IPLRA DEVELOPMENTS

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ILLINOIS PUBLIC LABOR RELATIONS ACT
RECENT DEVELOPMENTS

OCTOBER 2016 – SEPTEMBER 2017

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In *American Federation of State, County and Municipal Employees, Council 31 and Chief Judge of the Circuit Court of Cook County***,** 33 PERI ¶ 60 (IL LRB-SP 2016) (Case Nos. S-RC-15-032 andS-RC-15-012), Petitioner Union filed two separate petitions seeking to represent two job titles, Assistant Team Leader (ATL) and Supervisor in Charge (SIC), employed by the Respondent Employer at its Juvenile Temporary Detention Center (JTDC). The Employer objected to both petitions, contending that the petitioned-for job titles were supervisory as defined under Section 3(r) of the Act. The ALJ found that ATLs and SICs are supervisors within the meaning of the Act because they discipline, direct, and adjust grievances with independent judgement, and spend a preponderance of their work time engaged in such supervisory functions. The ALJ's decision was affirmed by the Board for the reasons set forth in that decision.

4/11/17
ILRB SP
Unit Clarification/Majority Interest Petition; Managerial Exclusion

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services,* 33 PERI ¶ 110 (IL LRB-SP 2017) (Case Nos. S-RC-15-044 and S-UC-15-052), the Union filed a unit clarification petition to include one Executive I position in a bargaining unit. Additionally, the Union filed a majority interest petition seeking to represent the position. The Employer opposed the unit clarification petition, asserting that there had not been a substantial change in the Executive I's duties and functions. The Employer opposed the majority interest petition, contending that a 2006 agreement to exclude barred the petition. The Employer also asserted that the Executive I position should be excluded from the bargaining unit pursuant to the Act's exemption for managerial employees. The ALJ found the unit clarification petition to be appropriate because a substantial change in the Executive I's duties occurred in 2006 when a new Bureau Chief altered the duties such that the incumbent no longer possessed the authority and discretion that rendered the position excluded under the prior Bureau Chief. Although the ALJ found that the petition was appropriate, she determined that it was untimely because the Union filed the petition nearly a decade after the event triggering the changed duties.

Regarding the Union's majority interest petition, the ALJ found the 2006 agreement did not bar the petition, explaining that neither a general exclusionary clause or an express

waive could operate as an indefinite waiver of the Union's organizational rights to add the position to the unit. The ALJ also determined the at-issue Executive I was not a managerial employee, concluding the Executive I acts in the limited role of an advisor, merely provides administrative support, does not have the authority to approve the budget, is not engaged in executive and management functions, and does not exercise authority and discretion which broadly affects the Employer's goals. Accordingly, the ALJ granted the Union's majority interest petition. The Board affirmed the ALJ's decision.

4/11/17
ILRB SP
Unit Clarification/Majority Interest Petition; Certification Bar; Managerial and Supervisory Exclusion

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 33 PERI ¶ 111 (IL LRB-SP 2017) (Case Nos. S-RC-15-066 and S-UC-15-123), the Union filed a majority interest representation petition (Representation Petition) to include one PSA, Option 3 in a bargaining unit. The Employer opposed the petition, asserting that the PSA, Option 3 is a managerial, supervisory, and/or confidential employee. The Employer also argued that the petition was barred by *res judicata* because the PSA, Option 3 position was previously excluded from the bargaining unit after the Employer filed a unilateral unit clarification petition asserting that the position was managerial, and the Union did not oppose the petition. The Employer argued that if the petition was not barred, then the case should be heard as a unit clarification petition. Thereafter, the Union filed the instant unit clarification petition. The ALJ found that the prior unit clarification certification was proper as it is the Board's consistent and regular practice to issue such certifications when a unilaterally filed petition is unopposed. However, the ALJ did not find that the Representation Petition was barred by *res judicata* because the facts and issues in the prior case and current case are different.

The ALJ also found that of the two petitions filed by the Union in the instant case, the unit clarification petition was the appropriate choice, stating that the Representation Petition was barred by the Board's certification bar rules. Although the ALJ found that the instant unit clarification petition was appropriate, the ALJ determined that the evidence did not support there being a substantial change in the duties and functions of the PSA, Option 3. The ALJ also found that the PSA, Option 3was not a managerial or supervisory employee.

The Board agreed with the ALJ's conclusion that the prior unit clarification petition was properly certified; rejected the ALJ's conclusion that the instant Representation Petition was barred by the certification bar and instead found the petition to be proper; and affirmed the ALJ's finding that the PSA, Option 3 is supervisory and managerial.

05/26/17
1st District Opinion

Revocation of Certification

In *AFSCME Council 31 v. Ill. Labor Relations Bd., Sheriff of Cook Cnty., and MAP Chapter 438*, 2017 IL App (1st) 160960 and 162034 (consol. for decision), 33 PERI 119, (ILRB Case No. L-UC-15-003, bifurcated proceedings), 32 PERI ¶ 158 and 33 PERI ¶ 18, AFSCME filed a unit clarification petition (UC) seeking to include 8 employees in the Cook County Sheriff's Electronic Monitoring Unit. MAP tried to intervene alleging that it currently represented the employees at issue. The Executive Director issued a certification (no objections to the UC had been filed) and then revoked it when MAP informed Board agents that it already represented the job title AFSCME was seeking. The case was bifurcated with the issue of whether the ED had authority to revoke the certification going to the Board while a hearing on whether the UC should be dismissed for failure to comply with the Board's rules on the filing of UCs. AFSCME filed two separate appeals. Appellate Court Case No. 1-16-0960 involves a review of the Board's order affirming the Executive Director's revocation order and Appellate Case No. 1-16-2034 involves the Board's order dismissing the unit clarification petition filed by AFSCME. In the first appeal, the court reversed on grounds that the Executive Director exceeded her authority in revoking the certification of AFSMCE as the exclusive representative. In the appeal of the Board's dismissal of the UC, the court held that because it found that the Executive Director lacked authority to revoke AFSCME's certification, the Board's dismissal was void.

06/05/17
1st District Rue 23 Order
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In *AFSCME Council 31 v. Illinois Labor Relations Board and City of Chicago, Dep't of Bldgs*, 2017 IL App (1st) 160835-U, 33 PERI ¶ 125, (ILRB Case No. L-RC-15-008), 32 PERI ¶ 155, the court affirmed the Board's decision determining that the Assistant Chief Engineer of Sewers in the City of Chicago's Department of Buildings was excluded from collective bargaining pursuant because he was a supervisor under the Act.

06/13/17
ILRB SP
Unit Clarification; Confidential Exclusion

In *State of Illinois, Department of Central Management Services (Department of Corrections and Metropolitan Alliance of Police, Chapter 294*, 33 PERI ¶ 121 (IL LRB-SP 2017) (Case No. S-UC-16-050), the Board accepted, with modification, the ALJ's recommended order finding the Employer's unit clarification petition to remove the titles of Internal Security Investigator (ISI) I and II from the bargaining unit represented by the Union to be procedurally appropriate and granting the petition. The Board accepted the ALJ's recommendation rejecting the Union's arguments that the petition was inappropriate because it sought to exclude an entire bargaining unit of 19 employees rather than a small number of positions. Relying on *Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board,* (*DOC*), 364 Ill.

App. 3d 1028 (4th Dist. 2006), the Board accepted the ALJ's determination that the petition, filed eight years after the positions were included in the bargaining unit, was timely, holding that the State can file a unit clarification petition at any time to remove a confidential employee from a bargaining unit. The Board and the ALJ rejected that the Union's attempt to distinguish the case from DOC on the basis that it sought to eliminate the entire bargaining unit rather than to remove some included job titles, noting that the Union cited no precedent identifying such a distinction. The Board also affirmed the ALJ's recommendation that the ISIs I and II are confidential employees within the meaning of section 3(c) of the Act under the authorized access test because, in the regular course of their duties, they have authorized access to confidential collective-bargaining related emails. The Board additionally found the positions to confidential based on the employees' role in the Employer's disciplinary process. It held that employee duties that result in work product on which the Employer's decision to discipline, or its grievance arbitration litigation strategy, is based, create a risk of divided employee loyalty between management and the union, and therefore should be considered in the confidential employee analysis. The Union sought direct administrative review by the appellate court of the Board's order and on June 13, 2017, the Board denied the Union's motion to stay its decision pending that review.

6/13/17
ILRB SP
Unit Appropriateness

In *International Brotherhood of Teamsters, Local 700 and Illinois State Toll Highway Authority*, 34 PERI ¶ 41 (IL LRB-SP 2017), the Union petitioned to represent employees of the ISTHA in the title of Intelligent Transportation Systems Field Technicians in a stand-alone bargaining unit. The ALJ found that the Employer did not identify any job positions that are not already represented by another union and which the petition should also have sought to include in the bargaining unit, and therefore the presumption of inappropriateness did not apply. The ALJ also found that the Employer conceded that the petitioned-for employees share a community of interest. The ALJ determined that no hearing was necessary. She found that the bargaining unit was appropriate and recommended certification of the unit. The Board rejected the ALJ's findings and recommendation. The Board found that the Employer identified positions that were not already included in a bargaining unit and which the petition did not seek to represent, raising an issue of fact requiring a hearing over whether the presumption of inappropriateness applies, the petition seeks only a portion of employees who perform similar duties under a centralized personnel system, and the appropriateness of the bargaining unit under the Section 9(b) factors. The Board remanded the matter to the ALJ for hearing.

06/27/17
4th District Opinion
Section 3 Exclusions for Office of Secretary of State

In *SEIU v. Ill. Labor Relations Bd. and State of Ill., Secretary of State,* Fourth District Appellate Court Case Nos. 4-16-0347 and 4-16-0372 (consol. for decision), 34 PERI ¶ 5 ILRB Case Nos. S-UC-12-034 & S-UC-14-006, 32 PERI ¶ 182, the court affirmed the Board's decision finding that the Executive I positions and the Drivers Facility Managers at the Secretary of State should be excluded from the bargaining unit. The Board had found that the Executive I positions were excluded as a matter of law and that the Drivers Facility Managers met the test for exclusion set forth the 2013 amendments to the Act. Regarding the Executive I positions, the court held that the Board did not err in its interpretation of the portion of Section (3) of the Act excluding the Executive I positions at the Secretary of State's office from the Act's definition of "public employee." Notably, the court declined to interpret the language of the "policy making exception" in Section 3(n) to require the use of the functional test established by the Seventh Circuit in *Nekolny v. Painter*, 653 F.2d 1164, 1169 (7th Cir. 1981) as urged by the Union. Modification upon denial of rehearing issue on 7/31/17.

II. Employer Unfair Labor Practices

10/3/16
ILRB SP
Unfair Labor Practice - Employer's Knowledge of protected concerted activity

In *American Federation of State, County and Municipal Employees, Council 31 and Will County Circuit Clerk,* 33 PERI ¶50 (IL LRB-SP 2016) (Case No. S-CA-14-123), the Board rejected the ALJ's recommendation and instead held that the Respondent, Will Count Circuit Clerk did not violate Sections 10(a)(2) and (1) of the Act when it terminated a probationary employee. The Board agreed with the ALJ's conclusion that the probationary employee had engaged in protected and concerted activity by participating in the strike with other bargaining unit members by not attending work and by chanting on the picket line, and that on at least one occasion the employee led the other members in chanting on the picket line. The Board also agreed that shortly after the probationary employee returned form the one-week strike, the employer terminated the probationary employee. However, the Board disagreed with the ALJ's conclusion that the employee's participation in the strike and picketing was in any part a motivating factor in the employer's decision to terminate the employee. Instead, the Board credited the testimony of the employer's agent that she *decided* to terminate the employee prior to the strike and that while she was aware that the employee was participating in the strike, she was unaware that the probationary employee had taken such an active and enhanced role on the picket line.

10/28/16
ILRB LP
Untimely Answer; Default Judgment

In *Michael J. Conroy and City of Chicago (Fire Department)*, 33 PERI ¶ 51 (IL LRB LP) (Case No. L-CA-16-020), Charging Party filed an unfair labor practice charge alleging that the Respondent Employer discriminated against him for initiating or filing OSHA complaints and raising safety concerns at the workplace as well as for filing an unfair labor practice charge with the Board. The Board's Executive Director issued a complaint on the charge. Per the Board's Rules and Regulations, service of the complaint on the Employer was presumed to have been effectuated on Friday, June 3, 2016, making its answer to the complaint due by June 20, 2016. As of June 28, the Employer had not filed its answer. The ALJ issued an Order to Show Cause as to why default judgment should not issue against the Employer for its failure to file an answer, and the Employer filed a response. Therein, counsel for the Employer admitted that she inadvertently put the wrong deadline for filing the answer on her calendar. The ALJ subsequently issued default judgement against the Employer. The ALJ noted that the Board's rules explicitly provide that a party who does not file a timely answer is deemed to have admitted the allegations contained within the complaint and will cause the proceedings before the Board to terminate with a default judgment being entered against the party failing to file the answer. This rule, the ALJ pointed out, has been strictly observed and construed by the Board and courts. The Board's rules do permit an ALJ to grant a respondent leave to file a late answer, but only in situations involving extraordinary circumstances. The ALJ noted that the Board and courts have long held that inattention or negligence, as was the case here, does not rise to the level of an extraordinary circumstance. The Board affirmed the ALJ's default judgement.

11/16/16
ILRB LP
Unilateral Change – camera footage to support discipline

In *Painters Council, Local 14 and Chicago Transit Authority*, 33 PERI ¶ 61 (IL LRB-LP 2016) (Case No. L-CA-14-035), the Board held that the Chicago Transit Authority ("CTA") violated Sections 10(a)(4) and (1) of the Act when it used footage from rail platform cameras to support its decision to discipline three employees in a bargaining unit represented by Painters Council, Local 14 because the employees did not know that the platform cameras could capture their conduct while they were not standing on the CTA platform, e.g., while they were on the public sidewalk next to the station, in a CTA van parked on the street, and in the parking lot adjacent to the station. The Board also held that the CTA's use of use of handheld surveillance cameras to support its disciplinary decision did not violate the Act because it did not constitute a substantial change to the method of investigation the CTA relied upon in making disciplinary decisions, where the record demonstrated that the CTA had historically investigated workers by observing them on the job and that the handheld cameras merely recorded what an investigator could observe with the naked eye. Finally, the Board modified the remedy recommended by the ALJ, and held that instead of allowing the CTA to make its disciplinary decision without considering the

platform camera footage, it ordered the CTA to rescind the discipline imposed upon the three employees.

12/13/16
ILRB SP
Refusal to Bargain; Impasse; Surface Bargaining; Failure to Provide Information; Direct Dealing; Surface Bargaining

In *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31*, 33 PERI ¶ 67 (IL LRB-SP 2016), the State Panel ruled on two consolidated cases, Case No. S-CB-16-017 and Case No. S-CA-16-087. In Case No. S-CA-16-087, the American Federation of State, County, and Municipal Employees, Council 31 ("Union") alleged that the State of Illinois, Department of Central Management Services ("State") violated Sections 10(a)(4) and (1) of the Act when it failed to provide the Union with necessary information to bargain over proposals, engaged in direct dealing, refused to bargain over mandatory subjects of bargaining, included permissive subjects in its last, best, and final offer, included illegal subjects of bargaining in its last, best, and final offer, engaged in surface bargaining, and refused to meet with the Union to bargain after January 8, 2016, instead declaring impasse. The Board affirmed the ALJ's conclusion that the State violated Sections 10(a)(4) and (1) of the Act by failing and refusing to provide the Union with certain information it requested from the State before the State's declaration of impasse. It rejected the State's claims on exception that the Union made the requests in bad faith and that the State's refusal to provide the information did not interfere with the Union's role as collective bargaining representative. Although some of the information requested pertained to health insurance, the Board expressly declined to address the State's exceptions to the ALJ's finding that health insurance was a mandatory subject of bargaining. The Board allowed the ALJ's determination on that issue to stand as a non-precedential disposition of the Board.

A majority of the Board affirmed the ALJ's finding that the State violated the Act by failing and refusing to provide the Union with certain information it requested from the State after the State's declaration of impasse. The majority emphasized that the State had a continuing obligation to provide the Union with information that is relevant and necessary to the Union's role as collective bargaining representative, even after the declaration of impasse. Two dissenting Board members stated that they would find that the State had no obligation to provide the Union with the requested information after the parties had reached impasse. They also reasoned that the Union's requests were not made in good faith.

The Board likewise affirmed the ALJ's dismissal of the allegations that the State engaged in direct dealing or otherwise made statements that violated the Act, imposed waivers of the Union statutory rights during bargaining, made illegal proposals in bargaining, engaged in surface bargaining, refused to bargain over the Union's Parking and Records and Forms proposals, unlawfully failed to explain its proposals, and refused to meet with the Union for bargaining after January 8, 2016, while the Board was determining the question of impasse.

However, the Board reversed the ALJ's finding that the parties were not at overall impasse on January 8, 2016, and it likewise rejected the ALJ's remedy of partial implementation. While the ALJ found that the parties had reached impasse on some package proposals but not others and permitted the State to implement those proposals on which the parties had reached impasse, the Board applied the approach that the ALJ had proffered as an alternative to her primary finding. Accordingly, the Board rejected the ALJ's package-by-package analysis of the question of impasse and adopted the National Labor Relations Board's single critical issue impasse test. To that end, the Board held that the parties reached a good faith bargaining impasse on the single critical issue of subcontracting. It further reasoned that the parties' disagreement on the issue of subcontracting led to a breakdown in negotiations.

The Board acknowledged that the State had committed an unfair labor practice by refusing to provide the Union certain requested information, but it found that this unfair labor practice did not preclude a finding that the parties had reached impasse where the information requested did not relate to subcontracting. Similarly, the Board acknowledged that the State had included some permissive subjects in its last, best, and final offer, but it reasoned that this too did not preclude a finding of impasse where the permissive aspects of the proposal did not cause the impasse.

Finally, the Board found that the Union's post-January 8, 2016 statements did not break the impasse because the Union merely stated that it was working on new proposals and offered only vague, non-specific statements that the Union was willing to move from its position.

02/01/17
1st District Opinion
Mandatory Subject of Bargaining—Secondary Employment

In *Cnty. of Cook and Sheriff of Cook Cnty., v. Ill. Labor Relations Bd., and Teamsters, Local 700 and Ill. Fraternal Order of Police,* 2016 IL App (1st) 153015, ILRB Case No. L-CA-14-016, 32 PERI ¶ 70, the court affirmed the Board's decision finding that the Sheriff committed an unfair labor practice when he unilaterally changed the policy and procedures related to secondary employment without giving the Union notice and an opportunity to bargain. The Sheriff had issued a new general order setting forth the Sheriff's secondary employment policy which differed from the policy included in a prior general order. The new general order included conditions under which secondary employment may be denied or revoked, and imposed an annual reporting requirement on all unit member employees, not just those that intended to pursue secondary employment. The Union demanded to bargain the change and its effects but the Sheriff did not respond to the bargaining demands. The Board found that the new secondary employment policy was a mandatory subject of bargaining and the Sheriff committed an unfair labor practice when he unilaterally changed this policy and failed to bargain the change and its effects with the Union. The Sheriff petitioned for leave to appeal to the Illinois Supreme Court which was denied.

03/15/17

1st District Rule 23 Order
Board's Exclusive Jurisdiction Over Act and Collective Bargaining

In *Village of North Riverside v. Ill. Labor Relations Bd., and North Riverside Firefighters and Lieutenants Union Local 2714, IAFF*, 2017 IL App (1st) 152900, ILRB Case No. S-CA-15-032, 33 PERI ¶ 33, the Village filed an interlocutory appeal of a Circuit Court of Cook County's order dismissing the Village's action for declaratory judgment. The Village filed an action in the Circuit Court of Cook County asking the circuit court to declare, among other things, that "nothing in the CBA, the Illinois Public Labor Relations Act, or any other law prevents the Village from outsourcing its fire protection service based on a good faith legislative determination of economic necessity." The First District affirmed the dismissal noting that the Act gives the Board exclusive jurisdiction over disputes related to collective bargaining and the Act. This case is related to Appellate Court Case No. 1-16-2251 which appealed the Board's decision in Case No. S-CA-15-032. See case summary for S-CA-15-032 on p. __.

03/31/17
1st District Opinion filed December 5, 2017; Modified Upon Denial of Rehearing March 31, 2017
Permissive Subject; Interest Arbitration; Submission of Status Quo Language as Waiver of Statutory Rights

In *Skokie Firefighters Union, Local 3033 v. Ill. Labor Relations Bd., and Village of Skokie*, 2017 IL App (1st) 152478, ILRB Case No. S-CA-14-053, 32 PERI ¶ 50, the Union appealed the Board's decision affirming the ALJ's dismissal of an unfair labor practice charge that alleged the Village refused to bargain in good faith when it submitted a permissive bargaining proposal to an interest arbitrator. The charge was dismissed in view of the Board's decision in *City of Wheaton*, 31 PERI ¶ 131. The reversed the Board's decision and remanded to the Board to vacate the dismissal and to find that Village committed an unfair labor practice. The court found that the submission of *status quo* language concerning the examination process for lieutenants had the effect of waiving statutory rights under the Fire Department Promotions Act. The Village filed a petition for rehearing asking the court to remand the matter to the Board for hearing. The court denied the petition for rehearing noting that a hearing was not required as the Village in its motion to dismiss before the Board admitted that there were no issues of fact or law for hearing.

03/31/17
1st District Opinion Filed February 21, 2017; Modified Upon Denial of Rehearing
Mandatory Subject of Bargaining; Unilateral Change

Teamsters, Local 700 v. Ill. Labor Relations Bd., and Cnty of Cook and Sheriff of Cook Cnty., 2017 IL App (1st) 152993, ILRB Case No. L-CA-13-055, 32 PERI ¶ 69, the court reversed the Board's determination that the Sheriff's was not obligated to bargain over his new gang affiliation order but affirmed the Board's finding that the Sheriff lawfully issued a general order setting forth his social media policy. The Sheriff issued two general orders relating to rules of conduct relating to gang affiliation and social media. The gang affiliation order required disclosure of known gang affiliations or those gang affiliations

that unit member employees "should have known" existed. The Union alleged Sheriff was obligated to bargain over the gang affiliation. The Board found the Sheriff had no obligation to bargain over the gang affiliation order because it was a non-mandatory subject of bargaining. The court reversed finding that the benefits of bargaining the gang affiliation order outweighed the burdens where the record lacked sufficient evidence as to the extent of the burden on the Sheriff to bargain.

The Sheriff's social media policy order included a provision stating that all rules of conduct in the Sheriff's Office apply to internet activity, including activity on social media sites. The Union alleged the Sheriff's social media general order had a chilling effect on member employees from engaging in protected activity. The court affirmed the Board's decision finding the Sheriff's conduct did not violate the Act. Applying the analysis in *Martin Luther Memorial Home, Inc*., 343 N.L.R.B. 646 (2004) (*Lutheran Heritage)* the court found that the social media order did not restrict protected activity. The Sheriff filed a petition for leave to appeal to the Illinois Supreme Court which was denied.

4/11/17
ILRB SP
Repudiation

In *International Association of Firefighters, Local 412, AFL-COI, CLC and City of Rockford*, 33 PERI ¶ 108 (IL LRB-SP 2017) (Case No. S-CA-15-030), the Board found that City of Rockford did not violate Sections 10(a)(4) and (1) of the Act when it refused to include language on medical certification in the parties' successor collective bargaining agreement. The employer announced a change in its sick change policy involving medical certification. The union grieved the change, and the parties agreed that they would resolve the grievance during their negotiations of the successor collective bargaining agreement. The Board found that during the negotiations the parties agreed to the medical language itself, but that they did not reach a meeting of the minds as to whether the language would appear in the collective bargaining agreement or whether it would appear in the employer's sick leave policy. Since there was no meeting of the minds as to the essential terms of the agreement, the employer did not violate the agreement by refusing to include the medical certification language.

06/08/17
ILRB LP
Duty to Bargain

In *Amalgamated Transit Union, Local 241/Chicago Transit Authority, L-CA-15-008***,** the Board dismissed the charge filed by Union alleging that the Employer violated the Act when it unilaterally eliminated a certain number of "swing posts" opportunities. Applying the three-prong *Central City* analysis, the ALJ found that the Employer was obligated to bargain its decision to reduce swing post opportunities and thus, violated the Act when it was done without giving the Union an opportunity to bargain. Although the Board concurred with the ALJ's analysis with respect to the first two prongs of the *Central City* test, the Board held that the benefits of bargaining the change did not outweigh the burden on the employer's inherent managerial authority. Specifically, the Board noted that the

decision to reduce swing post opportunities was made to ensure more employees were on the street responding to events, restoring service, and handling more passengers during periods of high congestion, thus fulfilling its primary governmental function to provide transit services in an efficient manner. The cost savings concerns, framed in this light, were ancillary at best to the employer's need to increase the efficiency of the service it is statutorily obligated to perform.

6/13/17
ILRB SP
Untimely Appeal; Protected Activity; Failure to Respond to Request for Information

In *Sharon White and State of Illinois, Department of Central Management Services (Human Services Madden Mental Health Center),* 34 PERI ¶ 39 (IL LRB SP 2017) (Case No. S-CA-16-137), the Board affirmed the Executive Director's dismissal of the Charging Party's claim against the Employer, finding the Charging Party failed to comply with the Board's rules. The Board struck the Charging Party's appeal on procedural grounds because the appeal was not properly served. However, the Board noted that even if the substance of the appeal was considered, the Executive Director's dismissal would be affirmed on the merits because there was no evidence that the Charging Party engaged in protected concerted activity and the Charging Party failed to respond to the Board investigator's request for information.

6/13/17
ILRB SP
Untimely Appeal; Retaliation

In *Shaquea K. Baker and Cook County Circuit Clerk*, 34 PERI ¶ 38 (IL LRB SP 2017) (Case No. S-CA-16-128), the Board affirmed the Executive Director's dismissal of the Charging Party's claim against the Employer, finding the Charging Party failed to comply with the Board's rules. The Board struck the Charging Party's appeal on procedural grounds because the appeal was not served on all other parties. However, the Board noted that even if the substance of the appeal was considered, the Executive Director's dismissal would be affirmed on the merits because the Charging Party did not identify any flaws in the Executive Director's analysis or findings of fact. The Charging Party also failed to provide evidence of an unlawful motive during the investigation of the charge, therefore the Executive Director correctly determined there were no issues for hearing. Additionally, the Charging Party did not claim that the Employer retaliated against her due to her participation in the union until the filing of the appeal.

7/11/17
ILRB SP
Failure and Refusal to Bargain – submitting status quo language to interest arbitration

In *Skokie Firefighters Local 3033 and Village of Skokie*, 34 PERI ¶ 17 (IL LRB-LP 2017) (Case No. S-CA-14-053), pursuant to Appellate Court of Illinois, First District's mandate,

the Board vacated its previous Decision and Order issued on August 31, 2015, and instead, held that Respondent, Village of Skokie, Sections 10(a)(4) and (1) of the Act when it submitted to interest arbitration status quo language concerning Article XXII, the examination process for the rank of Lieutenant, which in effect acted as a waiver of the Union's statutory rights under the Fire Department Promotions Act.

7/11/17
ILRB LP
Executive Director Dismissal – Retaliation

In *Shadonna Davis and County of Cook and Sheriff of Cook County*, 34 PERI ¶ 15 (IL LRB-LP 2017) (Case No. L-CA-17-026), the Board affirmed the Executive Director's dismissal of the charge, finding that the Charging Party had failed to raise an issue of fact or law warranting a hearing. Davis alleged that the Employer disparately and unfairly required her to return to her work assignment in Division 8 of the Cook County Jail in retaliation for complaining about seven-day-workweek schedules. Davis had previously been assaulted by an inmate in Division 8, but the Employer adjusted her assignment in that division to eliminate any contact with the inmate who assaulted her. While Davis demonstrated that she engaged in protected concerted activity in protesting the Employer's requirement that employees work weekends and that the Employer knew of her complaints, Davis did not establish that the Employer assigned her in retaliation for these complaints or that the Employer treated her disparately. Davis appealed, and the Local Panel affirmed the dismissal as written.

8/9/17
ILRB LP
Executive Director Dismissal – Jurisdiction

In *Shelley Kaplan and City of Chicago (Department of Police)*, 34 PERI ¶ 43 (IL LRB-LP 2017) (Case No. L-CA-16-084), the Executive Director dismissed the charge because it failed to raise an issue of law or fact warranting a hearing. Kaplan alleged the Employer refused to provide her with her pension and benefits and that she was suspended in 2006 because she filed a discrimination claim in federal court based on her religion and disability. The Executive Director found that Kaplan failed to allege that she engaged in conduct protected by the Act, and that the Board did not have jurisdiction to address issues that occurred more than ten years prior to the filing of the charge. Kaplan timely appealed, and the Local Panel affirmed the dismissal as written.

8/9/17
ILRB LP
Executive Director Dismissal – Service Rules on Appeal; Variance; Retaliation

In *Dudlita Prewitt and City of Chicago (Department of Family and Support Services)*, 34 PERI ¶ 44 (IL LRB-LP 2017) (Case No. L-CA-17-020), Prewitt alleged that the Employer took employment actions against her in retaliation for filing a grievance and in retaliation for filing a disability discrimination complaint with another agency. The Executive Director dismissed the charge, finding that the Board lacked jurisdiction over the portions of the charge alleging retaliation based on a discrimination complaint, and finding that Prewitt did not show that the Employer took any action against her based on her grievances. Prewitt appealed timely but failed to provide proof of service on the Employer of the appeal. The Local Panel granted a variance from the Board's service rules and allowed the appeal but affirmed the dismissal as written.

8/15/17
ILRB LP
Executive Director Dismissal – Retaliation

In *Kalaveeta Mitchell and County of Cook and Sheriff of Cook County*, 34 PERI ¶ 50 (IL LRB-SP 2017) (Case No. L-CA-17-011), Mitchell alleged that the Employer ultimately terminated her to retaliate against her for complaints she made to management about inadequate training and for complaints she made to the Union about the Employer's practice of changing employees' regular days off. The Executive Director dismissed the charge, finding that Mitchell failed to provide evidence that the Employer acted against Mitchell because it was motivated by her protected concerted activity and further finding that Mitchell was not treated disparately and was discharged for her performance rather than because of protected activity. Mitchell timely appealed, and the Local Panel affirmed the dismissal as written.

09/07/17
ILRB LP
Executive Director Dismissal – Retaliation; Untimely Response; Variance

In *Megan E. Cook and Sheena Williamson*, __ PERI ¶ __ (IL LRB-SP 2017) (Case Nos. L-CA-16-070 and L-CA-16-071), Mitchell alleged that the Employer ultimately terminated her to retaliate against her for complaints she made to management about inadequate training and for complaints she made to the Union about the Employer's practice of changing employees' regular days off. The Executive Director dismissed the charge, finding that Mitchell failed to provide evidence that the Employer took action against Mitchell because it was motivated by her protected concerted activity and further finding that Mitchell was not treated disparately and was discharged for her performance rather than because of protected activity. Mitchell timely appealed, and the Local Panel affirmed the dismissal as written.

09/29/17
1st District Opinion filed 03/27/17; Modified Upon Grant of Petition for Rehearing Timeliness

In *Amalgamated Transit Union, Local 241 v. Ill. Labor Relations Bd., and Chicago Transit Authority*, IL App (1st) 160999,33 PERI ¶ 107, ILRB Case No. L-CA-14-022, 32 PERI ¶ 161, the court granted petitions for rehearing filed by the CTA and the Board, and issued a new opinion modifying its March 27 opinion by remanding to the Board to determine whether the Union had the requisite notice of the CTA's contract with Cubic to implement the new Ventra system more than six months before filing the ULP. In its earlier opinion, the court reversed the Board's finding regarding the notice issue holding that the Union did not have the unambiguous explicit notice needed to trigger the six-month period. The court's remand to the Board for further proceedings on the merits of the Unions claims from its March opinion was not modified.

09/29/17
1st District
Duty to Bargain; Termination of Contract; Interest Arbitration

In *Village of North Riverside v. Ill. Labor Relations Bd., and North Riverside Firefighters and Lieutenants Union Local 2714, IAFF*, 2017 IL App (1st) 162251, ILRB No. S-CA-15-032, 33 PERI ¶ 33. The court affirmed the Board decision finding that the Village unlawfully notified the Union that the parties' collective bargaining agreement would be terminated. Village appealed contending that the Board improperly interpreted Section 7 of the Act which the Village argued negates any obligation for the employer to maintain the status quo throughout interest arbitration procedures. The court rejected this argument and held that Section 7 does not grant public employers the right to unilaterally terminate a collective bargaining agreement with employees who are prohibited from striking.

III. Union Unfair Labor Practices

11/29/16
ILRB LP
Executive Director Dismissal – Duty of Fair Representation

In *Jason Monsour and Amalgamated Transit Union, Local 308*, 33 PERI ¶ 64 (IL LRB-LP 2016) (Case No. L-CB-16-010), Charging Party alleged that the Union breached its duty of fair representation by negligently failing to process his grievance over his discharge from employment, costing him more than two years of lost wages and benefits. The Executive Director found that there was no evidence that the Union acted in a retaliatory manner despite some evidence to support that there may have been acrimony between Charging Party and a Union official against whom he ran for office. Instead, the Union elected to prioritize other employees' grievances because it determined that they had more merit than Charging Party's. And, the Union ultimately successfully processed Charging Party's grievance. Citing unions' substantial discretion in deciding whether to pursue a grievance, the Executive Director dismissed the charge. The Board affirmed the

dismissal following Charging Party's appeal. Regarding the Union's contention that the charge was untimely because it did not allege Union misconduct during the six months prior to the charge's filing date, the Board stated that the Executive Director, construing the facts in the light most favorable to Charging Party, assumed the charge was timely, and it noted that two grievance processing events occurred during the six-month limitation period.

12/13/16
ILRB SP
Refusal to Bargain; Impasse; Surface Bargaining; Failure to Provide Information; Direct Dealing; Surface Bargaining

In *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31*, 33 PERI ¶ 67 (IL LRB-SP 2016), the State Panel ruled on two consolidated cases, Case No. S-CB-16-017 and Case No. S-CA-16-087. In Case No. Case No. S-CB-16-017, the State alleged that the Union violated Sections 10(b)(4) and (1) of the Illinois Public Labor Relations Act (Act) by refusing to agree that the parties had reached impasse and initially refusing to submit the dispute concerning the question of impasse to the Illinois Labor Relations Board (Board), as required by the parties' Tolling Agreement. The Board affirmed the ALJ's dismissal reasoning that the Union did not repudiate the parties' tolling agreement by delaying its submission of the question of impasse to the Board by five weeks. It noted that it could not find repudiation where the parties' Tolling Agreement was ambiguous and where the State offered insufficient evidence that the Union's claim of ambiguity was made in bad faith.

06/13/17
ILRB SP
Duty of Fair Representation

In *Shaquea K. Baker/International Brotherhood of Teamsters, Local 700*, 34 PERI ¶ 40 (IL LRB-SP 2017) (Case No. S-CB-16-030), Charging Party filed an unfair labor practice charge against Respondent Union, alleging that it violated its duty of fair representation under the Act when it refused to advance her grievance to arbitration. The Board's Executive Director dismissed the charge on the grounds that the Charging Party did not provide any evidence regarding the Union's motive for refusing to take her grievance to arbitration, nor any evidence to support the Charging Party's assertion that the Union and Employer agreed that the Union would not arbitrate the grievance, or that the two worked together to the detriment of employees. The Executive Director also noted that the Union treated the Charging Party's grievance in a manner similar to another employee who was involved in the same altercation as the Charging Party. Charging Party filed exceptions to the dismissal, but did not provide proof that she served the Union with her exceptions as required by the Board's Rules and Regulations. The Board affirmed the dismissal on the grounds that the Charging Party's exceptions were procedurally deficient as they failed to comply with the Board's rules on service, but noted that, if it were to consider the substance of the appeal, it would nonetheless affirm the dismissal. It noted that unions have broad discretion in determining whether to arbitrate a grievance, and the

Charging Party's assertion that she should be granted a hearing in order to obtain evidence to prove her assertions runs counter to the purpose of a hearing, which serves to resolve issues of fact or law already raised during an investigation.

07/11/17
ILRB SP
Submission of Permissive Subject to Interest Arbitration; Health Insurance

In *State of Illinois, Department of Central Management Services and Troopers Lodge #41, Fraternal Order of Police*, 34 PERI ¶ 18 (IL LRB-SP 2017), the Board affirmed an ALJs determination that the Troopers Lodge #41, Fraternal Order of Police (Union) did not violate Section 10(b) of the Act when it submitted its health insurance proposal to an interest arbitration panel and then refused to withdraw it. The Board noted that the Union's conduct was lawful because it did not have a clear indication that health insurance was a permissive subject of bargaining. The Board noted that the State did not make timely and clear objections to the arbitration panel's consideration of the issue, and that the Union acted lawfully when it submitted its health insurance proposal and then insisted that the panel consider the health insurance issue.

The Board affirmed the ALJ's threshold finding that health insurance was not exempt from the duty to bargain on the grounds that it was a matter "specifically provided for" under the State Employees Group Insurance Act. The Board found that the State Employees Group Insurance Act does not foreclose or prohibit collective bargaining over health insurance for the State. The Board noted that the State Employees Group Insurance Act sets forth a minimum level of services and does not set forth premiums, deductibles, co-payments, or other similar contours of a health plan. The Board acknowledged that the State Employees Group Insurance Act also imposed certain requirements upon the Director of CMS to design health benefit plans consistent with that Act and to enter contracts with health insurance carriers that take into consideration existing terms and conditions of employment. However, it found that the State Employees Group Insurance Act allowed the Director to engaging in collective bargaining while exercising his statutory authority to design, and enter into contracts for, health benefits.

Next, the Board modified and narrowed the ALJ's finding that health insurance is a mandatory subject of bargaining for the State. The Board accepted the ALJ's analysis that health insurance affects wages, hours, and terms and conditions of employment. However, the Board found, contrary to the ALJ, that health insurance is also a matter of inherent authority for the State. It reasoned that health insurance benefits and associated costs impact the State's budget in a significant way, and that the State's statutory obligation to provide employees with health insurance might limit its ability to provide services to the public when its spending budget is decreased. The Board similarly reasoned that health insurance relates to the State's business because the State must maintain a workforce, and provide its employees with attendant benefits, to provide its public services. In addition, the Board narrowed the ALJ's finding that the benefits of bargaining over health insurance outweigh the burdens on the State's inherent managerial authority. The Board focused on the specific aspects of health insurance outlined in the parties' submissions, including

premiums, deductibles, co-payments, and out-of-pocket maximum (OPMs), along with concerns regarding procurement and choice of vendor. To that end, the Board noted that premiums, deductibles, co-payments, and OPMs are mandatory subjects of bargaining, but that the choice of vendor and the process by which the State procures health insurance are permissive subjects.

Finally, the Board reversed the ALJ's finding that sanctions were warranted against the State.

7/11/17
ILRB LP
Executive Director Dismissal – Service Rules on Appeal; Variance; Untimely Charge; Failure to Respond to Requests for Information

In *Karen Lindberg and Service Employees International Union, Local 73*, 34 PERI ¶ 16 (IL LRB-LP 2017) (Case No. L-CB-17-006), the Executive Director dismissed the charge, finding that Lindberg failed to respond to the investigator's request for additional information in support of the charge, and that the charge was untimely filed. Lewis appealed the dismissal but failed to provide proof of service on the Union. The Local Panel granted a variance of the Board's service rules, allowing the appeal despite the procedural deficiency. Moreover, the Local Panel found that the charge was timely filed in August of 2016 because it claimed that the alleged misconduct took place in July of 2016, and not in July of 2015 as noted by the Executive Director. However, the Local Panel upheld the dismissal because Lewis failed to respond to requests for additional information from the investigator, and the available evidence was not sufficient to raise an issue of law or fact warranting a hearing. Therefore, the Local Panel affirmed the dismissal with modification.

7/11/17
ILRB LP
Executive Director Dismissal – Service Rules on Appeal; Variance; Untimely Charge; Duty of Fair Representation

In *Geramy Webster and Amalgamated Transit Union, Local 308*, 34 PERI ¶ 70 (IL LRB-LP 2017) (Case No. L-CB-17-026), the Executive Director dismissed the charge, finding that Webster's charge was untimely and, in the alternative, that Webster failed to raise an issue of fact or law warranting a hearing. Webster alleged that the Union breached its duty of fair representation when it failed to inform him about his ability to appeal an arbitration award upholding his termination, and by refusing to pursue such an appeal on his behalf. Webster appealed the dismissal but failed to provide proof of service upon the Union of his appeal. The Local Panel granted a variance from the Board's rules to allow the appeal. However, the Local Panel found that Webster's charge was filed untimely because he originally attempted to file the charge on a National Labor Relations Board form that was not recognized by the ILRB as an attempt to file a charge with the ILRB, and there was no proof that the Union received this charge until Webster properly filed this charge with the ILRB in February 2017, more than nine months after the alleged misconduct. Moreover, the Local Panel found that, even if the charge was timely filed, it would uphold the

dismissal on the merits. Therefore, the Local Panel allowed Webster's appeal but affirmed the dismissal.

8/9/17
ILRB LP
Executive Director Dismissal – Duty of Fair Representation

In *Shelley Kaplan and Fraternal Order of Police, Lodge No. 7*, 34 PERI ¶ 44 (IL LRB-LP 2017) (Case No. L-CB-16-055), Kaplan alleged that the Union breached its duty of fair representation when it allegedly refused to assist her in obtaining back pay and benefits. The Executive Director dismissed the charge, finding that Kaplan failed to raise an issue of law or fact for hearing because she failed to provide evidence of a motive for the Union to breach its duty of fair representation. Kaplan timely appealed the dismissal, and the Local Panel affirmed the dismissal as written.

8/9/17
ILRB SP
Executive Director Dismissal – Duty of Fair Representation; Untimely Response to Appeal; Variance

In *Randy L. Railey and Metropolitan Alliance of Police*, 34 PERI ¶ 49 (IL LRB-SP 2017) (Case No. S-CB-17-022), Railey alleged that the Union breached its duty of fair representation when it refused to refuse Railey's grievance regarding promotion. The Executive Director dismissed Railey's charge, finding that he failed to present evidence that the Union has engaged in intentional misconduct due to any animosity toward the Charging Party, noting that Section 6(d) of the Act generally affords unions a considerable amount of discretion in pursuing grievances. The Executive Director determined that there was no indication that the Union held any animus toward the Charging Party based on the grievances he filed or that the Union disregarded the Employer's alleged violations of the collective bargaining agreement simply because the violation involved the Charging Party. Railey timely filed an appeal of the dismissal. The Union responded untimely but sought a variance to file its response *instanter*. The State Panel granted the variance and allowed the Union's response. Upon review, the State Panel affirmed the dismissal as written.

09/07/17
ILRB SP
Executive Director Dismissal – Duty of Fair Representation; Timeliness; Untimely Appeal

In *Laura Wicik and American Federation of State, County, and Municipal Employees, Council 31*, 34 PERI ¶ 60 (IL LRB-LP 2017) (Case No. L-CB-17-021), Charging Party alleged that the Union breached its duty of fair representation when it failed to file grievances over discipline she received from her employer and when two union representatives harassed her at her workplace. The Executive Director dismissed the charge on grounds that there was no indication the Union failed to pursue Charging Party's grievance because it held any animus toward or bias against the Charging Party. The

allegations based on instances occurring in December of 2015 were dismissed on timeliness grounds. Charging Party filed an appeal but failed to properly serve her appeal on the Union pursuant to Section 1200.20(f) of the Board's Rules. The Local Panel declined to grant a variance, striking the appeal and affirming the dismissal as written.

IV. Procedural Issues

03/01/17
4th District Orders

In *AFSCME Council 31 v. Ill. Labor Relations Bd. and State of Ill. Dep't of Cent. Mgmt. Servs*., Fourth Dist. Appellate Court Case No. 4-16-0827, ILRB Case Nos. S-CB-16-017 and S-CA-16-087, 33 PERI ¶ 67, the court issued an order granting AFSCME's motion to stay pending the outcome of the appeal. The court found that AFSCME demonstrated a "reasonable likelihood" of success in that the Board misapplied the three-prong NLRB's single-critical-issue test for impasse by conflating the third prong with the first and second. The court noted that this was the first time the Board used the single-critical-issue test and that the third prong of the test requires evidence that there "can be no progress on any aspect of the negotiations" (quoting *Atlantic Queens Bus Corp.* No. 29-CA-100833, 362 NLRB No. 65, 2015 WL 1815277, at *1 (April 21, 2015). The court found that the record was devoid of evidence that the parties deadlock on the subcontracting issue prevented the parties from making "progress on any aspect of the negotiations." The appellate cases began when the State filed in the Fourth District after the Board's November 15, 2017, meeting, and AFSCME filed in the First District after the Board issued its December 13, 201. While competing motions regarding jurisdiction were pending, AFSCME filed with the Board a motion to stay its December 13, 2016, order, and then, before the State had an opportunity to respond and before the Board could rule, AFSCME filed a motion to stay with the First District Appellate Court. The First District granted a temporary stay pending the court's review of any response to the AFSCME's motion. Shortly after the temporary stay was in place, the Fourth District denied AFSCME's motion to dismiss the State's petition for review in the Fourth District, and the Illinois Supreme Court granted the State's motion to transfer AFSCME's appeals filed in the First District to the Fourth District and consolidated the cases.

03/01/17
1st District Order to Show Cause
Compliance

In *Chicago Joint Board, Local 200 v. Ill. Labor Relations Bd., et al.*, [check cite] 2016 IL App (1st) 140802-U, 32 PERI ¶ 184, ILRB Case No. L-CB-06-035-C, 30 PERI ¶ 217, the Board in 2010 found that the Union was required to recalculate the disbursement of the $375,000 grievance award to include the previously excluded charging parties. After the Union's unsuccessful challenge of the Board's order before the appellate court, the employees sought enforcement of the Board's 2010 order. After completion of the compliance process, the Board determined that to put the charging parties in the position they would have been in absent the Union's unlawful conduct, the Union was required to

pay the charging parties a specific sum (appropriate proportion of the disbursement plus interest). The court rejected the Union's appeal and affirmed the Board's compliance order. Despite the court's ruling, the Union still had not paid the employees as ordered, claiming that it had insufficient funds to pay. Consequently, the Board requested the Attorney General's Office to file with the Appellate Court a Rule to Show Cause which the court granted. The case is currently pending.

V. Gubernatorial Designation Cases

1/06/17
1st District Order
Voluntary Dismissals
The Illinois Appellate Court, First District, granted motions for voluntary dismissal of the petitions for review of the eighty-three remaining designation petitions.

IPLRA UPDATES
General Counsel's Declaratory Rulings
October 2016 – September 2017

S-DR-17-001 State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31
3/20/2017; 33 PERI ¶ 116

The Employer filed a unilateral petition seeking a declaratory ruling regarding whether health insurance, or, in the alternative, health insurance plan design, constituted a mandatory subject of bargaining within the meaning of the Act. The Union objected to the petition, arguing that it was untimely because it was filed after the first day of the parties' interest arbitration hearing. Acting as the Board's General Counsel due to the recusal of the General Counsel, the Executive Director found that the petition was untimely under a strict application of the Board's Rules. However, the Executive Director granted a variance from the Board's rules, finding that this case met the criteria set forth in the rules for a variance and that strictly adhering to the rules in this case would defeat the purpose of the declaratory ruling process. In addressing the merits, the Executive Director considered prior decisions as well as legislative history, statutory authority, and case law in finding that health insurance premiums and other elements of health insurance plans, including deductibles, co-pays, and out-of-pocket maximums, are not exempt from the duty to bargain under the Act and are mandatory subjects of bargaining. In terms of the alternative argument regarding plan design, the Executive Director found that the Director of CMS is statutorily required to create an employee benefit program to include health benefits, and that some aspects of health insurance plan design, such as procurement and choice of vendor, are permissive subjects of bargaining. The Executive Director noted that the Employer must propose such plans in the context of collective bargaining and must bargain in good faith over the premiums, co-pays, deductibles, and out-of-pocket maximums to be charged for the particular features and value of each plan.

IPLRA UPDATES
Legislative Amendments
October 2016 – September 2017

HB0622—Labor Relations-Stay on Appeal—was signed into law on September 22, 2017, as Public Act 100-0516, effective upon signing. Public Act 100-0516 amends Section 11 of the Act and provides that the filing of an appeal to the Appellate court does not automatically stay the enforcement of the Board's Order in unfair labor practice charges. An aggrieved party may apply for a stay with the Appellate Court after following the procedures prescribed by Supreme Court Rule 335.

Supreme Court Rule 335(g) provides that an application for a stay of a decision or order issued by an agency pending direct review to the Appellate Court should first be made to the agency. If a motion for a stay is made to the Appellate Court, the motion must show that application was made to the agency and denied or that application to the agency was impracticable.