

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD



# ANNUAL REPORT

FISCAL YEAR 2018

One Natural Resources Way  
Springfield, Illinois 62702  
217/782-9068 (Phone)  
217/782-9331 (Fax)

160 North LaSalle Street, Suite N-400  
Chicago, Illinois 60601-3103  
312/793-3170 (Phone)  
312/793-3369 (Fax)

TTY: 1-800-526-0844 (Relay)  
Internet Address: <http://www.illinois.gov/elrb>  
Email: [ELRB.Mail@illinois.gov](mailto:ELRB.Mail@illinois.gov)



# ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

---

September 13, 2018

Dear Governor Rauner:

We are pleased to present to you, the General Assembly, and the citizens of Illinois, a statement of the operations of the Illinois Educational Labor Relations Board (the Board) for Fiscal Year 2018. This report summarizes the work performed by the Board over the course of the Fiscal Year.

Fiscal Year 2018 was a productive year for the Illinois Educational Labor Relations Board. In addition to processing its normal caseload, the Board engaged in a substantial revision of its rules to make them simpler and clearer, to reduce regulatory burdens, and to make more use of current technology. These changes were developed in consultation with the Board's customers, the Governor's office, the Legislative Joint Committee on Administrative Rules (JCAR), and agency staff.

We expect to further enhance our online services throughout the upcoming years by upgrading our website to publish more Board Opinions and Orders, providing online fillable forms and delivering current information to the public through our website posting procedures. These objectives will be coordinated with the Illinois Department of Innovation and Technology (DOIT), the new technology agency under the Office of the Governor. Moreover, the Board intends to continue administering the Illinois Educational Labor Relations Act in a fair, prompt and efficient manner, as it explores new and creative ways to provide better future service to the Board's customers, while maintaining the high standards, quality of decisions and professional expertise that we have consistently provided to the Board's customers.

Thank you for your support and the opportunity to advance and improve labor relations within the public educational institutions of Illinois.

Sincerely yours,

  
Andrea R. Waintroob  
Chairman

## TABLE OF CONTENTS

Chairman’s Message

History and Funding Sources . . . . .	1
Agency Mission and Structure . . . . .	2
Board Members and Biographies . . . . .	3
Agency Activities . . . . .	8
Representation Cases . . . . .	8
Unfair Labor Practice Cases . . . . .	10
Impasse Cases/Strike Activity . . . . .	12
Major Board and Court Decisions . . . . .	14

## **HISTORY AND FUNDING SOURCES**

The 83rd Illinois General Assembly created the Illinois Educational Labor Relations Board on January 1, 1984 by enactment of House Bill 1530, the Illinois Educational Labor Relations Act, in order to secure orderly and constructive relationships between all public educational employees and their employers. The Board is the sole administrative body to resolve collective bargaining disputes, representation questions and allegations of unfair labor practices.

The Illinois Educational Labor Relations Board received an appropriated budget of \$1,760,400.00 for Fiscal Year 2018. The Illinois Educational Labor Relations Board receives its funding from the Personal Property Tax Replacement Fund.

The IELRB is comprised of five members who are appointed by the Governor and confirmed by the Illinois Senate. By statute, Board Members must be residents of Illinois and have a minimum of five years of direct experience in labor and employment relations. Each Board Member must devote his entire time to the duties of the office and engage in no other compensated work. During FY18, the Board was comprised of Chair Andrea Waitroob and Board Members Judy Biggert, Gilbert O'Brien, Lara Shayne and Lynne Sered.

## AGENCY MISSION AND STRUCTURE

The Board's primary mission is to maintain, develop and foster stable and harmonious employment relations between public educational employees and their employers. To accomplish this mission, the Board investigates all charges and petitions filed by either a representative union, an individual or by a school district. Besides an extensive review and hearing process, the Board also offers mediation and arbitration services to interested parties as an informal forum to resolve their labor disputes. The adjudication process is three fold. The Executive Director, the agency's Administrative Law Judges and the Board issue decisions on all cases that come before the agency. The Board has the final appellate review of agency decisions. Its' final rulings set forth the legal standards for the interpretation of the Illinois Educational Labor Relations Act and Rules and establishes legal precedent through its decisions. Agency Attorneys and Investigators manage the case decisions under the direction of the General Counsel and Executive Director, the support staff process files and the paperwork associated with the claims and the Board oversees all operations and policy, including the budget.

The Executive Director investigates all unfair labor practice charges, conducts all necessary investigations of voluntary recognition and representation petitions including Majority Interest Petitions, advises the Board on legal issues, trains arbitrators and mediators, implements the Board's Labor Mediation Roster, administers the Board's Public Information Officer program and serves as the Board's Freedom of Information Officer and Ethics Officer. The Executive Director is responsible for administering all financial transactions, preparing the agency's proposed budget and testifying before the Illinois Legislature as a proponent of the proposed budget. The Executive Director also assigns all clerical and administrative staff within the offices of the IELRB.

The General Counsel serves as the Chief Legal Officer of the Agency and Chief Legal Advisor to the Board. The General Counsel supervises the Board's Administrative Law Judges and Board Attorneys; reviews all recommended decisions of its hearing officers and Executive Director; drafts and issues all unfair labor practice and representation decisions of the Board; advises the Board on legal issues arising in the course of the Board's official duties; assists the Office of the Attorney General in representing the Board in all legal matters pending in the courts; represent the Board in legal proceedings before other agencies and courts; conducts representation and unfair labor practice hearings; and reviews and revises the Board's Rules and Regulations.

After all unfair labor practice charges are fully investigated and reviewed by the Executive Director, the charge is either dismissed in the form of an Executive Director's Recommended Decision and Order, or sent to Complaint to be heard by an Administrative Law Judge (ALJ). The ALJ will conduct a full evidentiary hearing on the Complaint and at the conclusion of the hearing, issue a Recommended Decision and Order. All formal decisions issued by the Executive Director and an Administrative Law Judge are subject to review by the Board pursuant to a party filing exceptions or by the Board upon its own motion. The Board will review and discuss cases on its docket in open session. Thereafter, the Board will vote on the disposition of each case in open session. A Board decision may be appealed to the Illinois Appellate Court.

**The current Board Members are:**

Andrea Waitroob, Chair  
Appointment 04/06/15 to 06/01/20

Judy Biggert  
Appointed 04/06/15 to 06/01/20

Gilbert O'Brien  
Appointed 08/01/16 to 06/01/22

Lara Shayne  
Appointed 09/19/16 to 06/01/22

Lynne O. Sered  
Appointed 04/13/15 to 06/01/20

**Andrea R. Waitroob, Chair**

Andrea R. Waitroob was appointed to serve as Chairman of the Illinois Educational Labor Relations Board by Governor Bruce Rauner in April, 2015.

Prior to her appointment, Chairman Waitroob represented Illinois public and private sector employers in all aspects of labor and employment law for over thirty-five years, including negotiating many collective bargaining agreements for educational employers in the State of Illinois. Additionally, she taught public sector labor relations, government regulation of the employment relationship and employment discrimination courses at the University of Chicago Booth School of Business and the University of Chicago Law School.

Ms. Waitroob began her legal career at Vedder, Price Kaufman and Kammholz in 1978, becoming a partner at that firm in 1984. In 1994, she was one of twelve founding partners of Franczek Radelet where she worked until her appointment to the Board.

Ms. Waitroob was a member of the Illinois Council of School Lawyers and served a term as Chair of the Council. She has been recognized as an Illinois Leading Lawyer, a Top Woman Lawyer and an Illinois Super Lawyer.

Ms. Waitroob received her BA, Magna Cum Laude from Brown University. She graduated with honors from the University of Chicago Law School where she was a member of the Law Review.

Ms. Waitroob is married and has two children. She resides in Deerfield.

## **Judy Biggert, Member**

Judy Biggert was appointed to the Illinois Educational Labor Relations Board in 2015 by Governor Bruce Rauner. She brings to the Board decades of experience as an elected representative, community leader and attorney.

Prior to her appointment to the Board, she served Illinois for fourteen years as a member of the U.S. House of Representatives and for six years as a member of the Illinois House of Representatives.

In Congress, she served on the House Education and Workforce Committee, overseeing federal education programs and initiatives from preschool through higher education. During her tenure, the Committee produced major reforms of the Elementary and Secondary Education Act (ESEA), the Higher Education Act, Early Childhood Education including Head Start, the Individuals with Disabilities Education Act (IDEA), and many others.

Mrs. Biggert was appointed Vice Chairman of the Committee's Subcommittee on Workforce Protections, and helped to oversee its work on the Fair Labor Standards Act (FLSA), the Workforce Investment Act (WIA), workers compensation, retirement security, and all matters related to employee-employer relationships.

She also served as a senior member of the Financial Services Committee, House Committee on Science and Technology, and Standards of Official Conduct "Ethics" Committee. She was voted by her colleagues as one of the "Top Ten Most Bipartisan" members of Congress.

In the Illinois House of Representatives, Mrs. Biggert served as the Minority Spokesman on the Judiciary – Civil Committee, and as a member of the Financial Institutions, Insurance, and Labor and Commerce Committees. She was appointed to House leadership at the start of her second term.

As a member of the Hinsdale Township High School District 86 Board of Education, Mrs. Biggert chaired the committee that negotiated contracts with the District's teachers. After serving five years as a member, she was elected and served one term as President of the Board.

Her work on behalf of the Chicago area community has included service as President or Chairman of: the Junior League of Chicago, Visiting Nurse Association, Hinsdale Assembly of the Hinsdale Hospital, Village of Hinsdale Plan Commission, Junior Board of Travelers Aid Society, Hinsdale Antique Show, and the Oak School PTA.

Mrs. Biggert served as law clerk to the Hon. Luther M. Swygert, U.S. Court of Appeals for the Seventh Circuit. Prior to her election to public office, she practiced law, specializing in real estate, estate planning and probate.

She received her BA from Stanford University and JD from the Northwestern University School of Law, where she was a member of the Law Review. She and her husband Rody are the parents of four children and the grandparents of nine. They reside in Hinsdale.

**Gilbert O’Brien, Member**

Gilbert F. O’Brien was appointed to the Illinois Educational Labor Relations Board in 2011 by Governor Pat Quinn. Mr. O’Brien comes to the Board with thirty years of experience in government and labor law. In 1991 he was appointed by Secretary of State George Ryan to serve on his transition team as labor policy liaison, thereafter he was hired as Chief Labor Liaison for the Office. Mr. O’Brien served in this capacity for eight years negotiating contracts and collective bargaining agreements with Union representatives working for the Illinois Secretary of State. Mr. O’Brien acted as a Governmental Affairs Consultant for the Teamsters Local 705, advising their Secretary-Treasurer on governmental operations that potentially affected their interest.

In January of 2000, Jesse White appointed Mr. O’Brien as Executive Labor Liaison to negotiate collective bargaining agreements and advise the Secretary on labor policy issues. He participated in labor negotiations between various unions and the State of Illinois. He is a resident of Glen Ellyn.

**Lynne O. Sered, Member**

Lynne O. Sered was re-appointed to serve as a Board Member in April 2015. She previously served as Board Chairman of the Illinois Educational Labor Relations Board from June 2004 until stepping down immediately prior to her most recent re-appointment by Governor Bruce Rauner. Prior to assuming the Board Chair’s responsibilities in 2004, she served as a Board Member since her initial appointment to the Board in October 2000.

Ms. Sered’s legal background includes serving as Counsel to the Honorable Wilford W. Johansen, Member of the National Labor Relations (“NLRB”) in Washington, D.C. In that capacity, she prepared analyses for and made recommendations to Board Member Johansen and drafted decisions and orders for publication in the areas of collective bargaining, discriminatory hiring and termination practices, union organizing activities and elections, and other unfair labor practice and representation issues under the National Labor Relations Act. During her tenure at the NLRB, Ms. Sered also represented the NLRB in cases before the Second and Sixth Circuit Courts of Appeals.

As an attorney in private practice with the law firm of Scariano, Kula, Elch & Himes, Chtd., Chicago and Chicago Heights, Illinois, she counseled school districts, private employers and labor clients regarding litigation, legal strategies and policy issues pertaining to labor law and collective bargaining issues.

Ms. Sered also practiced with the law firm of Katz and Buhai in South Barrington, Illinois, where she represented clients in labor and employment discrimination matters in state and federal courts and administrative agencies. She also served as staff counsel for the Attorney Registration and Disciplinary Commission, where her duties included the review, analysis and investigation of professional misconduct within the legal profession in Illinois.

In addition, Ms. Sered served as Legal Director of the American Jewish Congress, Midwest Region, in Chicago, where she managed the organization’s not-for-profit legal



program, focusing on civil liberties and civil rights and oversaw its pro bono clinic providing legal services to the indigent. Her professional experience is also highlighted by her roles as a domestic policy specialist with the Jewish Community Relations Council and as Midwest regional director of the Jewish Labor Committee.

Ms. Sered received her law degree from DePaul University College of Law and her Bachelor of Arts degree from Indiana University. She is admitted to practice law in Illinois and the District of Columbia and is a member of the Illinois State Bar Association, the Chicago Bar Association and the Women's Bar Association. She has served on the Board of Chicago Volunteer Legal Services and the Government Affairs Committee of the Jewish Federation of Metropolitan Chicago.

Ms. Sered lives with her husband Jeff Schoenberg and their two children in Evanston, Illinois.

### **Lara Shayne, Board, Member**

Lara Shayne was appointed to the Illinois Educational Labor Relations Board by Governor Bruce Rauner in September 2016.

Ms. Shayne has been a labor and employment attorney since 1996, and has worked in all labor and employment practice areas, including negotiating and implementing collective bargaining agreements with numerous public employee unions, and handling grievance arbitrations and IELRB litigation. She began her legal career as an Assistant Corporation Counsel for the Labor/Employment Division of the City of Chicago Department of Law. In 2002, she left the City to join the labor practice group of the Board of Education of the City of Chicago's Law Department. In 2012, Ms. Shayne was selected to help run the Board of Education's Labor Relations unit, where she remained until her appointment to the IELRB

Ms. Shayne received her BA from the University of Michigan and her J.D. from Chicago-Kent College of Law, where she was a member of Moot Court.

Ms. Shayne is married with two children. She resides in Chicago.

### **Victor E. Blackwell, Executive Director**

Victor E. Blackwell was appointed Executive Director of the Illinois Educational Labor Relations Board in February, 1996. Prior to his appointment, Mr. Blackwell served as Chief of Prosecutions at the Illinois Department of Professional Regulations for five years. He was also Chicago Personnel Manager for the Illinois Secretary of State from 1987 to 1991. He was Personnel Analyst for the Illinois Secretary of State, an Adjudicator for the Illinois Department of Rehabilitation Services, and a Securities Legal Intern and Reference Library Intern for the Illinois Secretary of State. Mr. Blackwell received his Juris Doctorate degree from Loyola University's School of Law where he graduated with honors, and his Bachelor of Arts degree from the University of Illinois in Political Science with triple minors in Economics, Sociology and Spanish.

**Susan Willenborg, General Counsel**

Susan J. Willenborg is General Counsel at the Illinois Educational Labor Relations Board. She has been working at the IELRB since 1984, performing a wide variety of duties. Prior to working at the IELRB, she worked at the law firm of Jacobs, Burns, Sugarman & Orlove. She received her B.A. at Carleton College and her J.D. at the University of Chicago Law School.

## **AGENCY ACTIVITIES**

The Agency processes three categories of cases: representation cases, unfair labor practice cases and mediation cases.

### **Representation Cases**

The most common types of representation cases are petitions for representation and petitions for unit clarification. Petitions for representation are generally filed by a labor organization seeking to be certified as the exclusive bargaining representative of a unit of educational employees or seeking to add employees to a unit which is already represented. The Act provides for a majority interest procedure to expedite certification if the petition is supported by more than 50 percent of the proposed bargaining unit and there are no objections or other issues which could affect majority status. The Act also provides for representation elections to be conducted if the unit sought will contain professional and nonprofessional employees; the unit is an historical one; if the petition seeks to decertify an exclusive representative or, if the petition is supported by at least 30 percent of the proposed bargaining unit.

The second major category of representation cases are petitions for unit clarification. The unit clarification process is used to add or remove statutorily excluded employees from a bargaining unit; to resolve ambiguities concerning the unit placement of individuals who come within a newly-established classification or who fall within an

existing job classification that has undergone recent, substantial changes; and to resolve unit ambiguities resulting from changes in statutory or case law.

The Board also processes several other types of representation petitions, including petitions for voluntary recognition by an employer of an exclusive bargaining representative; petitions to amend certification due to a minor change in the name or organization of the exclusive bargaining representative; and petitions filed by an employer to determine whether a labor organization or exclusive representative represents a majority of the bargaining unit.

All representation petitions are investigated by the Board's agents. If a question concerning representation is raised during the course of the investigation, the case is scheduled for hearing and assigned to an Administrative Law Judge for resolution.

If an election is to be held, the Board Agent works with the parties to reach agreement on the date, time, place and other details of the election. Elections are conducted by secret ballot at a time and place when the majority of employees in the bargaining unit are working. Parties may file objections to the election within five days after the election. Objections are investigated, and if the objections are found to have affected the outcome of the election, a new election will be held. When the election procedures have concluded, a certification is issued by the Board.

**Representation Cases 2018**

**Representation Cases Filed in FY 2018:**

Petition to Determine Representative (RC)	21
Petition to Decertify Representative (RD)	4
Petition to Determine Unit (RS)	19
Petition to Determine Unit/Employer Filed (RM)	1
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	28
Amendment to Certification Petition (AC)	1
MIP Cases (includes RC and RS figures above/not added to total)	(31)
<b>Total</b>	<b>74</b>

**Agency Activity on Representation Cases for FY 2018:**

Certification of Representation	2
Certification of Results	1
Certification of Voluntary Representation	0
MIP Order of Certification	30
Withdrawal	10
Executive Director's Recommended Decision & Order	19
ALJ's Recommended Decision & Order	2
Elections/polls	6
Cases mediated by Board Agents	1
<b>Total</b>	<b>71</b>

### **Unfair Labor Practice Cases**

Unfair labor cases are charges alleging that the conduct of an employer or a union, or both, constitute conduct prohibited by the Act. Unfair labor practice charges can be filed by educational employers, unions, or employees. After a charge is filed, it is assigned to a Board agent who conducts an investigation by contacting both the charging party and the charged party to obtain statements and documents from each to support their position. At the conclusion of the investigation, the Executive Director will either dismiss the charge or issue a complaint. A charging party whose charge has been dismissed by the Executive Director may appeal that decision to the Board. When the Executive Director issues a complaint, the matter is set for hearing before an Administrative Law Judge. During the hearing, the parties have the opportunity to present witnesses to testify and present documentary evidence. After the hearing, the Administrative Law Judge issues a Recommended Decision and Order in which the Administrative Law Judge

either finds that an unfair labor practice charge has been committed and orders an appropriate remedy or dismisses the charge. The Administrative Law Judge's Recommended Decisions and Orders are appealable to the Board.

### **Mediation Cases**

The Board offers mediation in all unfair labor practice cases. Mediations most frequently occur after the Executive Director issues a complaint, but before the date of the scheduled hearing. However, Board agents can conduct mediations with the parties at any time during the unfair labor practice charge process. During mediation, both the charging party and respondent meet with a Board agent to attempt to resolve the dispute and withdraw the unfair labor practice charge. Mediation is an important case processing tool. The Illinois Educational Labor Relations Board has successfully used mediation to resolve disputes in an amicable manner often avoiding the more costly and adversarial process of litigation.

## Unfair Labor Practice Cases 2018

### **Unfair Labor Practice Cases Filed in FY 2018:**

Unfair Labor Practice Charge Against Employer (CA)	78
Unfair Labor Practice Charge Against Labor Organization or Agents (CB)	20
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	47

**Total** **145**

### **Agency Activity on All Unfair Labor Practice Cases for FY 2018:**

Withdrawn (including w/d by settlement)	104
Executive Director's Recommended Decision and Order	64
ALJ's Recommended Decision and Order	36
Complaints issued	92
Cases mediated by Board Agents	1

**Total** **297**

### **Board Activity 2018:**

Board Opinion & Orders	33
Final Orders	111

**Total** **144**

**IM Cases**

In IM cases, parties engaged in collective bargaining may initiate the public posting process. The parties then submit their most recent offers to the Board and the Board subsequently posts the offers on its website pursuant to Section 12(a-5) of the Act.

Parties engaged in collective bargaining shall notify the Board concerning the

status of negotiations if they have not reached an agreement by 90 days before the school year starts and again if they have not reached agreement by 45 days before the school year starts. Upon request of a party, the Board shall invoke mediation if mediation has not already been initiated.

**Strike Activity FY 2018**

(July 1, 2017 – June 30, 2018)

<b>School County</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
Winnebago CUSD #323	IEA-NEA Teachers (106)	05/02/18	
University of Illinois- Chicago	Illinois Nurses Association	09/01/17 09/13/17	
North Boone SD 200	IEA-NEA (119) FT & PT certified personnel	08/16/17 10/03/17	
CCSD #15 (Palatine)	IEA-NEA (440) FT & PT Educational Support	10/05/17 02/15/18	10/16/17 10 strike days
Plainfield SD 202	IEA-NEA (1891) All employees requiring teacher license, except supervisors & managers	10/16/17 10/26/17	
A-C Central	IEA-NEA Certified & non-certified employees (82)	10/30/17 12/06/17	
Community HS Dist. 94	West Chicago, IEA-NEA Teachers (141)	01/30/18 02/15/18	

<b>School</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Days Strike Days</b>
University of Illinois- Urbana/Champaign	GEO, Local 6300 IFT Teaching & Grad Assistants (2700)	01/31/18 03/08/18	02/26/18 8 days
Blackhawk College #503	IFT/AFT #1836 FT Faculty & Professionals Technical (163)	03/09/18 04/02/18	
Streator Elementary SD #144	IEA-NEA Teachers, classroom aides, secretaries, custodians (179)	03/23/18 04/02/18	
Alton CUSD #11	IEA-NEA Non-admin. Certified & Non- Certified (776)	03/20/18 04/25/18	
Western Illinois University	UPI, #4100, IFT/AFT Faculty (671)	04/19/18 05/14/18	

**Total Notices Filed for FY 2018:** 12  
**Total Pending for FY 2018:** 01  
**Total Settled for FY 2018:** 11



## **MAJOR BOARD AND COURT CASES**

**July 1, 2017 through June 30, 2018**

### **FISCAL YEAR 2017-2018 CASES**

#### **Representation Cases**

##### **Exclusions from the Definitions of Educational Employee**

**Board of Trustees of University of Illinois v. IELRB**, 2018 IL App (4<sup>th</sup>) 170059, 101 N.E.3d 209 (Apr. 16, 2018)

The court reversed the IELRB's determination that department chairs were entitled to be included in a bargaining unit consisting of all tenured and tenure-track faculty. The court concluded that the department chairs were managerial employees. The court found that the chairs performed executive and management functions, and that the chairs were predominantly engaged in those functions. The court also found that the department chairs were responsible for effectuating University and college policies. The court stated that a community of interest and the diffusion of governing authority did not preclude a finding of managerial status.

**Board of Education of Harlem School District 122 v. IELRB**, 2017 WL 3482057 (Ill. App. 1<sup>st</sup> Dist., Aug. 11, 2017) (unpublished Rule 23 order) (see below)

#### **Unit Clarification**

**Board of Trustees of University of Illinois/Illinois Federation of Public Employees, Local #4408/Metropolitan Alliance of Police, UIC Security Chapter #738**, 34 PERI 71, Case No. 2017-RC-0010-C (IELRB Opinion and Order, August 21, 2017)

The IELRB determined that the certification bar did not apply to a unit clarification petition. The IELRB reasoned that its decision on the unit clarification petition represented a finding that the newly created position was so similar to the position already in the unit that there was no need for an election or majority interest proceeding, and no legal reason to give the incumbent union an additional year to bargain for the additional position. The IELRB also found that the unit clarification petition and an election petition could be processed simultaneously.

#### **Unfair Labor Practices**

##### **Employer Unfair Labor Practices**

##### **Violations of Employee Rights**

**Board of Education of Harlem School District 122 v. IELRB**, 2017 WL 3482057 (Ill. App. 1<sup>st</sup> Dist., Aug. 11, 2017) (unpublished Rule 23 order)

The court affirmed the IELRB's decision that the Employer violated the Act when it refused to recommend a substitute teacher for a full-time teaching position because of her protected concerted activity. In reaching its decision, the court also affirmed the IELRB's conclusions that the substitute teacher was not a short-term employee, that the ALJ did not improperly modify the issues for hearing, and that the failure of the Employer's board of education to act on the recommendation that the substitute teacher be hired for a full-time position was directly attributable to the improper motivation of its employees. The court also upheld the IELRB's order that the Employer hire the substitute teacher as a full-time teacher. Justice Delort dissented as to the remedy, and otherwise concurred.

**Bremen Educational Support Team, IEA-NEA v. IELRB**, 2017 WL 5146071 (Ill. App. 1<sup>st</sup> Dist., Nov. 3, 2017) (unpublished Rule 23 order)

The court affirmed the IELRB's conclusions that the Employer did not violate the Act when it discharged an employee allegedly because of her union activity or when it delayed in providing information.

**Board of Education of A-C Central Community Unit School District 262 v. IELRB**, 2018 IL App (4<sup>th</sup>) 160801-U (4<sup>th</sup> Dist., Jan. 5, 2018) (unpublished Rule 23 order)

The court affirmed the IELRB's conclusion that the Employer violated the Act when it lowered a teacher's evaluation and assigned her an extra class because of her union activity. The court also determined that the case was not moot, and that the ALJ did not improperly allow a teacher to testify regarding information not fully disclosed in the Union's pre-hearing memorandum.

**Chicago Board of Education/Alita Jones**, 34 PERI 51, Case No. 2016-CA-0050-C (IELRB Opinion and Order, August 24, 2017)

The IELRB rejected the Charging Party's claim that the Employer had a workers' compensation investigator engage in improper conduct toward her in retaliation for her using the processes of the IELRB. The IELRB determined that the evidence did not show that the alleged conduct of the workers' compensation investigator constituted an adverse action by the Employer against the Charging Party. The IELRB stated that in order to constitute an adverse action, an employer's action must change the employee's terms and conditions of employment. The IELRB also found that there was no evidence that the Employer was responsible for the alleged conduct of the workers' compensation investigator. The IELRB further stated that even if the alleged conduct of the workers' compensation investigator constituted an adverse action by the Employer against the Charging Party, the Charging Party did not present sufficient evidence that the Employer took this action because she used the processes of the IELRB.

**Chicago Board of Education/Janice Bradshaw**, 34 PERI 63, Case No. 2017-CA-0028-C (IELRB Opinion and Order, September 14, 2017)

The IELRB concluded that the Charging Party did not raise an issue warranting a hearing as to whether her termination violated the Act. The IELRB stated that the Charging Party did not provide any evidence that she engaged in protected concerted activity or union activity.

**Board of Trustees of Southern Illinois University Carbondale/Bakul Dave**, 34 PERI 95, Case No. 2017-CA-0017-C (IELRB Opinion and Order, November 16, 2017) (see below)

**Chicago Board of Education/Raymond Gora**, 34 PERI 108, Case No. 2013-CA-0072-C (IELRB Opinion and Order, December 15, 2017) (appeal pending)

The IELRB determined that the Appellate Court's ruling that the Employer had violated the Act by refusing to employ a teacher in a drivers' education program in September 2011 did not extend to the Employer's refusal to employ him in a drivers' education program in 2012.

**Board of Trustees of University of Illinois/Ara Gardner**, 34 PERI 126, Case No. 2017-CA-0022-C (IELRB Opinion and Order, January 18, 2018)

The IELRB dismissed the unfair labor practice charge where the Charging Party did not provide evidence of a connection between her placement on administrative leave and her grievance filings or her prior unfair labor practice charge. The IELRB found that the Charging Party's exceptions were timely filed.

**Board of Trustees of University of Illinois/Ara Gardner**, 34 PERI 127, Case No. 2017-CA-0076-C (IELRB Opinion and Order, January 18, 2018)

The IELRB dismissed the unfair labor practice charge. The Charging Party alleged that the Employer violated the Act by making false statements during the investigation of a previous charge, and that there were multiple adverse actions. The IELRB found that none of the alleged actions occurred after the Charging Party filed the previous charge. The IELRB also found that the Charging Party's exceptions were timely filed.

**Northern Illinois University/Peter Suffield**, 34 PERI 140, Case No. 2017-CA-0038-C (IELRB Opinion and Order, February 15, 2018)

The Charging Party claimed that the Employer terminated his employment in retaliation for his exercise of rights protected under the Act. The IELRB dismissed the unfair labor practice charge. The IELRB determined that the Charging Party could be held to his agreement not to pursue "further action" against the Employer, which was included in a settlement agreement the Union negotiated on his behalf. The IELRB rejected the Charging Party's argument that he did not resign voluntarily.

**Chicago Board of Education/Valentina Sorescu**, 34 PERI 150, Case No. 2016-CA-0020-C (IELRB Opinion and Order, March 26, 2018)

The IELRB concluded that protected activity must concern employees' terms and conditions of employment. The IELRB determined that the Charging Party did not engage in protected activity by acting as a whistle blower with respect to the alleged manipulation of attendance data, since the manipulations of attendance data did not involve employees' terms and conditions of employment. Therefore, the Employer's alleged retaliation against the Charging Party for acting as a whistle blower did not violate the Act. The IELRB stated that whether the Employer's conduct violated the whistle blower protection section of the School Code was beyond its jurisdiction, and the Charging Party's claim that her layoff violated the collective bargaining agreement did not constitute an unfair labor practice.

**Skokie School District 73.5/Margo Kavanaugh**, 34 PERI 172, Case No. 2018-CA-0024-C (IELRB Opinion and Order, May 21, 2018)

The IELRB determined that there was insufficient evidence that the Employer issued a notice of remedial warning to the employee because of her union activity. The IELRB noted that certain alleged comments by administrators could be viewed as showing hostility toward union activity, but were too remote to raise an issue warranting a hearing in the absence of any other evidence supporting a prima facie case. The IELRB noted that a lengthy period elapsed between the alleged hostile comments and the notice of remedial warning, and that the employee resigned her Union position well before she received the notice of remedial warning.

**Proviso Township High School District 209/Shavonne Henry**, 35 PERI 6, Case No. 2016-CA-0087-C (IELRB Opinion and Order, June 14, 2018)

The IELRB dismissed the unfair labor practice charge. The IELRB determined that there was no evidence that the Employer was motivated by the Charging Party's union activity when it allegedly denied her part of the overtime pay she was owed. The IELRB also noted that the timing of the Employer's alleged underpayment of overtime pay, 15 months after the Union filed a grievance on behalf of the Charging Party, suggested that the alleged underpayment was not motivated by the grievance.

### **Duty to Bargain**

**Bremen Educational Support Team, IEA-NEA v. IELRB**, 2017 WL 5146071 (Ill App. 1<sup>st</sup> Dist., Nov. 3, 2017) (unpublished Rule 23 order) (see above)

**City Colleges of Chicago, District 508/City Colleges Contingent Labor Organizing Committee**, 34 PERI 23, Case Nos. 2016-CA-0030-C, 2016-CA-0048-C (IELRB Opinion and Order, July 20, 2017)

The IELRB concluded that the Employer violated the Act when it unilaterally gave evaluations to bargaining unit members performing online instruction and when it

required bargaining unit members to complete Federal Education Rights and Privacy Act training without paying them. The IELRB determined that the Union's allegation concerning pay for online instruction was timely. The IELRB determined that the Union's allegations concerning hard to fill pay, lane placement change and the discontinuance of pay for ethics training were untimely. The IELRB reversed the ALJ's finding that no unilateral change occurred with respect to pay for Federal Education Rights and Privacy Act training.

**Northern Illinois University/AFSCME, Council 31**, 34 PERI 61, Case No. 2016-CA-0084-C (IELRB Opinion and Order, September 14, 2017)

The IELRB determined that the Employer violated the Act by unilaterally announcing and implementing changes to parking fees before the issue had been bargained to agreement or impasse. The IELRB found that increases in parking fees did not constitute the status quo. The IELRB also found that the issue in the case was not whether the Employer or the Union refused to bargain over parking fees, but whether the Employer violated the Act when it announced and implemented changes to parking fees without bargaining to agreement or impasse.

**Western Illinois University/University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO**, 34 PERI 149, Case No. 2016-CA-0005-S (IELRB Opinion and Order, January 22, 2018)

The IELRB determined that the Employer violated Sections 14(a)(5) and (1) of the Act by engaging in direct dealing when it issued a survey to its employees. The IELRB found that a provision in the collective bargaining agreement did not waive the Union's right to pursue the unfair labor practice charge.

**Country Club Hills School District 160/Country Club Hills Education Association, IEA-NEA**, 34 PERI 148, Case No. 2015-CA-0055-C (IELRB Opinion and Order, January 22, 2018) (see below)

**Board of Trustees of University of Illinois/University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO**, 34 PERI 171, Case No. 2016-CA-0006-S (IELRB Opinion and Order, May 17, 2018)

Two faculty members sought to file grievances concerning the denial of their applications for tenure. The IELRB determined that the Employer did not make unlawful unilateral changes to the grievance procedure when the ombudsman made the decision as to whether the grievances were grievable, and when she classified the grievances as non-procedural, and therefore not grievable. The IELRB found that the Employer did not change the status quo. The IELRB also determined that the complaint was broad enough to encompass both issues, and that the union did not waive its right to bargain by failing to demand bargaining.

**Refusal to Process a Grievance**

**Board of Trustees of Southern Illinois University Carbondale/Bakul Dave**, 34 PERI 95, Case No. 2017-CA-0017-C (IELRB Opinion and Order, November 16, 2017)

The Board remanded the case to the Executive Director to issue a complaint on whether the Employer violated Section 14(a)(1) of the Act by failing to process a grievance the Charging Party filed on his own behalf. The Board determined that the Charging Party's allegation that the Employer had refused to comply with an arbitration award was untimely. The Board also dismissed the Charging Party's allegations concerning whether the Employer retaliated against him because of union activity. The Board determined that the Charging Party's allegation that the Employer had retaliated against him by failing to assign him to appropriate, equivalently equipped space was untimely. The Board found that the Charging Party's alleged exclusion from a meeting and the Employer's directive that the Charging Party provided lists as directed by the arbitrator did not constitute adverse actions because they did not affect his terms and conditions of employment. The Board also found that the Charging Party had not provided sufficient evidence that the Employer made changes to his course assignment because of his union activity.

#### **Refusal to Comply with an Arbitration Award**

**City Colleges of Chicago, District 508/City Colleges Contingent Labor Organizing Committee, IEA-NEA**, 34 PERI 24, Case No. 2016-CA-0039-C (IELRB Opinion and Order, July 20, 2017)

The IELRB concluded that the Employer did not violate the Act by refusing to comply with a binding arbitration award. The IELRB determined that the procedures through which the award issued were unfair where the arbitrator granted the Employer the opportunity to file a post-hearing brief, but issued his award before receiving a brief from the Employer and before the deadline for filing a brief. The IELRB concluded that the award was not binding on the Employer.

#### **Union Unfair Labor Practices**

##### **Duty of Fair Representation**

**Streator Education Association, IEA-NEA/Larry Dean Blevins**, 34 PERI 82, Case No. 2017-CB-0018-C (IELRB Opinion and Order, October 19, 2017)

The Charging Party argued in his exceptions that the Union made false statements during the investigation of his charge against the Union. The IELRB dismissed the charge. The IELRB noted that providing false information in an unfair labor practice charge investigation is not itself an unfair labor practice, and that, in most cases, parties claim that the other party is not telling the truth.

**Southern Illinois University Carbondale Campus Faculty Association, IEA-NEA/Bakul Dave**, 34 PERI 96, Case No. 2017-CB-0014-C (IELRB Opinion and Order, November 16, 2017)

The IELRB determined that most of the Charging Party's allegations were untimely. As to the Charging Party's timely allegations, the IELRB determined that the Charging Party had not provided sufficient evidence of intentional misconduct. The IELRB found that the Charging Party's claim that the Union was retaliating against him was negated by an email he had sent and that there was no evidence that the Union acted, or failed to act, due to his status. The IELRB determined that the evidence was insufficient to establish the severe level of hostility necessary to show intentional misconduct. The IELRB also found that there was no evidence that the Union threatened the Charging Party.

**District 202 Teachers Council, IEA-NEA/Clare Kelly**, 34 PERI 167, Case No. 2018-CB-0004-C (IELRB Opinion and Order, April 19, 2018)

The IELRB determined that the Union did not engage in intentional misconduct when it negotiated an employer matching contribution to employees' retirement accounts. The IELRB determined that even assuming that there was evidence that the matching contribution would have a disparate impact on female and minority employees, a disparate impact is not sufficient to show intentional misconduct. The IELRB noted that a union does not automatically breach the duty of fair representation by taking a position contrary to the interest of some of the employees.

### **Other Union Unfair Labor Practices**

**Homer District 33-C Support Staff Council, Local 604, IFT-AFT, AFL-CIO/Dennis Gutka, et al.**, 34 PERI 141, Case Nos. 2017-CB-0003-C, *et al.* (IELRB Opinion and Order, February 15, 2018)

The IELRB remanded the consolidated cases to the Executive Director to issue a complaint on whether restrictions on resignation from union membership violated the Act. A majority of the IELRB explained that the cases concerned potential violations of Section 14(b)(1) of the Act which did not involve the duty of fair representation. Thus, the standard was not whether the Union engaged in intentional misconduct, but whether the Union's conduct would have reasonably tended to coerce employees in the exercise of their rights under the Act. The majority found that there was an issue warranting a hearing as to whether the Union would have reasonably tended to coerce the Charging Parties in the exercise of their statutory right to refrain from concerted activity when it restricted resignations from union membership to a certain time period, and that the evidence submitted during the investigation did not show that the Charging Parties clearly and unmistakably waived that right. The majority found that there also was an issue warranting a hearing as to whether the Union would have reasonably tended to coerce the Charging Parties in the exercise of their statutory right to refrain from concerted activity when it allegedly required them to use a specific, Union-supplied form and to meet with a Union officer in order to resign their Union membership. The majority stated that, given that a complaint would issue on the above matters, the

complaint should also include the Charging Parties' allegations concerning the delay in providing them with copies of their membership authorization cards and the Union's initial response to their requests to resign from Union membership. Board Member Lynne Sered concurred in the decision to send the cases to hearing on the basis that the IELRB had not closely examined the question they presented.

### **Remedy**

**Board of Education of Harlem School District 122 v. IELRB**, 2017 WL 3482057 (Ill. App. 1<sup>st</sup> Dist., Aug. 11, 2017) (unpublished Rule 23 order) (see above)

### **Deferral to Arbitration Award**

**Country Club Hills School District 160/Country Club Hills Education Association, IEA-NEA**, 34 PERI 148, Case No. 2015-CA-0055-C (IELRB Opinion and Order, January 22, 2018)

The IELRB deferred to the arbitrator's award with respect to two alleged unilateral changes. The IELRB noted that there was no dispute that the arbitration proceedings were fair and regular. The IELRB found that the arbitrator's factual findings that the Union refused to engage in collective bargaining over the evaluation forms which the Employer had modified and refused to even pick up, allowed the IELRB to resolve the statutory issue of whether the Union waived bargaining over the modified forms. The IELRB concluded that the Union had waived bargaining over the modified forms and that the Employer did not violate Sections 14(a)(5) and (1) of the Act by modifying the forms. The IELRB also found that the arbitrator's contractual interpretation that the contract did not require tenured teachers to be evaluated by the end of the first quarter allowed the IELRB to resolve the statutory issue of whether the Employer changed the status quo when it did not complete tenured teacher evaluations by the end of the first quarter. The IELRB concluded that the Employer did not change the status quo when it failed to complete tenured teacher evaluations by the end of the first quarter, and that its failure to complete the evaluations by the end of the first quarter did not violate Sections 14(a)(5) and (1).

The IELRB found that the arbitrator did not make any factual findings or contractual interpretations which would allow the IELRB to resolve the issue of whether the Employer violated Sections 14(a)(5) and (1) by engaging in regressive bargaining over the timeline to complete tenured teacher evaluations. Therefore, the IELRB did not defer to the arbitration award with respect to this issue. The IELRB determined that the parties had not reached a tentative agreement, and that various parts of their proposals changed as their positions shifted during negotiations. The IELRB concluded that the Employer did not violate Sections 14(a)(5) and (1) by allegedly engaging in regressive bargaining.

### **Unfair Labor Practice Procedure and Related Issues**

### **Mootness**



**Board of Education of A-C Central Community Unit School District 262 v. IELRB**, 2018 IL App (4<sup>th</sup>) 160801-U (4<sup>th</sup> Dist., Jan. 5, 2018) (unpublished Rule 23 order) (see above)

### **Timely Filed**

**City Colleges of Chicago, District 508/City Colleges Contingent Labor Organizing Committee**, 34 PERI 23, Case Nos. 2016-CA-0030-C, 2016-CA-0048-C (IELRB Opinion and Order, July 20, 2017) (see above)

**Board of Trustees of Southern Illinois University Carbondale/Bakul Dave**, 34 PERI 95, Case No. 2017-CA-0017-C (IELRB Opinion and Order, November 16, 2017) (see above)

**Southern Illinois University Carbondale Campus Faculty Association, IEA-NEA/Bakul Dave**, 34 PERI 96, Case No. 2017-CB-0014-C (IELRB Opinion and Order, November 16, 2017)

### **Failure to Serve Exceptions**

**Proviso Township High School District #209/Darrell Straughter**, 34 PERI 64, Case No. 2017-CA-0065-C (IELRB Opinion and Order, September 14, 2017)

The IELRB struck the Charging Party's exceptions because they were untimely, and because Charging Party did not provide a certificate of service or any other evidence that he served his exceptions on the Employer.

### **Untimely Exceptions**

**Proviso Township High School District #209/Darrell Straughter**, 34 PERI 64, Case No. 2017-CA-0065-C (IELRB Opinion and Order, September 14, 2017) (see above)

**Board of Trustees of the University of Illinois/Ara Gardner**, 34 PERI 126, Case No. 2017-CA-0022-C (IELRB Opinion and Order, January 18, 2018) (see above)

**Board of Trustees of the University of Illinois/Ara Gardner**, 34 PERI 127, Case No. 2017-CA-0076-C (IELRB Opinion and Order, January 18, 2018) (see above)

**Rochester Community Unit School District No. 3A/Rochester Educational Support Personnel, IFPE Local 4408, IFT-AFT, AFL-CIO**, 35 PERI 7, Case No. 2017-CA-0059-C (IELRB Opinion and Order, June 19, 2018)

The IELRB struck the Employer's exceptions because they were untimely.

### **Hearing Process**

**Board of Education of Harlem School District 122 v. IELRB**, 2017 WL 3482057 (Ill. App. 1<sup>st</sup> Dist., Aug. 11, 2017) (unpublished Rule 23 order) (see above)

**Board of Education of A-C Central Community Unit School District 262 v. IELRB**, 2018 IL App (4<sup>th</sup>) 160801-U (4<sup>th</sup> Dist., Jan. 5, 2018) (unpublished Rule 23 order) (see above)

### **Preliminary Injunctive Relief**

**Rock Valley College/Rock Valley College Support Staff, Local 6569, IFT-AFT, AFL-CIO**, 34 PERI 94, Case Nos. 2017-CA-0031-C, 2017-CA-0045-C (IELRB Opinion and Order, November 16, 2017)

The Union requested preliminary injunctive relief to order the Employer to grant the members of the bargaining unit a paid holiday. The IELRB declined the Union's request for preliminary injunctive relief as procedurally improper. The IELRB determined that the Union did not comply with the requirement in the IELRB's rules to "provide the basis for and evidence in support of its request for injunctive relief when it files its charge." The IELRB found that the Union did not request preliminary injunctive relief or provide any description of the basis for such relief until long after the charges had been filed. A majority of the IELRB stated that, even if they were to consider the Union's request for preliminary injunctive relief, they would decline it on the merits, on the basis that a make-whole remedy would be available. Board Member Lynne Sered, in concurrence, stated that she would have found that preliminary injunctive relief was not appropriate based on the improper filing and would not have addressed whether injunctive relief was just and proper.

**Educational Support Personnel Association v. Community Consolidated School District No. 15**, 34 PERI 147, Case No. 2018-CA-0029-C (IELRB Opinion and Order, December 18, 2017)

The IELRB denied the Union's request for preliminary injunctive relief where the Employer cancelled health insurance benefits for striking employees. The IELRB determined that preliminary injunctive relief was not just and proper. The IELRB found that the employees had returned to work, and the Employer had immediately restored their health insurance benefits. The IELRB stated that make-whole relief would be appropriate for any medical expenses or COBRA premiums the employees had occurred during the strike.

Printed by Authority of the State of Illinois  
Printed on Recycled Paper  
Printed by the IELRB  
100 – 08/2018