

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2009

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January 22, 2010

Governor Pat Quinn
Office of the Governor
207 State Capitol
Springfield, Illinois 62706

Dear Governor Quinn:

Pursuant to Section 5(i) of the Illinois Educational Labor Relations Act, 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 for Fiscal Year 2009.

This report contains a description of the activities and accomplishments of the Board as well as summaries of major cases decided by the Board and the Illinois courts. In addition, this year we include the FY09 strike activity report. We believe that this report reflects the Agency's growth, success, and commitment to effective implementation of the Act.

During the past fiscal year we were fortunate to find that for the most part, educational employers, educational employees, and labor organizations were cooperative and eager to work with the Agency to peacefully resolve their educational employment disputes. We shall endeavor to continue to develop the necessary elements of fairness and cooperation in educational labor relations in Illinois.

Thank you for your support and for the opportunity to review our accomplishments with you.

Sincerely yours,

Lynne O. Sered
Chairman

Michael H. Prueter
Board Member

Bridget L. Lamont
Board Member

Jimmie E. Robinson
Board Member

Ronald F. Ettinger
Board Member

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 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's original appropriation of \$1,434,450 was amendatory vetoed by the Governor. The IELRB operated on a budget of \$1,075,650 during Fiscal Year 2009.

On August 11, 2003, Public Act 93-509 reconstituted the Board from 7 members to 5 members. 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.

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. Although the Board is the final appellate reviewer 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 the recently enacted 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. 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; serves as the Board's Ethic's Officer; 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 an Opinion 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 current Board Members are:

Lynne O. Sered, Chairman
Appointed 06/01/04 – 06/01/10

Michael H. Prueter
Appointed 06/01/04 – 06/01/07

Bridget L. Lamont
Appointed 06/01/04 – 06/01/10

Ronald F. Ettinger
Appointed 06/02/08 – 06/01/14

Jimmie E. Robinson
Appointed 06/01/04 – 06/01/07

Lynne O. Sered

Lynne O. Sered was appointed Chairman of the Illinois Educational Labor Relations Board in June 2004. Prior to assuming the board chair's responsibilities, she served as a board member since her initial appointment to the Board in October 2000.

Chairman 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, Ellch & 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.

Chairman Sered lives with her husband and their two children in Evanston, Illinois.

Michael H. Prueter

Michael H. Prueter was appointed to the Illinois Educational Labor Relations Board in October 2000. Mr. Prueter served as Government Liaison for a number of corporations and trade associations where he negotiated labor contracts with local and national food service vendors. He has received numerous local, state and national awards for his work in youth and family services, humanitarianism, and in legislation. He also received the Illinois General Assembly Award of Recognition for his work. He also served on a national legislative policy board in Washington, D.C. for several years.

Mr. Prueter has served for many years as pro bono Director of Government Affairs for the Illinois State Crime Commission and as a mentor and tutor in an alternative education program through the Regional Office of Education in DuPage County.

As a mortgage banker, Mr. Prueter has several years of business experience in the banking and financial services industry. Mr. Prueter has previously worked as a staff member in the Illinois House and Illinois Senate. He was elected in his township as Township trustee and served the public in this capacity for 10 years. Mr. Prueter received his Masters in Business Administration from Columbia State University.

Bridget L. Lamont

Bridget L. Lamont was appointed to the Illinois Educational Labor Relations Board in 2002 and reappointed in 2004 after legislation authorizing the restructuring of the Board. Prior to her appointment, Member Lamont served as Director of Policy Development in the Office of the Governor where she coordinated issues development and policy positions among agencies of state government with external constituencies. She administered a staff of policy specialists in areas ranging from economic development, education, health and human services, literacy and natural and cultural resources.

Member Lamont served as Director of the Illinois State Library for 16 years where she managed the nation's largest statewide library cooperative network; initiated state per capita grants for school library development; promoted community based literacy programs; and administered federal and state library grant programs. Under her leadership, numerous reading and author programs were established including Family Reading Night and the Illinois Author's Festival.

Member Lamont received her BA from Clarke College and an MS from the University of Illinois. She has an honorary doctorate in humane letters

from Dominican University. She has received numerous awards and honors from the American and Illinois Library Associations. She is the recipient of the Public Humanities Award from the Illinois Humanities Council; the Friend of Illinois Community College Libraries; and an Alumnus of the Year from the University of Illinois Graduate School of Library and Information Science. She has also served as the Vice-Chair of the US National Commission on Libraries and Information Services and a member of the US National Commission on Adult Literacy.

Member Lamont is married to Thomas R. Lamont and they have two sons.

Jimmie E. Robinson

Jimmie E. Robinson was appointed to the Illinois Educational Labor Relations Board by Governor Rod Blagojevich in 2004. Mrs. Robinson taught elementary school in Blue Island for thirty-four (34) years. She was active in every aspect of collective bargaining during her teaching career and served as grievance chair for over ten (10) years. As a member of the Illinois Education Association and the National Education Association, she lobbied the US Congress on behalf of education and witnessed the signing of the Collective Bargaining Law in Illinois. As a retired teacher, Mrs. Robinson remained active in the Illinois Education Association.

Jimmie E. Robinson was educated in the public schools of Chicago. She holds a B.A. in Education from Pestalozzi Froebel Teachers College; M.A. in Education and a M.S. in English from Chicago State University and has taken Doctoral courses from Peabody/Vanderbilt.

Member Robinson is married to William Robinson and they have one daughter.

Ronald F. Ettinger

Ronald F. Ettinger was appointed to the Illinois Educational Labor Relations Board by Governor Rod Blagojevich in 2004. Prior to his appointment he had retired from the University of Illinois at Springfield (UIS) as Emeritus Professor. During his 30 years of service at UIS (formerly Sangamon State University), Professor Ettinger served as Chair of the Faculty Senate and President of the Faculty Union. He also served as Executive Vice-President of the University Professionals of Illinois (Local 4100, IFT/AFT AFL-CIO) where his primary duties involved lobbying on behalf of public university faculty in Illinois. He was elected Vice-President of the Illinois Federation of Teachers and Delegate to the Illinois AFL-CIO.

Member Ettinger received a Ph.D. in clinical psychology from Purdue University and has taught at Purdue, York University (Toronto), Albion College and UIS. In addition to teaching and publishing articles related to education and labor relations, he has served as a member of the board of the Montessori Children's House in Springfield and has lobbied on behalf of public school teachers as a government affairs specialist with the Illinois Federation of Teachers.

Member Ettinger is married to Bonnie J. Ettinger and they have two daughters.

Victor E. Blackwell

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.

Helen Higgins

In May 1984, Helen was hired as the first career staff attorney of the newly-created Illinois Educational Labor Relations Board (IELRB). In 1987, she joined the Chicago Law Office of the United States Postal Service, litigating labor and employment cases. In November 2002, she returned to the IELRB as General Counsel.

She attended the University of Illinois in Champaign-Urbana for undergraduate and graduate school. She has a master's degree from the Institute of Labor and Industrial Relations; her major was in collective bargaining. She graduated with high honors from IIT Chicago-Kent College of Law in 1984.

Susan J. Willenborg

Susan J. Willenborg was appointed Associate General Counsel of the Illinois Educational Labor Relations Board in November 2005. She joined the Board as a staff attorney and Hearing Officer in December 1984, and became a Board Attorney in October 1987. She served as Acting General Counsel from August 1995 to March 1996. From August 1983 to December 1984, she was employed by Jacobs, Burns, Sugarman & Orlove. She received her Juris Doctorate in 1983 from the University of Chicago, and

graduated magna cum laude in Religion from Carleton College in 1980.

Kathleen Liu Lyons

Kathleen Liu Lyons returned to the Board in February, 2005 and is currently serving as Associate General Counsel. Ms. Lyons originally joined the IELRB in February, 1996 as an Administrative Law Judge. Ms. Lyons was an ALJ from 1996 to July, 2001, at which time she left the IELRB to become Associate Director of Career Resources at Loyola University Chicago School of Law. Prior to joining the Board in 1996, Ms. Lyons practiced labor and employment law at Vedder Price Kaufman and Kammholz in Chicago, Illinois. Ms. Lyons is currently a member of the ISBE Due Process Screening Committee, and has served as a volunteer mediator for the Center for Conflict Resolution and an adjunct faculty member at Loyola University Chicago School of Law. She has also been active in the Women's Bar Association, the Chicago Bar Association, and Mothers of Multiples. Prior to her career in law, Ms. Lyons was a management consultant in Detroit, Michigan. Ms. Lyons received her JD degree from Loyola University Chicago School of Law, and her Bachelors of Business Administration from the University of Michigan.

AGENCY ACTIVITIES

The types of cases processed by the Agency fall essentially into three categories: representation cases, mediation cases and unfair labor practice cases.

Representation Cases

The major types of representation cases are those involving majority interest petitions and those involving petitions seeking an election. The majority interest procedure was established by Public Act 93-444. Majority interest cases arise when a union submits dues deduction authorizations, authorization cards, signatures on a petition or other evidence demonstrating that it is supported by a majority of the employees in the bargaining unit. The case is investigated, and the union is certified as the exclusive representative within 30 days after service of the petition if the legal requirements are met. However, the majority interest procedure may not be used to decertify a union or when another union has lawfully attained representation rights.

The second category of representation cases are those where the petitioner seeks an election. These generally arise when a petitioner seeks representation by a union that does not represent the petitioned-for bargaining unit in whole or in part (commonly referred to as "RC" cases); when a group of employees no longer wish to be represented by an exclusive bargaining representative (commonly referred to as "RD" cases); when an employer is faced with a situation in

which there are competing claims between labor organizations that they are the exclusive bargaining representative, or when the employer has reason to believe that an incumbent union no longer represents the majority of employees in the bargaining unit (commonly referred to as "RM" cases); or when an exclusive bargaining representative wishes to add a group or groups of employees to its existing bargaining unit (commonly referred to as "RS" cases). Once a petition is properly filed and the necessary showing of interest is provided to the Board, the matter is assigned to a Board Agent who then contacts the parties to begin the investigation to determine whether the parties will agree to a consent election agreement. In the event that the parties are unable or unwilling to execute a consent election agreement, the matter is set for hearing on those issues upon which the parties cannot agree. After the hearing is closed, the Administrative Law Judge issues a Recommended Decision and, where appropriate, a Direction of Election. In those cases in which the Administrative Law Judge directs that the filing of an appeal will not prevent conducting an election pending the Board's review, the election will be conducted and the votes will be impounded, segregating the ballots of those individuals who are the subject of the appeal to the Board. The ballots will be counted only upon the Board's ultimate decision in the case and in accordance with that decision.

Representation Cases 2009

Representation Cases Filed in FY 2009

Petition to Determine Representative (RC)	26
Petition to Decertify Representative (RD)	3
Petition to Determine Unit (RS)	31
Petition to Determine Representative-Employer Filed (RM)	2
Voluntary Recognition Petition (VR)	3
Unit Clarification Petition (UC)	26
Amendment to Certification Petition	8
MIP Cases (included in RC, and RS figures above)	51
Total	99

Agency Activity on All Representation Cases for FY 2009

Certification of Representative	4
Certification of Voluntary Recognition	1
Certification of Results	1
MIP Order of Certification	39
Withdrawn	16
Executive Director's Recommended Decision & Order	24
ALJ's Recommended Decision & Order	3
Elections	13

Mediation Cases

The second major type of case processed by the Board, mediation cases, are cases in which the parties, once engaged in bargaining for a collective bargaining agreement, notify the Board of the status of their negotiations and at some point engage in the process of mediation, fact-finding and/or interest arbitration. In those bargaining units consisting of professional/instructional personnel, the parties must report on the status of negotiations to the

Board at 90, 45 and 15 days prior to the beginning of the school year. In those bargaining units consisting of non-professional/non-instructional personnel, the parties must report to the Board at 45 and 15 days prior to the expiration of the collective bargaining agreement. Fifteen days prior to the beginning of school or fifteen days before the expiration of the collective bargaining agreement, the Board will invoke mediation absent agreement of the parties to defer mediation.

Strike Activity FY 2009

(July 1, 2008 – June 30, 2009)

School County	Union Unit Description/No.	Notice Filed Date Settled	Strike Date Strike Days
MADISON COMM UNIT SCH DIST 12 MADISON	IFT/AFT CERTIFIED PERSONNEL (80)	8/18/2008 2/25/2009	
WILMETTE SCHOOL DIST 39 COOK	IEA/NEA CERTIFICATED PERSONNEL (340)	9/16/2008 12/15/2008	
RIVER BEND COMM UNIT DIST 2 WHITESIDE	IEA/NEA CERTIFIED TEACHING PERSONNEL (132)	10/23/2008 11/6/2008	
KANELAND C U SCHOOL DIST 302 KANE	IEA/NEA CERTIFICATED EMPLOYEES (362)	10/6/2008 10/23/2008	
LEBANON COMM UNIT SCH DIST 9 ST. CLAIR	IFT/AFT CLASSROOM TEACHERS (60)	8/14/2008 10/9/2008	
CONSOLIDATED SCHOOL DISTRICT 158	IEA/NEA	8/12/2008	9/15/2008

MCHENRY	CERTIFIED STAFF (570)	9/17/2008	3
ALTAMONT COMM UNIT SCH DIST 10 EFFINGHAM	IEA/NEA K-12 CERTIFIED STAFF (60)	8/22/2008 9/15/2008	3
HIGHLAND COMM UNIT SCH DIST 5 MADISON	IEA/NEA CERTIFIED TEACHING STAFF (217)	9/3/2008 9/11/2008	
TRICO COMM UNIT SCH DISTRICT 176 JACKSON	IEA/NEA CERTIFIED EMPLOYEES (66)	8/20/2008 8/27/2008	
DEKALB COMM UNIT SCH DIST 428 DEKALB	IFT/AFT CERT TCHRS,NURSE,SOC WORK,SPEC (380)	8/7/2008 8/18/2008	
SULLIVAN C U SCHOOL DIST 300 MOULTRIE	IEA/NEA CERTIFIED INST PERSONNEL (60)	7/17/2008 8/15/2008	

Subtotal 11

Total Notices Filed 11

Total Strikes 1

CONSOLIDATED SCHOOL DISTRICT 158

Unfair Labor Practice Cases

Unfair labor practice cases are charges alleging that the conduct of an employer and/or a union constitute conduct proscribed by the Act and can be filed by educational employers, unions or employees. Once properly filed, an unfair labor practice charge is assigned to a Board Agent who conducts an investigation by contacting both the charging party and the charged party to obtain whatever testimony and/or documents they may wish to provide in support of or in response to the charge. Upon conclusion of the investigation, the

Executive Director can either dismiss the unfair labor practice charge, a decision that is appealable to the Board, or he may decide to issue a complaint and set the matter for hearing, absent a voluntary settlement of the case by the parties. In those cases in which a complaint issues, the matter is set for hearing and the parties are provided an opportunity to present whatever witnesses and/or documentary evidence they may wish to provide. At the close of the hearing, the Administrative Law Judge issues a Recommended Decision and Order in which he or she will either find that an unfair labor practice has been committed

and order the appropriate remedy or dismiss the charge. Either of those decisions is appealable to the Board.

Unfair Labor Practice Cases 2009

Unfair Labor Practice Cases Filed in FY 2009

Unfair Labor Practice Charge Against Employer (CA)	104
Unfair Labor Practice Charge Against Union (CB)	27
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	116
Total	247

Agency Activity on All Unfair Labor Practice Cases for FY 2009

Withdrawn Pursuant to Settlement Agreement	112
Withdrawn	69
Executive Director's Recommended Decision & Order	62
ALJ's Recommended Decision & Order (including Fair Share)	32
Complaints Issued	39
Cases Mediated by Board Agents	62

Board Activity 2009

Board Opinion & Orders	19
Board Final Orders	90

Board and Court Cases

JULY 1, 2008 THROUGH JUNE 30, 2009

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD
JULY 1, 2008 THROUGH JUNE 30, 2009

I. Jurisdiction/Constitutionality

- (a) **Northern Kane Educational Corp. v. Cambridge Lakes Education Ass'n, IEA-NEA, et al., Case No. 2008-RC-0013-C (IELRB Opinion and Order, November 21, 2008), rev'd, __ N.E.2d __, 2009 WL 3052367 (Ill. App. Ct., 4th Dist., September 23, 2009)**

The IELRB issued an Opinion and Order certifying a bargaining unit of professional staff at Cambridge Lakes Charter School. The IELRB affirmed the ALJ's conclusion that the chartering entity, Northern Kane Educational Corporation, was an educational employer under the IELRA. The Appellate Court reversed the IELRB's decision that it had jurisdiction over a charter school because the charter school was an educational employer under the Act. The Appellate Court found that the plain language of the Illinois Charter Schools Law establishes that charter schools are exempt from "all other [s]tate laws" with limited, specified exceptions, of which the Act is not one. Having found that charter schools are exempt from the Act, the Appellate Court did not address the question of whether charter schools were educational employers, but did note that an amendment to the Charter Schools Law, which goes into effect January 1, 2010, specifically brings charter schools under the jurisdiction of the Act.

II. Unfair Labor Practices

A. Employer Unfair Labor Practices

1. Duty to Bargain in Good Faith

- (a) ***Hiawatha Community Unit School District 426*, ____ PERI ____, Case No. 2008-CA-0023-C and 2008-CA-0069-C (IELRB Opinion and Order, March 23, 2009)**

In the first of these two consolidated cases, referencing its long history of enforcing its filing deadlines and noting that the District had failed to file an answer for 60 days and that there were no exceptional circumstances, the IELRB concluded that the ALJ properly found that the District failed to file a timely Answer to the Complaint and therefore properly held that the District violated Section 14(a)(5) by refusing to meet to conduct grievance hearings.

In the second case, the District did not respond to the Exclusive Representative's demands to bargain a successor contract and subsequently refused to bargain when a rival union filed a petition to represent the employees in question. The ALJ found that the District had violated the IELRA by refusing to bargain a successor contract with the Exclusive Representative after the rival union's petition was filed. Citing the IELRB's longstanding decision in *Galesburg*, 1 PERI 1155 (IELRB 1985), the IELRB affirmed the ALJ, noting that an adequate showing of interest in a rival union is not sufficient evidence that the incumbent union had lost support, and that even if the District had legitimate doubts as to the majority status of the incumbent union, refusing to bargain would still not have been an appropriate response.

- (b) ***Thornton Fractional Township High School District 215*, ____ PERI ____, Case No. 2008-CA-0003-C (IELRB Opinion and Order, May 22, 2009) (appeal pending) (see II.A.2.(c))**

- (c) ***Chicago Ridge School District No. 127 1/2*, 24 PERI 48, Case No. 2007-CA-0062-C (IELRB Opinion and Order, January 21, 2009)**

The IELRB found that the District violated Sections 14(a)(5) and (1) when it unilaterally removed extended-detention duty from the parties' collective bargaining agreement and when it failed and refused to

assign bargaining unit members to extended-detention duty. Noting that the technical rules of contract law do not apply to labor negotiations and that the existence or non-existence of an agreement is a question of fact for the IELRB, the IELRB found that there was a “meeting of minds” when the parties reached a tentative agreement about extended-detention duty and the District’s subsequent actions were consistent with that agreement for more than one year. The IELRB found that there was no meeting of minds regarding the subsequent removal of the extended-detention duty from the final draft of the agreement. Consequently, the District’s refusal to assign the duty to bargaining-unit members constituted a unilateral change.

2. Violation of Employee Rights

- (a) ***Chicago Board of Education (Walczak), ___ PERI ___, Case No. 2008-CA-0071-C (IELRB Opinion and Order, June 30, 2009) (appeal pending) (see II.C.3)***
- (b) ***Triton College and Triton College Adjunct Faculty Association, IEA-NEA, ___ PERI ___, Case No. 2008-CA-0010-C and 2008-CB-0002-C (IELRB Opinion and Order, November 20, 2008)***

The IELRB affirmed the Executive Director’s Recommended Decision and Order, which dismissed the Charging Party’s unfair labor practice charges against both Respondents. The IELRB affirmed the Executive Director’s conclusion that, based upon the bargaining agreement descriptions of the bargaining unit and of eligible employees, the Charging Party was not a member of the bargaining unit. As such, the College did not commit an unfair labor practice by refusing to allow her to grieve her termination, and the Association did not commit an unfair labor practice by refusing to recognize her as a member of the bargaining unit.

- (c) ***Thornton Fractional Township High School District 215, ___ PERI ___, Case No. 2008-CA-0003-C (IELRB Opinion and Order, May 22, 2009) (appeal pending)***

The IELRB affirmed the ALJ’s Recommended Decision and Order concluding that the District violated Section 14(a)(5) and (1) of the IELRA by unilaterally changing the status quo ante concerning how 12-month schedules would be awarded in the Guidance Office at Thornton Fractional South High School and Section 14(a)(3) and (1) of the IELRA by refusing to award the 12-month position to a union officer when she became the most senior secretary in the office.

The IELRB found that the District had previously assigned the 12-month position based on seniority, and that the District unilaterally changed this practice when it assigned the 12-month position to an employee with less seniority than the union officer, in violation of Section 14(a)(5) and (1).

The IELRB also found that the District violated 14(a)(3) and (1) by retaliation against a union officer when it assigned the 12-month position to a less senior employee. The IELRB found that the District’s anti-union animus was evidenced in threatening comments made by the District representatives during negotiations, statements made by District administrators, and the timing of the District’s actions. The IELRB determined that the District’s proffered reason for its action was pre-textual, and that the District failed to provide any other reason why it denied the union officer the 12-month schedule when she became the most senior secretary.

Board Member Lamont dissented, stating that she was unconvinced that the District’s action was based on anti-union animus.

3. Employer Domination of Labor Organizations
4. Failure to Comply with a Binding Arbitration Award

- (a) ***Central Community Unity School District No. 4 v. IELRB, et al., Case No. 2007-CA-0042-C, 388 Ill. App. 3d 1060, No. 4-08-0303 (4th District, February 27, 2009)***

The Appellate Court found that there was a broad and very important public policy in Section 24-24 of the Illinois School Code concerning the safety of school children. The Court reversed the IELRB's opinion and order and remanded the case to the IELRB to remand to the arbitrator to consider the employee's conduct toward school children in his position which he held at the District but which was outside the bargaining unit. On June 29, 2009, the IELRB issued an order remanding the matter to the arbitrator consistent with the guidelines provided by the Appellate Court.

5. Employer Free Speech

B. Union Unfair Labor Practices

1. Duty of Fair Representation

- (a) ***Chicago Teacher's Union (Walczak)*, ____ PERI ____, Case No. 2008-CB-0023-C (IELRB Opinion and Order, June 30, 2009) (appeal pending) (see II.C.3.(a))**
- (b) ***Int'l Union of Operating Engineers (Pavlovic), Local 143-143B*, ____ PERI ____, Case No. 2007-CB-0018-C (IELRB Opinion and Order, December 17, 2008)**

The IELRB affirmed the Executive Director's Recommended Decision and Order dismissing the Charging Party's unfair labor practice charge on the basis that the Charging Party had not presented evidence sufficient to support a finding of intentional misconduct in the union's failure to file a grievance or its negotiation of a settlement on the employee's behalf.

- (c) ***East Aurora Council, Local 604, AFT*, ____ PERI ____, Case No. 2008-CB-0016-C (IELRB Opinion and Order, November 20, 2008)**

The IELRB affirmed the Executive Director's Recommended Decision and Order, which found that the evidence did not establish a prima facie case that the union violated Section 14(b)(1) of the Act by failing to pursue a grievance to arbitration. The Executive Director stated that there was no evidence that the union failed to make a good faith investigation of the employee's grievances, and that the union president's remarks about "wasting time" did not constitute severely hostile and irrational treatment.

- (d) ***Triton College and Triton College Adjunct Faculty Association, IEA-NEA*, ____ PERI ____, Case No. 2008-CA-0010-C and 2008-CB-0002-C (IELRB Opinion and Order, November 20, 2008) (see II.A.2.(b)).**

- 2. **Unlawful Restraint and Coercion**
- 3. **Duty to Bargain in Good Faith**

C. Unfair Labor Practice Procedure and Related Issues

1. Timely Filed

- (a) ***SASED Education Association, IEA-NEA, 24 PERI 82*, Case No. 2008-FS-0037-C (IELRB Opinion and Order, July 9, 2008)**

The Objector filed an objection to the fair share fee assessed by the Association. The Executive Director issued a Recommended Decision and Order finding that the objections were untimely. The Objector filed timely exceptions, and the IELRB affirmed the Executive Director's Recommended Decision and Order.

- (b) **Chicago Teacher's Union (Hirshfield), ___ PERI ___, Case No. 2009-CB-0002-C (IELRB Opinion and Order, February 10, 2009) (see II.C.2(a))**
- (c) **Chicago Board of Education (Walczak), ___ PERI ___, Case No. 2008-CA-0071-C (IELRB Opinion and Order, June 30, 2009) (appeal pending) (see II.C.3)**
- (d) **Chicago Teachers Union (Walczak), ___ PERI ___, Case No. 2008-CB-0023-C (IELRB Opinion and Order, June 30, 2009) (appeal pending) (see II.C.3)**

2. Failure to Serve Exceptions

- (a) **Chicago Teacher's Union (Hirshfield), ___ PERI ___, Case No. 2009-CB-0002-C (IELRB Opinion and Order, February 10, 2009)**

The Charging Party filed an unfair labor practice charge against the Union. The Executive Director issued a Recommended Decision and Order, which found the charge to be untimely filed and therefore dismissed the charge in its entirety. The Charging Party filed exceptions, but failed to include an Affidavit of Service. Accordingly, the IELRB struck the exceptions and affirmed the Executive Director's decision.

- (b) **Chicago Board of Education and Chicago Teachers Union (Russell), ___ PERI ___, Case No. 2009-CA-0021-C and 2009-CB-0003-C (IELRB Opinion and Order, February 10, 2009)**

The Charging Party filed exceptions to the Executive Director's Recommended Decision and Order, but failed to include adequate certification of service or otherwise demonstrate that she had served her exceptions to the Respondents. Neither Respondent filed a response to her exceptions. Accordingly, the IELRB struck the exceptions and affirmed the Executive Director's decision.

3. Consideration of New Evidence, Arguments

- (a) **Chicago Board of Education (Walczak), ___ PERI ___, Case No. 2008-CA-0071-C (IELRB Opinion and Order, June 30, 2009) (appeal pending)**

The IELRB upheld the Executive Director's Recommended Decision and Order dismissing Walczak's allegations that the Board of Education violated Section 14(a)(3) and (1) by giving her low evaluations during the remediation process that resulted in her termination. The IELRB found, first, that Walczak's exceptions were untimely. Notice of the Executive Director's decision was sent by certified mail to Walczak's attorney's correct address, and delivery was attempted several times and notice for pick-up left, but the notice was not claimed. Walczak's exceptions were filed more than one month after the notice was returned unclaimed, and was therefore considered untimely. The IELRB found that even had Walczak's exception been timely, the IELRB would still have dismissed her charge, as she failed to present any evidence that she had engaged in any protected activity that predated her participation in the remediation process. The IELRB noted that, as a quasi-judicial body, it could not consider facts that were not presented during the investigation. Board Member Lamont filed a concurring opinion highlighting the fact that the IELRB is prohibited from considering evidence which was not submitted during the investigation.

- (b) **Chicago Teachers Union (Walczak), ___ PERI ___, Case No. 2008-CB-0023-C (IELRB Opinion and Order, June 30, 2009) (appeal pending)**

The IELRB upheld the Executive Director's Recommended Decision and Order dismissing Walczak's allegation that the Union violated Section 14(b)(1) by failing to file a grievance on her behalf. The IELRB found, first, that Walczak's exceptions were untimely. Notice of the Executive Director's decision was sent by certified mail to Walczak's attorney's correct address, and delivery was attempted several times and notice for pick-up left, but the notice was not claimed. Walczak's exceptions were filed more than one month after the notice was returned unclaimed, and were therefore considered untimely. Additionally, the IELRB found that even had the exceptions been timely, the IELRB would still have dismissed her charge, as Walczak failed to produce any evidence that the Union committed intentional misconduct in deciding whether or not to file a grievance on her behalf. The IELRB noted that, as a quasi-adjudicatory body, it could not consider facts that were not presented during the investigation. Board Member Lamont filed a concurring opinion highlighting the fact that the IELRB is prohibited from considering evidence which was not submitted during the investigation.

4. **Standard for Issuance of Complaint**
5. **Settlement Agreement**
6. **Bias**
7. **Agency**
8. **Interference with a Witness**
9. **Investigation Procedures**
10. **Failure to File a Timely Answer**

- (a) *Hiawatha Community Unit School District 426, ____ PERI ____, Case No. 2008-CA-0023-C and 2008-CA-0069-C (IELRB Opinion and Order, March 23, 2009)*
(see II.A.1)

11. **Interlocutory Appeals**
12. **Reconsideration**
13. **Failure to Prosecute**
14. **Motions**
15. **Summary Judgment**
16. **Hearing Procedures**
17. **Other**

III. **Representation Cases**

- A. **Contract Bar**
- B. **Blocking Charge Rule**
- C. **Appropriate Unit**
- D. **Statutory Exclusions**

1. **Supervisor**

- (a) *Board of Trustees/University of Illinois At Urbana-Champaign, ____ PERI ____, Case No. 2009-RS-0001-S (IELRB Opinion and Order, June 30, 2009) (appeal pending)*

The Union filed a majority interest representation petition which sought to add all Building Service Foremen employed at the University's Urbana-Champaign campus to an existing unit represented by the Union. The ALJ issued a Recommended Decision and Order dismissing the case. The IELRB upheld the ALJ's decision, finding that the BSF position had been extensively litigated, including at the Illinois Appellate Court level, and had been found by the IELRB to be a statutorily excluded supervisory position, pursuant to Section 2(g). The Board adopted the "changed circumstances" standard set forth in *Metropolitan Alliance of Police v. ILRB*, 362 Ill. App. 3d 469 (2nd Dist. 2005), holding that reconsideration of a prior Board decision is inappropriate unless there is evidence of a substantive change in the relevant facts, such as the duties and functions of an existing title, or a significant change in the controlling statutory or case law. A majority of the IELRB affirmed the ALJ's conclusion that the Union failed to demonstrate

either a substantive change in the BSF job duties or a change in law that would justify reconsideration of the matter. Board Member Sered dissented, concluding that the Union established minimally sufficient evidence of changed circumstances to warrant a hearing, and that the current petition sought to add employees in a department not included in the previous litigation.

2. Confidential

- (a) *Niles Township High School District 219 v. IELRB, et al., Case No. 2003-UC-0007-C, 387 Ill. App. 3d 58, No. 1-08-1158 (1st Division, December 15, 2008)*

The Appellate Court affirmed the IELRB's Opinion and Order finding that neither a systems and networking engineer nor a world-wide web communications assistant were confidential employees as defined by the IELRA and that, therefore, neither employee could be properly excluded from the bargaining unit. The Appellate Court concluded that neither employee was a confidential employee under either the labor-nexus test or the authorized-access test. The court noted that the employees had never once been asked to look at or read any confidential collective bargaining information, despite technically having access to such, and emphasized that an employee assigned to compile statistical data related to labor relations does not automatically become a confidential employee. Emphasizing that the issue is not the level of access an employee is capable of exercising, but rather the level of access the employer intends for the employee to exercise, the court found that the two employees in question had only theoretical, but not actual, access to confidential information and that such access would not be part of their regular duties even if there were actual access.

- (b) *Midwest Central Community Unit School District 191, No. 2008-UC-0004-S (IELRB Opinion and Order, September 10, 2008)*

The IELRB affirmed the Executive Director's Recommended Decision and Order dismissing the District's unit clarification petition seeking to remove the position of Data Director from the bargaining unit as a confidential employee. The IELRB rejected the District's argument that the Data Director was a confidential employee under the "access" test because she had sole responsibility for computer security and had access to confidential information, which she had to actually read in the course of investigating employee misconduct, and that she was a confidential employee under the "labor nexus" test because she reported misconduct to the Superintendent or the Board of Education. Noting that the exclusion of confidential employees is narrowly interpreted, the IELRB found the Data Director was not a confidential employee under the "access" test because she did not have access to confidential information specifically related to collective bargaining in the course of her regular duties. Nor was she a confidential employee under the "labor nexus" test, as it was not shown that the Data Director assisted and acted in a confidential capacity with respect to labor relations to any individual who formulates, determines and effectuates labor relations policy.

- 3. Managerial**
4. Short-term
5. Part-time Academic Employees of Community Colleges

- E. Unit Clarification/Self-Determination Petitions**
F. Election Objections
G. Employer Filed Petitions

IV. The IELRB and Arbitration

- A. Failure to Arbitrate/Arbitrability**
B. Enforcement of Awards

- (a) ***Central Community Unity School District No. 4 v. IELRB, et al.*, Case No. 2007-CA-0042-C, 388 Ill. App. 3d 1060 (4th Dist., February 27, 2009) (see II.A.4)**

C. Referral to Arbitration/Deferral to Awards

V. Compliance/Remedies/Sanctions

- (a) ***SPEED District 802 v. Rachel Warning, et al.*, Case No. 2006-CA-0013-C, 911 N.E.2d 425 (1st Dist., June 8, 2009) (appeal pending)**

The Appellate Court upheld both the IELRB's decision and remedy in a Board Opinion and Order finding that the District committed an unfair labor practice when it non-renewed a probationary teacher's contract in retaliation for her engaging in protected union activity. Recognizing that the IELRB's purpose in fashioning a remedy in an unfair labor practice case is to "make-whole" the employee by ordering that she be placed in the same position she would have occupied absent the unfair labor practice, and that the IELRB has wide discretion and substantial flexibility in determining the appropriate remedy, the court affirmed the IELRB's remedy ordering reinstatement where the reinstatement resulted in her obtaining tenure by operation of law pursuant to the School Code. Justice Garcia dissented, arguing that there was no violation; however, even if the District did violate the Act, the IELRB lacked the power to renew and grant tenure to a non-tenured teacher, as that power belonged only to the school board.

VI. Preliminary Injunctive Relief – Section 16(d) of the Act

VII. Fair Share

- (a) ***SASED Education Association, IEA-NEA, 24 PERI 82*, Case No. 2008-FS-0037-C (IELRB Opinion and Order, July 9, 2008) (see II.C.1)**

VIII. Other

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