed the complaint wherein Sroga alleged he had been terminated as a manager at one of Employer's aquatic centers for engaging in protected activity, namely encouraging his subordinates to organize. The Board modified the ALJ's recommendation. The Board found that despite the ALJ finding that the supervisor's testimony regarding his knowledge of Sroga's protected activity had limited credibility, such a finding did not require the ALJ to categorically reject all of the supervisor's testimony. The Board concluded that Employer's proffered reasons for Sroga's discharge were legitimate and found that the Employer would have terminated Sroga absent any protected activity. Therefore, it dismissed Sroga's claim.

3/8/16
ILRB SP
Withdrawal of charge prior to final decision

In *Tri-State Professional Firefighter Union, Local 3165, IAFF and Tri-State Fire Protection District*, 32 PERI ¶ 153 (IL LRB-SP 2016) (Case No. S-CA-15-033), the Union brought an unfair labor practice charge alleging that the Employer violated the Act when it mailed a letter to staff during negotiations for a successor bargaining agreement. The Executive Director dismissed the charge, and, after appeal, the Board heard the case and voted to uphold the dismissal. After the Board voted, but before it issued its written decision, the parties filed a joint motion seeking to set aside the Board's oral decision and seeking to withdraw the charge. The Board granted the parties' motion, stating that granting this extraordinary remedy would ensure full resolution of the parties' dispute and facilitate the achievement of labor peace between the parties. The Board also cautioned that parties who are subject to the Act should not view this decision as an invitation to take their disputes to the Board, "fight to the edge, and presume that they

will be able to avoid a negative Board decision by withdrawing their charge after the Board has reached an oral decision."

3/10/16
ILRB SP
Retaliation; Effects Bargaining

In *Metropolitan Alliance of Police, Chapter # 612 and Village of Glenwood*, 32 PERI ¶ 159 (IL LRB-SP 2016) (Case No. S-CA-14-019), the Union claimed that the Employer retaliated against two members of MAP's executive board in the manner in which it awarded promotional points and that it unilaterally implemented promotions without engaging in effects bargaining. The Board affirmed the ALJ's decision that the retaliation allegation was untimely but that the Employer failed to engage in effects bargaining. The Board modified the recommended remedy, holding that rescission of promotions was not appropriate because the promotions list had expired and MAP was only challenging the effects of the promotions. The Board also issued an affirmative bargaining order as well as a limited back pay award.

3/11/16
ILRB LP
Subcontracting

In *Amalgamated Transit Union, Local 241 and Chicago Transit Authority*, 32 PERI ¶ 161 (IL LRB-LP 2016) (Case No. L-CA-14-022), ATU alleged that the Employer violated the Act when it unilaterally subcontracted fare collection work and eliminated bargaining unit positions related to the implementation of the VENTRA systems. The Board dismissed the Complaint. The Board found that two portions of the charge were untimely filed: the allegation that Employer unilaterally transferred work outside of the bargaining unit, and that the Employer repudiated the parties' bargaining agreement by subcontracting bargaining unit work. The Board affirmed the ALJ's recommendation that the Employer did not violate the Act by unilaterally eliminating bargaining unit positions because the decision did not involve a mandatory subject of bargaining and that the Employer's refusal to arbitrate ATU's grievance over the subcontracting of bargaining unit work did not constitute repudiation of its bargaining obligations. The Board slightly modified the ALJ's RDO to clarify that letters notifying affected bargaining unit members of their layoff did not evince the inadequacy of any notice that preceded them.

3/15/16
ILRB SP
Fair Share

In *Brian K. Trygg and State of Illinois, Department of Central Management Services and General Teamsters/Professional and Technical Employees, Local Union 916*, 32 PERI ¶ 164 (IL LRB-SP 2016) (Case Nos. S-CA-10-0092 and S-CB-10-024), the Board affirmed the ALJ's RDO finding that Trygg qualified as a bona fide religious objector, and that the Union and Employer committed unfair labor practices by failing to notify employees of their right to non-association in the fair share fee provision of the collective bargaining agreement. Trygg excepted to the RDO's limitation to direct his fair share contributions

to a non-religious entity. Trygg argued that as a bona fide religious objector, he was entitled to direct his fair share contributions to a religious organization. The Board rejected this argument because the Act expressly states that fair share designations can only be made to non-religious charitable organizations.

3/18/16
1st District Opinion
Retaliation

In *Pamela Mercer v. Illinois Labor Relations Board Local Panel; Thomas J. Dart, Sheriff of Cook County, Illinois; and County of Cook*, 2016 IL App (1st) 151258, 32 PERI ¶ 157 (Case Nos. L-CA-13-009 and L-CA-13-063, 31 PERI ¶ 171), the First District, in a nonprecedential Rule 23 decision, affirmed a decision of the Local Panel dismissing Mercer's unfair labor practice charge. The Court found that charging party presented no evidence contradicting the Board's conclusion that the employer was not aware of her protected activity at the time she was reassigned. The court determined that the employer's reassignment of charging party was not motivated by animus for her protected activity. Similarly, where the employer's decision maker was unaware of those charges when the suspension was imposed, the charging party could not establish that the employer's decision to discipline her was motivated by animus for her filing of unfair labor practice charges.

4/26/16
3rd District Opinion
Executive Director Dismissal

In *Dwyane McCann v. the Ill. Labor Relations Bd., State Panel; Cnty. of Will (Land Use Development); and American Federation of State County and Municipal Employees, Council 31*, 2016 IL App. (3d) 150686-U, 32 PERI ¶ 183, the Third District affirmed by non-precedential Rule 23 Order a decision of the State Panel affirming the Executive Director's dismissal of charges filed against the Charging Party's employer and union. The Charging Party alleged that his employer violated the Act by denying his disability claims and terminating him and that his Union failed to sufficiently represent him.

5/20/16
ILRB LP
Failure to Respond to Board inquiries

In *Kenneth Sawyer and City of Chicago (Streets and Sanitation)*, 32 PERI ¶ 185 (IL LRB-LP 2016) (Case No. L-CA-16-044), the Board affirmed the Executive Director's dismissal of an unfair labor practice charge brought by Sawyer, a truck driver, against the Employer. The Executive Director found that Sawyer's allegation of wrongful discipline by the Employer, in violation of Section 10(a) of the Act, was unsupported by sufficient facts. Further, Sawyer's failure to respond to requests for additional information suppored the dismissal of the charge.

5/26/16
ILRB SP
Unilateral Change

In *American Federation of State, County and Municipal Employees, Council 31 and State of Ill., Dep't of Cent. Mgmt, Servs.*, 33 PERI ¶ 3 (IL LRB-SP 2016) (Case No. S-CA-16-006), the Board's State Panel adopted the ALJ's finding that the State's failure to pay step increases, longevity pay, and certain promotions-related raises during negotiations for a successor agreement was not a violation of the Act, as those payments did not constitute status quo. Further, the State Panel adopted the ALJ's finding that the parties' 2012-2015 CBA violated the clear and plain language of Section 21.5(b) of the Act, rendering the agreement null and void under Section 21.5(c) of the Act.

6/22/16
ILRB SP
Subcontracting; Impasse

In *American Federation of State, County and Municipal Employees, Council 31 and City of East Moline*, 33 PERI ¶ 15 (IL LRB-SP 2016) (Case No. S-CA-15-116), the State Panel adopted the ALJ's recommended decision finding that the Employer violated the Act by taking steps to subcontract bargaining unit work without bargaining to agreement or impasse. Specifically, at the point where the Employer made the subcontracting decision, the parties had not reached a legitimate impasse. The State Panel further held the Employer to its admission in its Answer to the Complaint for Hearing that the subcontracting decision was a mandatory subject of bargaining.

6/29/16
ILRB LP
Executive Director Abeyance Order

In *Sherise Hogan and Chicago Transit Authority*, 33 PERI ¶ 16 (IL LRB-LP 2016) (Case No. L-CA-16-007), the Charging Party filed an unfair labor practice charge under Section 10(a) of the Act, after she was terminated by the CTA. The Union also filed a grievance disputing the Charging Party's termination. The Board affirmed the Executive Director's Abeyance Order, pending a final determination of the contractual grievance concerning the discipline/termination of the Charging Party.

7/29/16
ILRB SP
Motion to Expedite Board's Ruling

In *State of Illinois, Department of Central Management Services* and *American Federation of State, County and Municipal Employees, Council 31*, __ PERI ¶ __ (IL LRB-SP 2016) (Case Nos. S-CA-16-087 and S-CB-16-017), the State Panel rejected the Employer's request to expedite the decision and order in the consolidated case involving the question of whether the State of Illinois and AFSCME were at a legitimate impasse in their negotiations for a successor agreement. The Employer proposed having the Board decide the case directly from the record, without the assistance of a recommendation by the ALJ. The State Panel held that the approach suggested by the Employer would not necessarily expedite its consideration of the matter, as the Illinois Administrative

Procedures Act requires the equivalent of an RDO unless the Board actually heard the testimony or a majority of the Board reviewed the record in whole. Further, the Board found that even a variance from the Board's rules would not allow the Board to run afoul of the APA's mandate. The Board further directed the parties to comply with all timeframes for filing post-hearing briefs and that no extensions in time would be granted.

8/10/16
ILRB SP
Failure to Bargain; Status Quo; Discriminatory Motive

In *North Riverside Fire Fighters, Local 2714 and Village of North Riverside*, 33 PERI ¶ 33 (IL LRB-SP 2016) (Case No. S-CA-15-032), the Board held that that the ALJ properly denied the Union's request to amend the complaint to include an allegation the Employer violated the Act by bargaining to impasse on its proposal to subcontract its firefighting services to a private company; that the Employer violated Sections 10(a)(4) and (1) of the Act by altering the status quo during the pendency of interest arbitration when it issued termination notices to firefighters; that the Employer independently interfered, restrained, and coerced employees in violation of Section 10(a)(1) of the Act when it issued the termination notices; and that the Employer did not engage in surface bargaining when it rejected the Union's counter proposals regarding the privatization. Board Member Snyder dissented with the majority's holdings that the Employer altered the status quo during the pendency of interest arbitration and that it restrained and coerced employees when it issued the termination notices. Member Snyder found that the Employer did not violate the Act when it issued the termination letters, because the issuance of termination notices did not change the status quo nor constitute an adverse action where the Employer did not actually terminate the firefighters. Member Snyder also found that the Employer did not act with a discriminatory motive, but rather was motivated by its legitimate business reason of extreme financial hardship when it issued the termination notices.

9/15/16
ILRB LP
Dismissal after Deferral to Arbitration

In *Fraternal Order of Police, Lodge No. 7 and city of Chicago (Department of Police)***,** __ PERI ¶ __ (IL LRB-LP 2016) (Case No. L-CA-15-066), the Board affirmed the Executive Director's dismissal of a previously deferred charge. The dismissal was related to the Lodge's failure to respond to the Board's correspondence investigating the status of the deferred charge. On appeal, the Lodge provided evidence that it had, in fact, responded to the Board's letter and through that response, the Lodge sought to withdraw the charge given that the arbitration award and the City's compliance resolved the issues. Therefore, the Board affirmed the dismissal, but modified the basis for the dismissal to reflect that the arbitration award and City's compliance, rather than a failure to respond to the Board.

9/30/16
ILRB SP
Executive Director Dismissal - Retaliation, Appointment of Counsel
In *Charles Jones and State of Illinois, Department of Central Management Services (Children and Family Services)*, 33 PERI ¶ __ (IL LRB-SP 2016) (Case No. S-CA-15-149), the Board affirmed the Executive Director's dismissal of the Charging Party's claim against the Employer, finding the charge failed to present issues for hearing. Jones claimed that his Employer assaulted him, improperly suspended him, altered information on his computer in order to support claims that he did not adequately perform his duties, refused to allow him to use benefit time, and failed to properly investigate a claim that he allegedly had threatened a supervisor. Although Jones had engaged in protected activity by previously filing claims against the Employer, and the Employer took adverse action against Jones by imposing suspensions against him before his final discharge, the Executive Director determined that Jones had not raised a question of law or fact for hearing. Namely, he failed to produce any evidence of a causal connection between his protected activity and the adverse actions taken against him by the Employer.

Following the dismissal, the Charging Party filed a Request for Appointment of Counsel. First looking to the technical requirements, the Board noted that the Charging Party failed to submit the requisite affidavit attesting to his inability to pay or otherwise provide for representation. Even if the Charging Party could satisfy the means test, the Board found that the request lacked merit, as the assistance of counsel could not remedy the substantive deficiencies of the Charging Party's claims. Based upon the merit requirement, the Board inferred a recognition of financial costs associated with the appointment of counsel, which includes some measure of a cost/benefit analysis.

10/3/16
ILRB SP
Failure to Bargain; Status Quo During Interest Arbitration;
In *Service Employees International Union, Local 73 and Village of Dixmoor*, 33 PERI ¶ __ (IL LRB-SP 2016) (Case No. L-RC-14-063), the Board affirmed the ALJ's conclusion that the Employer's failure to maintain the status quo through interest arbitration violated Section 10(a)(4) and (1) of the Act. The Board held that the Employer violated Section 10(a)(4) and (1) of the Act when it unilaterally closed its Fire Department, subcontracted bargaining unit work, and unilaterally laid off bargaining unit employees. The Board noted that it was bound by the plain language of Section 14(l) of the Act, which specifically provides that the parties cannot unilaterally alter existing wages, hours, and other conditions of employment during the pendency of interest arbitration. The Board nonetheless recognized that Section 14(l) does not account for the fiscal realities where public employers cannot afford to maintain the status quo during interest arbitration. The Board also specifically rejected the ALJ's suggestion that the significance of the financial crisis was diminished because it had evolved over time due to the Employer's mismanagement or neglect. The Board rejected the suggestion that financial matters are *categorically* amenable to bargaining.

III. Union Unfair Labor Practices

1/29/16
ILRB SP
Failure to Respond to Board Information Requests

In *Maria Zavala and Chicago Newspaper Guild, Local 34071,* 32 PERI ¶ 134 (IL LRB-SP 2016) (Case No. S-CB-16-003), the State Panel remanded the matter for further investigation. The Executive Director dismissed the charge due to the Charging Party's failure to respond to letters from the Board seeking further information. On appeal, the Charging Party indicated that she keeps two addresses – a home address and a P.O. Box – because she has had difficulty getting her mail at her home address. Given this information, the Local Panel remanded the case with the direction that all future Board correspondence be directed to both the Charging Party's home address and P.O. Box.

1/29/16
ILRB SP
Unilateral Settlement; Hudson violation

In *Diana Caloca and Chicago Newspaper Guild, Local 34071*, 32 PERI ¶ 133 (IL LRB-SP 2016) (Case No. S-CB-15-028) the Board affirmed the Executive Director's Order Directing Unilateral Settlement of Charging Party's charge alleging that the Union failed to respond to information requests inquiring about fair share payments and bullied and intimidated her. During the course of the investigation of the charge, the parties were unsuccessful in reaching a settlement. However, the Union remained willing to give the Charging Party all she could receive through the hearing process. As such, the Union requested that the Board dismiss the charge pursuant to a unilateral settlement that would provide Charging Party complete relief and make her whole. Because the Union's offer was a comprehensive settlement that made Charging Party whole, the State Panel affirmed the Executive Director's Unilateral Settlement and Dismissal finding that there was no remaining issue of law or fact warranting a hearing. The imposition of a unilateral settlement was a matter of first impression before the Board, though the State panel noted that the IELRB has done it in the past.

1/29/16
ILRB LP
Retaliation

In *Edward Brewer and Painters District Council #14*, 32 PERI ¶ 131 (IL LRB-LP 2016) (Case No. L-CB-15-038) the Board affirmed the Executive Director's determination that Charging Party failed to establish that the Union committed any intentional misconduct in violation of the Act. Charging Party alleged that the Painter's District Council #14 violated Section 10(b) of the Act in connection with Brewer's loss of certain seniority rights and the Union's failure to transition him from a seasonal to a career service employee. After investigation, the Executive Director determined that Brewer failed to raise an issue of law or fact sufficient to warrant a hearing and dismissed Brewer's

charge. Even assuming that a diminution in Charging Party's seniority could be considered an adverse representation action, there is no evidence that this action was based on a discriminatory motive following heated conversations between Charging Party and Ryanhart. The evidence shows that the alleged change to seniority is what precipitated the heated conversations. Similarly, the Local Panel affirmed the Executive Director's finding that the Charging Party failed to present sufficient evidence to find intentional misconduct related to the lottery for additional work.

In its written Decision, the Board expressly commented that although Brewer's charge was somewhat unclear, the Board acknowledged that he seemed to allege that the Union also violated Section 10(b) of the Act because he had not transitioned from seasonal employment to career service employment. The Board noted that while this allegation was not specifically addressed in the Dismissal Order, the evidence did not establish that the Union had any role in this alleged career service transition issuer. Further, Charging Party had failed to raise this issue in his appeal.

1/29/16
ILRB LP
Intentional Misconduct Standard
In *Latrecia Brazil and Amalgamated Transit Union, Local 241*, 32 PERI ¶ 132 (IL LRB-LP 2016) (Case No. L-CB-15-042) the Board affirmed the Executive Dismissal of the charge based on her finding that Charging Party had failed to establish that ATU had engaged in any intentional misconduct. Charging Party alleged that her Union failed to properly advance grievances challenging Brazil's discharge from her employment as a bus driver for the CTA and failed to return her calls. The investigation revealed that recent changes in the composition of its officers may account for the alleged failure to return Charging Party's calls, which ATU could find no record of having received. Further, ATU indicated that the Charging Party's grievances were currently at the second step and were being processed. The Executive Director concluded that the Charging Party failed to provide evidence sufficient to satisfy the intentional misconduct standard necessary to establish a violation of Section 10(b)(1). The Local Panel agreed.

3/4/16
ILRB SP
Unilateral Change
In *City of Park Ridge and International Union of Operating Engineers, Local 150*, 32 PERI ¶ 151 (IL LRB-SP 2016) (Case Nos. S-CA-13-197 and S-CB-13-047), the Employer and Union were engaged in contract negotiations for a successor agreement. The parties did not sign any tentative agreements during negotiations and never signed a successor contract. Nevertheless, the Employer implemented both wage increases and insurance premium increases. The Board upheld the ALJ's ruling that neither the Employer nor the Union committed an unfair labor practice by failing to sign and/or reduce to writing a nonexistent agreement. The Board also accepted the ALJ's conclusion that the Employer violated Section 10(a)(4) and (1) of the Act when it implemented changes to insurance premiums and caps that were not in accordance with the parties' negotiated language because there had not been a meeting of the minds. In

modifying the unfair practice remedies issued by the ALJ, the Board balanced the need to sufficiently sanction the Employer to dissuade them from future unlawful conduct, with the Act's intent to be remedial, not punitive. With that in mind, the Board directed that the bargaining unit members shall retain the wage increases implemented by the Employer, and that the Employer rescind the implementation of the increased healthcare contributions and reimburse the bargaining unit members the additional contributions they paid as a result of the Employer's unilateral implementation. The Board noted that because the parties' behavior was so "factually and substantially anomalous," its decision should be considered as having "little value to other practitioners in the industry."

3/10/16
ILRB SP
Possible Hudson Violation
In *Irene Alba-Hernandez and Chicago Newspaper Guild, Local 34071*, 32 PERI ¶ 160 (IL LRB-SP 2016) (Case No. S-CB-15-034), Charging Party alleged that her Union had failed to provide her information about fair share fee options, that the Union steward treated her discourteously, and that the Union retaliated against her for filing her initial charge with the Board. The Executive Director issued a Complaint for Hearing as to Charging Party's retaliation claims. The Board affirmed the Executive Director's Partial Dismissal of the Charging Party's claims of general mistreatment, finding that the claims did not amount to intentional misconduct. With respect to the claims regarding the Union's failure to provide information or to otherwise address the Charging Party's fair share requests, the Board remanded to the Executive Director to conduct further investigation.

3/15/16
ILRB SP
Fair Share
In *Brian K. Trygg and State of Illinois, Department of Central Management Services and General Teamsters/Professional and Technical Employees, Local Union 916*, 32 PERI ¶ 164 (IL LRB-SP 2016) (Case Nos. S-CA-10-0092 and S-CB-10-024), the Board found that the Employer and the Union violated Sections 10(a)(1) and (b)(1), respectively, by failing to notify employees of their right to non-association in the fair share provision of their contract. The Board further found that the Charging Party was a bona-fide religious objector because his beliefs were religious in nature and he sincerely held those beliefs. The Board held that an individual can qualify for the fair share exemption based upon the objector's personal non-institution religious beliefs, but that the individual cannot direct his fair share contributions to a religious organization because the Act expressly provides that fair share designations can only be made to non-religious charitable organizations.

5/3/16
ILRB LP
Executive Director Dismissal - Failure to Respond to Board Inquiries; Service of Documents
In *Olivia Cruse and Amalgamated Transit Union, Local 308*, 32 PERI ¶ 180 (IL LRB-LP 2016) (Case No. L-CB-16-021), the Board affirmed the Executive Director's

dismissal of the unfair labor practice charge that alleged that the Union breached its duty of fair representation under the Act. The Executive Director found that the charge did not raise a question of fact and law sufficient to warrant hearing because Charging Party failed to respond to a written request by a Board agent to provide further information in support of her charge. In her appeal to the Board, the Charging Party alleged that the request from the Board agent was not addressed to her correct address. However, regardless of whether the Charging Party's appeal was meritorious, the Board declined to entertain the appeal because the Charging Party failed to serve the appeal upon the Union, as the Board's rules required.

5/20/16
ILRB LP
Executive Director Dismissal - Failure to Respond to Board Inquiries
In *Kenneth Sawyer and International Brotherhood of Teamsters, Local 700*, 32 PERI ¶ 186 (IL LRB-LP 2016) (Case No. L-CB-16-028) the Board affirmed the Executive Director's dismissal of an unfair labor practice charge brought by Sawyer, a truck driver, against his Union. Sawyer's failure to respond to requests for additional information to support the charge warranted dismissal of the charge.

6/29/16
ILRB LP
Executive Director Dismissal- Retaliation
In *James Kondilis and Teamsters, Local 700*, 33 PERI ¶ 17 (IL LRB-LP 2016) (Case No. L-CB-16-015), the Board upheld the Executive Director's dismissal of a County Corrections Officer's unfair labor practice charge, alleging the Union violated section 10(b) of the Act when the employer denied his request for reasonable accommodation following his return from a duty injury; when his grievances were denied without explanation; when his employer denied him reasonable computer access required by its general orders; and when the Union failed to provide him with a copy of the new collective bargaining agreement. The Executive Director found insufficient evidence that the Union took some action (or inaction) because it held a bias or grudge against the Charging Party; therefore, Charging Party failed to show intentional misconduct by the Union.

7/29/16
ILRB LP
Motion to Expedite Board's Ruling
In State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31, __ PERI ¶ __ (IL LRB-SP 2016) (Case Nos. S-CA-16-087 and S-CB-16-017), the State Panel rejected the Employer's request to expedite the decision and order in the consolidated case involving the question of whether the State of Illinois and AFSCME were at a legitimate impasse in their negotiations for a successor agreement. The Employer proposed having the Board decide the case directly from the record, without the assistance of a recommendation by the ALJ. The State Panel held that the approach suggested by the Employer would not necessarily expedite its consideration of the matter, as the Illinois Administrative

Procedures Act requires the equivalent of an RDO unless the Board actually heard the testimony or a majority of the Board reviewed the record in whole. Further, the Board found that even a variance from the Board's rules would not allow the Board to run afoul of the APA's mandate. The Board further directed the parties to comply with all timeframes for filing post-hearing briefs and that no extensions in time would be granted.

8/5/16
ILRB SP
Executive Director Dismissal – Mandatory Subject of Bargaining
In *State of Illinois, Department of Central Management Services (State Police) and Troopers Lodge # 41, Fraternal Order of Police*, 33 PERI ¶ 30 (IL LRB-SP 2016) (Case No. S-CB-16-023), the Board reversed the Executive Director's dismissal. The Board held that the charge presented a case of first impression because the Board had never addressed the impact of 2004 Amendments to the Act on the State's obligation to bargain health insurance. The Employer alleged that the Union violated Section 10(a)(4) of the Act by demanding to bargain over the subject of employee health insurance, because the 2004 amendments the Act provide that the State's Health Insurance Plan is a non-mandatory bargaining subject. The Board remanded the matter for issuance of a complaint for hearing.

8/12/16
ILRB SP
Executive Director Dismissal - Duty of Fair Representation
In *Beverly Jackson and American Federation of State, County and Municipal Employees, Council 31*, 33 PERI ¶ 34 (IL LRB-SP 2016) (Case No. S-CB-16-013), the Board affirmed the Executive Director's dismissal of the unfair labor practice charge that alleged that the Union breached its duty of fair representation under the Act when it declined to proceed to arbitration regarding the Charging Party's termination. The Executive Director noted that in order to violate the Act the Union's conduct must rise to the level of intentional misconduct. Since there was no evidence that the Union's conduct was motivated by vindictiveness, discrimination, or enmity, there was insufficient evidence that the Union's refusal to arbitrate the Charging Party's termination constituted intentional misconduct.

9/19/16
ILRB LP
Executive Director Dismissal - Duty of Fair Representation – Jurisdiction; Standing
In *Darryl Spratt and Amalgamated Transit Union, Local 241,* 33 PERI ¶ 44 (IL LRB-LP 2016) (Case No. L-CB-16-047), the Board affirmed the Executive Director's dismissal of the Charging Party's unfair labor practice charge against the Union where the Charging Party asserted that the Union breached its duty of fair representation when the Union President did not live up to his promise to get the Charging Party reinstated to his former position as quid pro quo for Charging Party's helping him in his bid for Union President. The Board held that it lacked jurisdiction to hear the matter and that the Union had no duty to represent the Charging Party, because the Charging Party was not a public employee at the time the alleged violations occurred. Thus, the Charging Party lacked

standing to bring a charge under the Act. The Board clarified that a former public employee has standing to bring a charge when that employee is terminated and timely files an unfair labor practice charge related to that termination. Here, the Charging Party lacked standing because while he is a former public employee, he filed the charge nine years after his termination, and the charge was unrelated to his termination.

9/30/16
ILRB SP
Executive Director Dismissal - Retaliation, Duty to Fair Representation, Appointment of Counsel
In *Charles Jones and American Federation of State, County and Municipal Employees, Council 31*, 33 PERI ¶ __ (IL LRB-SP 2016) (Case No. S-CB-15-035), the Board affirmed the Executive Director's dismissal of the Charging Party's claim against his Union, finding the charge failed to present issues for hearing. Jones alleged that his discharge was based on allegations he made threats of violence against a DCFS supervisor. A Union Steward was the individual who reported the alleged threats that led the Employer to terminate Jones. The Union grieved Jones's discharge to Step 4, but ultimately declined to take the matter further based on the merits of the case. The Executive Director determined the Charging Party failed to establish a breach of the duty of fair representation under Section 10(b)(1) of the Act, because there was no evidence of intentional misconduct by the Union, or that the Union harbored bias or otherwise treated him in a discriminatory manner. Although a Union Steward reported the Charging Party for making threats, the Charging Party's claim under Section 10(b)(3) of the Act was dismissed because the absence of evidence of improper motivation. Further, the Executive Director noted that Union representatives, other than the reporting Union Steward, handled the termination grievance and were instrumental in the decision to not pursue the matter to arbitration.

Following the dismissal, the Charging Party filed a Request for Appointment of Counsel. First looking to the technical requirements, the Board noted that the Charging Party failed to submit the requisite affidavit attesting to his inability to pay or otherwise provide for representation. Even if the Charging Party could satisfy the means test, the Board found that the request lacked merit, as the assistance of counsel could not remedy the substantive deficiencies of the Charging Party's claims. Based upon the merit requirement, the Board inferred a recognition of financial costs associated with the appointment of counsel, which includes some measure of a cost/benefit analysis.

IV. Procedural Issues

12/2/15
ILRB SP
Compliance; Variance
In *Oak Lawn Professional Fire Fighters Association, Local 3405, IAFF and Village of Oak Lawn,* 32 PERI ¶ 100 (IL LRB-SP 2015) (Case No. S-CA-09-007-C), the Board affirmed the ALJ's Compliance RDO finding that the Compliance Officer erred when he determined that the Village owed the Union $3,163,801 in back pay, pursuant to an

earlier Board decision issued in Case No. S-CA-09-007. The Board agreed with the ALJ that the Village had complied with the Board's 2010 order requiring it to maintain specific manning levels and to bargain about any attempt to change the levels.

The ALJ also denied the Union's request to strike the Employer's objection to the Compliance Order and found that the Union waived its right to object to the Compliance Order by failing to timely object. The Board affirmed the ALJ's refusal to strike the Employer's objection, but found that the Charging Party's arguments on appeal implicitly sought a variance of the Board's rules. The Board granted the Charging Party's implicit request for a variance and considered the argument that the Compliance Officer failed to award interest. The Board found merit in the Charging Party's argument and modified the RDO to award the Union $21,939.06 in interest payments.

1/22/16
ILRB LP
Untimely Appeal
In *Kenneth Sawyer and City of Chicago (Streets and Sanitation)*, 32 PERI ¶ 126 (IL LRB-LP 2016) (Case No. L-CA-16-005), the Executive Director dismissed the charge, finding that the Charging Party had failed to raise an issue of fact or law warranting a hearing. The Dismissal informed the Charging Party that Board Rules required that he file an appeal of the dismissal within 10 calendar days of service of the Executive Director's Order. Sawyer filed an untimely appeal, stating only that he had received the Dismissal late; however, he provided nothing to substantiate that claim or otherwise request a variance from Board Rules. The majority of the Local Panel declined to grant a variance on its own motion, allowing the Dismissal to stand as non-precedential. Dissenting, Member Lewis stated that while he found the appeal meritless and concurred with the Dismissal, he would have granted the variance regarding the timeliness of Charging Party's appeal.

1/22/16
ILRB LP
Untimely Appeal
In *Kenneth Sawyer and City of Chicago (Streets and Sanitation)*, 32 PERI ¶ 127 (IL LRB-LP 2016) (Case No. L-CA-16-018) the Executive Director dismissed the charge, finding that the Charging Party had failed to raise an issue of fact or law warranting a hearing. The Dismissal informed the Charging Party that Board Rules required him to file an appeal of the dismissal within 10 calendar days of service of the Executive Director's Order. Sawyer filed an untimely appeal, but neither acknowledged nor explained the lateness of his filing. The Board declined to grant a variance on its own motion, allowing the Dismissal to stand as non-precedential.

5/25/16
1st District Opinion
Compliance

In *Chicago Joint Board, Local 200, Retail, Wholesale and Department Store Union v. Illinois Labor Relations Board, Carmelthia Otis, Delcina Rosado, Christiana Ohear-Enyeazu, Marshall Berry, Gabriel Nwandu, Britten McBride*, 2016 IL App (1st) 140802-U, 32 PERI ¶ 184 (Case No. L-CB-06-035-C, 30 PERI ¶ 217), the First District issued a non-precedential decision affirming the Local Panel's adoption of an ALJ's RDO finding that the Union failed to comply with a 2010 Board order, which found that the Union violated the Act by not including certain bargaining unit members in its distribution of the proceeds from a grievance settlement. At compliance, the Local Panel had ordered the Union to redistribute the grievance settlement and pay the Charging Parties specific amounts to which they would have been entitled if not for the Union's unlawful conduct.

6/22/16
2nd District Opinion
Permissive Subject of Bargaining

In *Wheaton Firefighters Union, Local 3706 v. Ill. Labor Relations Bd. State Panel, et al.*, 2016 IL App (2d) 160105, __ PERI ¶ __ (Case No. S-CA-14-067, 31 PERI ¶ 131), the appellate court affirmed the State Panel's reliance on *Village of Bensenville*, 14 PERI ¶ 2042 (IL SLRB 1998), for the proposition that the mere submission of a permissive subject of bargaining to an interest arbitrator is not an unfair labor practice.

7/29/16
ILRB SP
Motion to Expedite Board's Ruling

In State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31, __ PERI ¶ __ (IL LRB-SP 2016) (Case Nos. S-CA-16-087 and S-CB-16-017), the State Panel rejected the Employer's request to expedite the decision and order in the consolidated case involving the question of whether the State of Illinois and AFSCME were at a legitimate impasse in their negotiations for a successor agreement. The Employer proposed having the Board decide the case directly from the record, without the assistance of a recommendation by the ALJ. The State Panel held that the approach suggested by the Employer would not necessarily expedite its consideration of the matter, as the Illinois Administrative Procedures Act requires the equivalent of an RDO unless the Board actually heard the testimony or a majority of the Board reviewed the record in whole. Further, the Board found that even a variance from the Board's rules would not allow the Board to run afoul of the APA's mandate. The Board further directed the parties to comply with all timeframes for filing post-hearing briefs and that no extensions in time would be granted.

8/12/16
1st District Opinion
Compliance

In *Oak Lawn Professional Firefighters, Local 3405, International Association of Firefighters v. the Illinois Labor Relations Board, State Panel, et al., and Village of Oak Lawn*, 2016 IL App. (1st) 153483-U, __ PERI ¶ __ (Case No. S-CA-09-007-C, 32 PERI ¶ 100), the appellate court affirmed the State Panel's adoption of an ALJ RDO overturning a compliance order. The compliance officer had recommended a large monetary award for the Employer's alleged failure to maintain minimum manning as required by the Board's prior order. The ALJ and the Board held that the employer had properly complied with the Board's order; therefore, no compliance award was warranted. The Court affirmed the Board's decision to vacate the compliance award and its denial of the Union's Motion to Strike the employer's objections to the compliance order.

V. Gubernatorial Designation Cases

1/19/16
1st District Opinion
Qualification for Designation

In *American Federation of State, County and Municipal Employees v. The State of Illinois, the Department of Central Management Services, and the Illinois Labor Relations Board, Sate Panel*, 2016 IL App (1st) 133866-U, (ILRB Consol. Case Nos. S-DE-14-092, S-DE-14-093 and S-DE-14-094, 30 PERI ¶ 124), the Appellate Court reversed the Board's order designating for exclusion positions at the Pollution Control Board and Human Rights Commission. Specifically, the Court agreed with AFSCME that those agencies were not agencies "directly responsible to the Governor." Therefore, the Court directed the Board to rescind the certifications excluding the at-issue positions from existing bargaining units.

IPLRA UPDATES
General Counsel's Declaratory Rulings
October 2015 – September 2016

S-DR-16-002 Policemen's Benevolent Labor Committee and
Village of Sauget
2/2/2016; 32 PERI ¶ 136

The Employer unilaterally sought a determination as to whether the retroactive payment of increased compensation for fiscal years commencing prior to the initiation of arbitration procedures was a permissive or mandatory subject of bargaining. The General Counsel determined that the questions raised by the petition were dependent upon factual disputes that an interest arbitrator must consider.

S-DR-16-003 Troopers Lodge #41, Fraternal Order of Police and
Illinois State Police
2/18/2016; 32 PERI ¶ 138

The Employer filed a unilateral petition seeking a declaratory ruling regarding a determination as to whether its proposal on health insurance constituted a permissive or mandatory subject of bargaining within the meaning of the Act. The Union objected to the petition, arguing that it was untimely, filed after the first day of the parties' interest arbitration hearing. The General Counsel found that the petition was untimely under a strict application of the Board's Rules. However, the General Counsel granted a variance, when: (1) the regulatory deadline for filing a unilateral petition for declaratory ruling was not statutorily mandated, (2) neither the Union nor the Employer would be injured by the grant of a variance, and (3) strict application of the deadline would be unreasonable and unnecessarily burdensome. Specifically, because the parties by agreement did not exchange final health insurance proposals until two weeks after the start of the arbitration hearing, applying the timeliness rule in this case would require the Employer to file a unilateral petition for a declaratory ruling before it received the proposal that would be its subject. The General Counsel relied on prior decisions, such as Illinois Department of State Police, 31 PERI ¶ 176 (IL LRB-SP G.C. 2014), in deciding that the proposal on health insurance constituted a mandatory subject of bargaining. The General Counsel noted that the Employer's proposal did not grant it with unfettered discretion to set Employees' health care benefits or costs.

S-DR-16-004 Troopers Lodge #41, Fraternal Order of Police and
Illinois State Police
3/1/2016; 32 PERI ¶ 162

The Employer filed a unilateral petition seeking a declaratory ruling regarding whether its proposals concerning seniority positions and a merit incentive program were permissive or mandatory subjects of bargaining within the meaning of the Act. The Union objected to the petition, arguing that it was untimely. The General Counsel found that the petition was untimely under a strict application of the Board's Rules. However, the General Counsel granted a variance from the regulatory time limit, where: (1) the regulatory deadline for filing a unilateral petition for declaratory ruling was not statutorily mandated, (2) neither the Union nor the Employer would be injured by the grant of a variance, and (3) strict application of the deadline would be unreasonable and unnecessarily burdensome. Looking to the substantive matters, the General Counsel found that the Employer's merit incentive program proposal constituted a mandatory subject of bargaining because it related to wages, it did not seek the Union's waiver of statutory rights, and it did not qualify as a prohibited subject of bargaining. The General Counsel found that the Employer's seniority positions proposal constituted a mandatory subject of bargaining because the proposal limited circumstances under which the Employer would use seniority as the sole criterion in making position assignments.

S-DR-16-006 Village of Skokie and
Skokie Firefighters Local 3033, IAFF
6/21/2016; 33 PERI ¶ 14

The Employer's proposal on the Entire Agreement clause was a permissive subject of bargaining because it sought the Union's waiver of its right to midterm bargaining over the impacts of the Employer's exercise of management rights.

S-DR-16-005 Village of Oak Lawn and
Oak Lawn Professional Firefighters Association, Local 3405, IAFF
7/1/2016; 33 PERI ¶ 21

The Employer's residency proposal and the topic of paramedic certification/decertification were mandatory subjects of bargaining.
The Union's proposal to maintain the status quo on residency was a permissive subject of bargaining because if the arbitrator granted the Union's proposal, the arbitrator's award would expressly allow residency outside of Illinois, and the Act specifically provides that any residency requirements imposed upon firefighters shall not allow residency outside Illinois.

IPLRA UPDATES
Legislative Amendments
October 2015 – September 2016

There were no substantive amendments to the Act during this period.

Amendments to the Board's General Procedures

The Board revised Section 1200 General Procedures of its administrative rules. Among other things, the Board eliminated filing by facsimile and implemented procedures for electronic filing. A copy of the red-lined version of Section 1200 can be found at: https://www.illinois.gov/ilrb/Documents/1200AmendedRedLine.pdf