Chicago Kent College of Law 2007

Public Labor Relations Conference

IPLRA Developments

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OUTLINE
IPLRA CASE SUMMARIES

I. **JURISDICTION**

A. **In General** 1

- Harej, Wayne v. FOP, Lodge 7, 22 PERI 63 1

B. **Joint Employer Status** 1

- AFSCME, Council 31 v. Illinois Departments of Central Management Services and Corrections, 23 PERI 71 1

C. **Six-month Time Limitations period** 1

- Shamley, Landa v. Chicago Transit Authority; Illinois LRB et al., 22 PERI 38 1
- Doggett, David v. Cook, County of (John H. Stroger Hospital), 22 PERI 40 2
- Dujmovic v. ATU, Local 308, 22 PERI 7 2
- Illinois Department of Central Management Services (Corrections) Wiggs v. IUOE, Local 399, 22 PERI 85 2
- Illinois Labor Council v. Village of River Forest, 22 PERI 55 2
- City of St. Charles v. IAFF, Local 3322, St. Charles Professional Firefighters Ass'n, 23 PERI 50 2
- Buhr, Phillis v. County of Champaign,(Nursing Home), 23 PERI 52 3

II. **CARD CHECK CERTIFICATION ISSUES** 3

- County of DuPage v. Illinois State Labor Relations Board, Ill. App., Case No. 2-06-0380 (2nd Dist.) (August 24, 2007) 4

III. **REPRESENTATION ISSUES** 4

A. **Bar To Representation Proceedings** 4

(1) **Blocking Charges** 4

ATU, Local 1028 v. PACE, Northwest Division, 22 PERI 15 4

(2) **Contract Bar** 4

Winfield, Village of v. MAP Winfield Patrol Officers,
Chapter 477; Illinois Council of Police, Local 7, 22 PERI 96 4

(3) **Election Bar** 5

Harvey, City of v. Illinois Council of Police, 22 PERI 130 5

B. Unit Determination/Appropriateness 5

- Cook, County of (Provident Hospital) v. Illinois Labor Relations Board,
Local Panel et al., 369 Ill. App. 3d 112
(3d. Div) 859 N.E.2d 80 (1st Dist. 2006), 22 PERI 163 5
- Cook, County of (Provident Hospital) v. AFSCME, Council 31,
22 PERI 12 5
- LIU, Local 773 v. Litchfield, City of et al., 23 PERI 70 5
- Illinois Department of Central Management Services v. AFSCME,
Council 131, 22 PERI 151 6
- Stephenson, County of et al. v. UAW, Local 2261; Policemen's
Benevolent Labor Committee, 22 PERI 30 6
- Harvey, City of v. Illinois Council of Police and Sheriffs, Local 7; AFSCME,
Council 31, 22 PERI 29 6
- Metropolitan Water Reclamation District of, Greater Chicago v. Illinois
Council of Police; Firemen and Oilers Union, Local 7, 22 PERI 61 7
- Illinois Department of Central Management Services v. AFSCME,
Council 31, 23 PERI 74 7
- MAP, Burr Ridge Command Chapter No. 13 v. Burr Ridge,
Village of, 23 PERI 102 7

C. Majority Interest 7

- See discussion at Section II, supra 7

D. Unit Clarification 7

- Illinois Department of Central Management Services
(Department of Corrections) v. Illinois, State of; Ill. LRB, State Panel, et al.,
364 Ill. App. 3d 1028, 848 N.E.2d 118 (4th Dist. 2006) 22 PERI 54 8
- Bloomington, City of v. Policemen's Benevolent Labor Committee,
22 PERI 22 8
- LIUNA, Local 231 v. Washington, City of, 23 PERI 101 8

- FOP. Illinois v. Livingston, County of; Livingston County Sheriff, 23 PERI 76 8

Millstadt, Village of v. IUOE, Local 148, 23 PERI 65 8

- LIU, Local 1197 v. City of Newton, 23 PERI 85 9
- IAFF, Plainfield Firefighters v. Plainfield Fire Protection District: MAP, Plainfield Paramedics Chapter 2, 23 PERI 105 9

E. Labor Organization Status 9

- Intentionally left blank 9

F. Section 3(n) Independent Contractors 9

- Teamsters, Local 714 v. Ill. LRB, Local Panel; Metropolitan Pier & Exposition Authority, 23 PERI 57 9
- Metropolitan Pier and Exposition Authority v. Teamsters, Local 714, 22 PERI 87 10

G. Section 3(n) Confidential Employees 10

- Cook, County of (Provident Hospital) v. Illinois Labor Relations Board,. Local Panel et al., 369 Ill. App. 3d 112, 859 N.E.2d 80 (1st Dist. 2006) 22 PERI 163 10
- SEIU, Local 73 v. Bloomingdale, Village of, 23 PERI 40 10
- Cook, County of (Provident Hospital) v. AFSCME, Council 31, 22 PERI 12 10
- Stephenson, County of et al. v. UAW, Local 2261; Policemen's Benevolent Labor Committee, 22 PERI 30 11
- Pleasant Hill, Village of v. IUOE, Local 965, 22 PERI 97 11
- Rockford Housing Authority v. AFSCME, Council 31, 23 PERI 67 11
- Illinois Department of Central Management Services v. AFSCME, Council 31, 23 PERI 74 11
- Millstadt, Village of v. IUOE, Local 148, 23 PERI 65 12
- Cook, County of: Cook County Sheriff v. MAP, Chapter 438, 438, 23 PERI 75 12

H. Section 3(j) Managerial Employees 12

- Delavan, City of v. UAW, Local 974, 22 PERI 41 12
- Illinois Department of Central Management Services v. AFSCME, Council 31, 23 PERI 74 12
- New Baden Public Works Department v. IUOE, Local 148, 22 PERI 98 13
- Illinois Department of Central Management Services v. AFSCME, Council 31, 23 PERI 73 13
- Millstadt, Village of v. IUOE, Local 148, 23 PERI 65 13
- LIU, Local 1197 v. City of Newton, 23 PERI 85 13
- Cook, County of: Cook County Sheriff v. MAP, Chapter 438, 438, 23 PERI 75. 14
- AFSCME, Council 31 v. Illinois Departments of Central Management Services and State Police, 23 PERI 38 14

I. Section 3(r) Supervisory Employees 14

- Illinois State Employees Ass'n et al. v. Illinois Department of Central Management Services;, 23 PERI 47 14
- Hinsdale, Village of v. FOP, Illinois Labor Council, 22 PERI 176 14
- MAP, South Elgin Sergeants Chapter No. 205 v. South Elgin, Village of, 23 PERI 58 15
- Illinois Department of Central Management Services v. AFSCME, Council 31, 22 PERI 158 15
- MAP, Sergeants Chapter 435 v. Morton Grove, Village of, 23 PERI 72 15
- Delavan, City of v. UAW, Local 974, 22 PERI 41 15
- MAP, Sergeants Chapter No. 22 v. New Lenox, Village of, 23 PERI 104 16
- Pleasant Hill, Village of v. IUOE, Local 965, 22 PERI 97 16
- Illinois Department of Central Management Services v. AFSCME, Council 31, 23 PERI 74 16

- New Baden Public Works Department v. IUOE, Local 148, 22 PERI 98 16
- Fairview Heights, City of v. FOP, Illinois Labor Council, 22 PERI 14 16
- 12th Judicial Circuit (Chief Judge, River Valley Detention Center) v. Metropolitan Alliance of Police, Chapter 228, River Valley Detention Center, 22 PERI 73 17
- Knox County Board/Knox County Nursing Home v. AFSCME, Council 31, 22 PERI 58 17
- Niles, Village of v. MAP, Chapter 358, Niles Police Sergeants, 22 PERI 83 17
- Illinois Department of Central Management Services v. AFSCME, Council 31, 23 PERI 73 17
- Millstadt, Village of v. IUOE, Local 148, 23 PERI 65 18
- Cook, County of: Cook County Sheriff v. Map, Chapter 438, 23 PERI 75 18

J. Election Issues 18

- Cook County Circuit Court (Clerk) v. Teamsters, Local 714; AFSCME, Council 31, 22 PERI 84 18
- City of Chicago -Police Department, LRC-05-019 (Sept. 24, 2007) 18
- Teamsters, Local 714 v. Cook County Clerk of Circuit Court; AFSCME, Council 31, 23 PERI 69 19
- PACE Heritage Division v. Teamsters; ATU, Local 241, 22 PERI 59 19
- Teamsters, Local 714 v. Cook County Circuit Court (Chief Judge); AFSCME, Council 31, 23 PERI 109 19
- Cook, County of (Oak Forest Hospital) v. American Federation of Professionals; SEIU, Local 20, 22 PERI 165 19
- Livingston, County of (Livingston Manor) v. SEIU, Local 4 22 PERI 76 20

IV. EMPLOYER UNFAIR LABOR PRACTICES 20

A. **Section 10(a)(1) Restraint, Interference and Coercion** 20

- SEIU, Local 73 v. Sarah D. Culbertson Memorial Hospital, 22 PERI 140 20
- IAFF, Local 4308 v. Princeton Fire Department, 22 PERI 139 20
- FOP, Illinois Labor Council v. Calumet Park, Village of, 22 PERI 23 21
- Clark, Harvey v. Kankakee County Housing Authority, 22 PERI 137 21
- ATU, Local 1028 v. PACE, Northwest Division, 22 PERI 15 21
- FOP, Illinois Labor Council v. Calumet Park, Village of, 23 PERI 108 21
- Metropolitan Alliance of Police, Plainfield Sergeants, Chapter 94 v. Plainfield, Village of, 22 PERI 71 22

B. **Section 10(a)(2) Discrimination** 22

- Anderson, Brenda v. Winnebago County Department of Public Health, 22 PERI 25 22
- Doggett, David v. Cook, County of (John H. Stroger Hospital), 22 PERI 40 22
- Cheatem v. Illinois Department of Central Management Services (Human Services), 22 PERI 178 22
- IUOE, Local 150 v. Lisle, Village of, 23 PERI 39 23
- American Federation of Professionals v. Calumet City, City of, 22 PERI 24 23
- AFSCME, Council 31 v. Champaign-Urbana Public Health District, 22 PERI 164 23

C. **Section 10(a)(4) Refusal To Bargain** 23

(1) **In General** 23

- Forest Preserve District of Cook County v. Illinois labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist. 2006), 22 PERI 171 23
- Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007);

petition leave to appeal denied, (9/26/07)Council 31, 23 PERI 59 24

- AFSCME, Council 31 v. Illinois Department of Central Management Services, 22 PERI 10 24
- AFSCME v. Illinois Department. of Central Management Services (Corrections), 22 PERI 106 24
- IAFF, Local 717, Cicero Fire Fighters v. Cicero Fire Department, 22 PERI 113 24
- IAFF. Local 3234, Downers Grove Professional Firefighters Union v. Downers Grove, Village of, 22 PERI 161 25

(2) **Subjects of Bargaining** 25

- Chicago Park District v. Illinois LRB, Local Panel; SEIU, Local 73, 346 Ill. App. 1169, 866 N.E.2d 708 (1st Dist. 2004), 22 PERI 47 25
- Forest Preserve District of Cook County v. Illinois Labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733, 861 N.E.2d 231 (1st Dist. 2006), 22 PERI 171 25
- Illinois, University of (Board of Trustees) v. IELRB; LRB, State Panel et al., 224 Ill. 2d 88, 862 N.E.2d 944 (2007), 22 PERI 186 26
- IAFF, Local 4232, Bellwood Professional Firefighters Ass'n v. Bellwood, Village of, 22 PERI 122 26
- Bridgeview Fire Fighters Alliance, Local 4330 v. Bridgeview, Village of, 22 PERI 101 26

(3) **Unilateral Charge** 26

- Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007); petition leave to appeal denied, (9/26/07)Council 31, 23 PERI 59 26
- SEIU, Local 73 v. Sarah D. Culbertson Memorial Hospital, 22 PERI 140 27
- CTA Trade Coalition v. Chicago Transit Authority,22 PERI 120 27
- IAFF, Local 473, Waukegan Firefighters v. Waukegan Fire Department, 22 PERI 100 27

- Elk Grove Village Firefighters Ass'n v. Elk Grove, Village of, 22 PERI 119 27

(4) **Waiver of The Right To Bargain** 28

- Chicago Park District v. Illinois LRB, Local Panel; SEIU, Local 73, 346 Ill. App. 1169, 866, N.E.2d 708 (1st Dist. 2004), 22 PERI 47 28
- Forest Preserve District of Cook County v. Illinois labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist.2006), 22 PERI 171 28
- FOP, Illinois Labor Council v. Carlinville, City of, 22 PERI 35 28

(5) **Settlement Agreements** 29

- Teamsters, Local 726 v. Oak Forest, City of, 22 PERI 13 29

(6) **Status Quo** 29

- IUOE, Local 150 v. Lisle, Village of, 23 PERI 39 29
- SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds, 22 PERI 99 29

D. **Remedies** 29

- SEIU, Local 73 v. Illinois LRB; Pleasantview Fire Protection District, 23 PERI 68 30
- Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007); petition leave to appeal denied, (9/26/07)Council 31, 23 PERI 59 30
- Cheatem v. Illinois Department of Central Management Services (Human Services), 22 PERI 178 30
- IAFF, Local 1255, Alton Firefighters Ass'n v. Alton, City of,. 22 PERI 102 31
- IAFF, Local 49 v. Bloomington, City of, 22 PERI 107. This decision was affirmed on appeal 31

- Bloomington, City of v. Illinois Labor Relations Board, State Panel; IAFF, Local 49, No. 4-06-0774, 373 Ill. App. 3d 599, 871 N.E.2d 752 (4th Dist. 2007) 23 PERI 41 31
- Tipsword, Robert v. Illinois Federation of Public Employees, Local 4408, 22 PERI 60 31
- Edwards, Patricia v. Cook, County of et al.; AFSCME, Council 31, 22 PERI 6 31

V. UNION UNFAIR LABOR PRACTICES 32

A. Section 10(b)(1) Duty of Fair Representation 32

- Dujmovic v. ATU, Local 308, 22 PERI 7 32
- Tipsword, Robert v. Illinois Federation of Public Employees, Local 4408, 22 PERI 60 32
- Khan, Basharath v. AFSCME, Council 31, 22 PERI 177 32
- Chaney, Ronald v. SEIU, Local 73, 22 PERI 64 32
- Harej, Wayne v. FOP, Lodge 7, 22 PERI 63 33
- Wright, Mike v. IUOE, Local 318, 22 PERI 138 33

B. Section 10(b)(1) Interplay With Section 10(c) 33

- Biller, Douglas et al. v. AFSCME, Council 31, 23 PERI 51 33

VI. PROCEDURAL ISSUES 33

A. Replacement of Administrative Law Judges 33

- Forest Preserve District of Cook County v. Illinois labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist. 2006), 22 PERI 171 33

B. Summary Judgment Motions 34

- Intentionally left blank 34

C. Default 34

- SEIU, Local 73 v. Cook, County of; Cook County Sheriff, 22 PERI 94 34
- Coleman, Lawrence v. Teamsters, Local 705, 22 PERI 26 34

- SEIU. Local 73 v. Chicago Park District, 22 PERI 9 34
- SEIU, Local 73 v. East St. Louis, City of (Public Library). 22 PERI 95 34
- LIU, Local 773 v. Anna, City of, 23 PERI 103 35
- Randazzo, Bruce v. Chicago, City of, 22 PERI 8 35

D. Deferral To Arbitration 35

- IAFF, Local 1255, Alton Firefighters Ass'n v. Alton, City of,. 22 PERI 102 ... 35
- Rodeghero, Robert v. AFSCME, Local 1019, 23 PERI 88 35
- Policemen's Benevolent and Protective Ass'n v. Peoria, City of, 23 PERI 99 .. 36
- SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds 22 PERI 99 36

E. Filing Period For Exceptions To Recommend Orders 36

- Intentionally left blank 36

F. Sufficiency of Evidence/Evidence Unavailable AT Time of Hearing 36

- SEIU, Local 73 v. Bloomingdale, Village of, 23 PERI 40 36
- Cook, Karl v. ATU, Local 241, 22 PERI 27 37
- Panikowski, Ursula v. PACE Northwest Division, 22 PERI 28 37

G. Amendment of Contract 37

- Forest Preserve District of Cook County v. Illinois labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist. 2006), 22 PERI 171 37
- SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds, 22 PERI 99 37

H. Appellate Review 37

- Boone County Sheriff v. LRB, State Panel et al., 22 PERI 48 38

IPLRA CASE SUMMARIES[1]

I. JURISDICTION

A. In General

Union's expulsion of member doesn't present DFR violation
Ill. LRB Local Panel 2006. The LRB Local Panel upheld the Executive Director's dismissal of an unfair practice charge in which the individual charging party alleged the union violated Section 10(b)(1) of the PLRA by taking certain actions with respect to his membership. Following a hearing, the union expelled charging party from its membership, and charging party became a fair share fee payer. The Executive Director found that the matters raised by charging party, including the union's refusal to permit him to attend union meetings, involved internal union matters over which the LRB lacked jurisdiction. *Harej, Wayne v. FOP, Lodge 7,* 22 PERI 63.

B. Joint Employer Status

State qualifies as joint employer of prison inmates' instructors
Ill. LRB State Panel 2007. The LRB State Panel, agreed with an ALJ's recommended determination with respect to a representation-certification petition. The ALJ recommended the union's certification as exclusive representative of instructors for inmates incarcerated in state Department of Corrections (DOC) facilities. The LRB found that the state qualified as joint employer of the petitioned-for employees with a regional office of education. It agreed with the ALJ that the state's control over pay and benefits, as enumerated in the record, was sufficient to make it the employer of the petitioned-for employees. *AFSCME, Council 31 v. Illinois Departments of Central Management Services and Corrections*, 23 PERI 71.

C. Six-month Time Limitation Period

Appeals court upholds dismissal of untimely ULP charge
Ill. App. Ct., 1st 2006. The Appellate Court of Illinois, First Judicial District upheld the decision of the LRB Local Panel (see 20 PERI 143 [LRB, LP 2004]). The court rejected petitioner's pro se appeal of her wrongful dismissal charge. In the charge, petitioner alleged the employer-transit authority violated PLRA provisions by refusing to allow her to return to work following her time off for a work-related injury. The court agreed with the LRB that petitioner's unfair practice charge was untimely filled over six months after the employer's representative informed charging' party that it would not permit her to return to her previous position. *Shamley, Landa v. Chicago Transit Authority; Illinois LRB et al.*, 22 PERI 38.

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County employer's discharge of union steward wasn't retaliatory

Ill. LRB Local Panel 2006. The LRB Local Panel upheld the Executive Director's dismissal of an unfair practice charge. In the charge, charging party alleged that the county employer disciplined and then discharged him in retaliation for his actions as union steward, in furtherance of bargaining unit members' safety concerns. The Executive Director determined that a portion of the charge was untimely filed over six months after the allegedly wrongful discipline, including the elimination of charging party's flex time and the denial of his request for one hour of vacation time. The Director further determined that charging party failed to establish a prima facie PLRA violation with respect to the timely portion of the charge, concerning his termination. No evidence established a causal connection between charging party's protected activity and his termination, the Director concluded. *Doggett v. County of Cook (John H. Stroger Hospital)*, 22 PERI 40.

Executive Director rejects DFR claim as untimely, meritless

Ill. LRB Local Panel 2005. The LRB Local Panel upheld the Executive Director's recommended dismissal of an unfair practice charge. Charging party alleged, in the charge, that the union violated its duty' of fair representation toward her following her discharge. The Director found the charge was untimely filled over six months after an arbitrator denied charging party's grievance challenging her discharge. Even if the charge wasn't untimely, the union proved that it effectively represented charging party, the Director concluded. *Dujmovic v. ATU, Local 308*, 22 PERI 7.

LRB, SP rejects charge against state employer, union

LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of two unfair practice charges. In those charges, the individual charging party alleged that the state employer improperly refused to hire him for a plant maintenance engineer II position and that the union improperly failed to advance his grievance. The Executive Director found the charge against the union was untimely filled over six months after charging party knew, or reasonably should have known, of the employer's alleged improper conduct. In a similar manner, the charge against the union was untimely filled over six months after charging party knew that the union wouldn't process the grievance, the Executive Director concluded. *Illinois Department of Central Management Services (Corrections) Wiggs v. IUOE, Local 399*, 22 PERI 85.

Union raises untimely challenge to unilateral elimination of position

Ill. LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended dismissal of an unfair practice complaint as untimely. In the complaint, charging party alleged that the municipal employer violated PLRA provisions by unilaterally eliminating a police lieutenant position. The ALJ correctly reasoned that the charge was untimely filed well over six months after the employer unambiguously announced its intention to make the change in question, the LRB found. *FOP, Illinois Labor Council v. Village of River Forest,* 22 PERI 55.

LRB, SP rules that retaliation claim is untimely filed

Ill. LRB State Panel 2007. The LRB State Panel, accepted an ALJ's recommended dismissal of an unfair practice charge as untimely. In the charge, the union alleged the employer retaliated against union members by refusing allow a union representative to attend a staff meeting. The LRB agreed

with the ALJ that the charge was untimely filed over six months after the staff meeting in question, when the union representative was ejected from the meeting. It refused to overturn the ALJ's credibility determinations. *City of St. Charles v. IAFF, Local 3322, St. Charles Professional Firefighters Ass'n,* 23 PERI 50.

ULP charge is untimely; appeal is procedurally deficient

Ill. LRB State Panel 2007. The LRB State Panel, affirmed the Executive Director's dismissal of an unfair practice charge as untimely. The individual charging party alleged that she was discharged in retaliation for seeking union representation and participating in a picket line. The LRB agreed with the Executive Director that the charge was untimely because charging party failed to serve the employer with a copy of the charge within the six-month limitation period. The LRB found the charge also didn't comply with Section 1200.20(e) of its Rules and Regulations, since it wasn't accompanied by proof of service verifying that copies of charging party's appeal from the dismissal of the charge had been served on all other parties to the case. *Buhr, Phillis v. County of Champaign (Nursing Home),* 23 PERI 52.

II. CARD CHECK CERTIFICATION ISSUES

Appellate Court grants administrative review challenge to majority interest petition challenge

The DuPage county sheriff argued the Board misinterpreted the statutory evidentiary requirements under the majority interest provisions of the Act. The labor organization petitioner in this case filed a majority interest provision seeking representation of peace officers excluding the deputies assigned to the corrections bureau of the Sheriff's office. The Board issued a certification of representative. The Sheriff challenged the representation certification on the ground that at least two kinds of evidence, dues deduction authorization cards and "other evidence" are required to make a showing of majority interest under the Act. The Board rejected the employer's request for hearing and held that MAP had submitted a sufficient showing of interest in support of its petition.

The court found there was not sufficient evidence to support the majority interest provision. The court also held that the Board's administrative regulations allowing support for a majority interest petition to consist of authorization cards, petitions or other evidence that demonstrate that a majority of employees wish to be represented contradicts the requirements of the statute. The regulation does not require dues deduction authorization cards, and it does not require two forms of evidence, one of which is dues deduction authorization cards. The Board's regulations require only one form of evidence and do not require the dues, deduction authorization cards be used to support the showing of interest. Therefore, the Court held the Board's regulations are invalid.

The Court also held that a reviewing court must be able to review the evidence submitted to the Board and whether that evidence was sufficient to demonstrate that a majority of the eligible employees supported or rejected the particular organization has the exclusive representative. In essence, the Board's decision in majority interest petition cases is subject to meaningful appellate review.

MAP conceded that it did not seek or submit dues deduction authorization cards from employees when submitting a majority interest petition. Based on this concession, the court held dues deduction authorization cards were not submitted to the Board, contrary to the requirements of the Act. The court held there was no evidence to support the Board's certification decision and that the Board's regulations contradicted the Act's requirements.

In reviewing majority interest petitions, the court acknowledged the sensitivity of confidential information, i.e., names of employers and suggested review of redacted evidence in support of a majority interest petition. The court wrote, "the Board must adopt some sort of regulation that provides for the submission of evidence it relied upon to the reviewing court," and this could be redacted dues authorization cards and other evidence to support that will serve employees' anonymity interests and provide for adequate review by the court. *County of DuPage v. Illinois State Labor Relations Board, Ill. App., Case No. 2-06-0380 (2nd Dist.), (August 24, 2007).*

III. REPRESENTATION ISSUES

A. Bar To Representation Proceedings

(1) Blocking Charges

Complaint issues on challenge to employer's no-solicitation rule
Ill. LRB State Panel 2006. The LRB State Panel, rejected the Executive Director's dismissal of an unfair practice charge in which the union alleged that the employer violated PLRA provisions by preventing union representatives from soliciting employees and distributing literature in connection with an organizing campaign. The LRB found the charge raised issues, of fact and/or law concerning whether the employer maintained an overbroad no-solicitation rule and otherwise restrained or coerced employees in their exercise of statutorily guaranteed rights. The LRB agreed with the Executive Director that the evidence was insufficient to warrant blocking an election on the pending representation petition. *ATU, Local 1028 v. PACE, Northwest Division*, 22 PERI 15.

(2) Contract Bar

Absent contract bar, ALJ directs election among police officers
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision, the LRB State Panel's General Counsel determined that the ALJ's non-precedentiai decision was final and binding only on parties to the proceeding. Upon considering the petitioner-union's representation petition, the ALJ directed an election in a unit of sworn officers below the rank of sergeant serving the municipal employer. The ALJ refused to find that the election fell under the contract bar enumerated in Section 9(h) of the PLRA. Under the *Board of Trustees* decision, the 2003 amendment to Section 9(h) didn't apply retroactively, the ALJ found. *Winfield, Village of v. MAP Winfield Patrol Officers, Chapter 477; Illinois Council of Police, Local 7*, 22 PERI 96.

(3) Election Bar

LRB, SP adopts dismissal of representation petition as untimely
Ill. LRB State panel 2006. The LRB State Panel, adopted an ALJ's recommended dismissal of a representation petition. In the petition, the union sought to represent all full-time telecommunicators serving the municipal employer. In a prior secret ballot election held on April 28, 2006, the petitioned-for telecommunicators selected no representation. The ALJ concluded that the petition was untimely filed within 12 months of the April 2006 election and that it was also barred under the doctrine of res judicata. *Harvey, City of v. Illinois Council of Police*, 22 PERI 130.

B. Unit Determination/Appropriateness

Bargaining unit of hospital administrative assistants is appropriate
Ill. LRB Local Panel 2006. The Appellate Court of Illinois, Third Division affirmed the ruling of the LRB Local Panel (see 22 PERI 12 [LRB LP 2006]), that a petitioned-for bargaining unit of administrative assistants serving the employer-county hospital was appropriate for bargaining purposes. While some fragmentation and proliferation may occur as a result of the LRB's decision, the court found, the LRB's determination of appropriateness was not clearly erroneous. The court upheld the LRB's conclusion that certain employees should be excluded from the unit as confidential employees. *Cook, County of (Provident Hospital) v. Illinois Labor Relations Board, Local Panel et al., 369 Ill. App. 3d 112 (3d. Div) 859 N.E.2d 80 (1st Dist. 2006),* 22 PERI 163.

LRB, SP directs election among unit of hospital administrative assistants
Ill. LRB Local Panel 2006. The LRB Local Panel rejected an ALJ's recommended finding that a petitioned-for bargaining unit of administrative assistants, serving the employer-county hospital, wasn't appropriate for bargaining purposes. The LRB upheld the ALJ's determination that certain employees should be excluded from the unit as confidential employees. In conclusion, it directed a secret ballot election among the petitioned-for administrative assistants. *Cook, County of (Provident Hospital) v. AFSCME, Council 31*, 22 PERI 12.

LRB, SP directs election among petitioned-for paramedics
Ill. LRB State Panel 2007. The LRB State Panel, upheld an ALJ's recommended decision, as modified to correct a clerical error. The LRB directed an election, on a representation petition filed by the union, among the municipal employers' nonfirefighter paramedic employees. The petitioned was intervened on by the intervener–union, which sought to include paramedic employees in a unit of full-time firefighters. The ALJ determined that it would be presumptively inappropriate to create a mixed unit by adding paramedics to the existing bargaining unit of municipal employees, since that bargaining unit always included employees who maintained a right to strike and no right to interest arbitration. *LIU, Local 773 v. Litchfield, City of et al.,* 23 PERI 70.

Bargaining unit of technical manager IVs isn't appropriate
Ill. LRB State Panel 2006. The LRB State Panel, agreed with an ALJ's recommended dismissal of a representation petition. Through that" petition, the union sought to represent employees in the title

of technical manager IV employed by the state employer in its Department of Central Management Services (CMS). The LRB explained that, under the DuPage decision, it will find smaller Units appropriate where an internal cohesiveness existed and where such factors as traditional historical pattern of recognition or functional integration sufficiently outweighed the considerations of common personnel structure and possibility of fragmentation. Here, the union filled to present any evidence pertaining to these factors, the LRB found. It concluded the union failed to show that it sought an appropriate bargaining unit. Illinois *Department of Central Management Services v. AFSCME, Council l31*, 22 PERI 151.

ALJ directs election among two bargaining units of county workers

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ' recommended decision with respect to a representation-certification petition, the LRB State Panel's General Counsel determined that the parties waived their exceptions to that decision, which was final and binding only on the parties to the proceeding. The petitioner-unions sought a bargaining unit composed of all full-time and part-time employees in the titles of correctional officer, correctional corporal, clerk/deputy, telecommunicator, civilian clerk, courthouse maintenance, courthouse maintenance supervisor and jail maintenance. The ALJ also excluded a civilian clerk from one bargaining unit as a confidential employee. The ALJ directed elections in two bargaining units of county employees. The ALJ determined it was inappropriate to include the joint employers' security and nonsecurity employees in the same bargaining unit. A separate unit composed of correctional officers and corporals would constitute an appropriate unit, the ALJ further determined. *Stephenson, County of et al. v. UAW, Local 2261; Policemen's Benevolent Labor Committee*, 22 PERI 30.

ALJ rejects stand-alone unit of police telecommunications operators

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended dismissal of a representation petition, the LRB State Panel's General Counsel determined that the parties waived exceptions to that dismissal. The General Counsel observed that the ALJ's non-precedential recommendation was final and binding only on parties to the proceeding. The ALJ dismissed the petitioner union's representation-certification petition, by which it sought to represent all police telecommunications operators serving the municipal employer in a separate unit. The telecommunicators clearly lacked any strong and identifiable community of interest separate from that of other non-sworn police department employees, the ALJ found. In conclusion, the ALJ directed a secret ballot election among the petitioned-for-telecommunicators. *Harvey, City of v. Illinois Council of Police and Sheriffs, Local 7; AFSCME, Council 31*, 22 PERI 29.

LRB, SP will not sever sworn police officers from existing unit

Ill. LRB Local Panel 2006. Upon reviewing an incumbent union's exceptions, the LRB Local Panel adopted an ALJ's recommended dismissal of a representation petition. The petitioner-union sought to sever a group of sworn police officers of a municipal water reclamation district from a historic bargaining unit to which they belong. That unit includes non-sworn district employees. The ALJ found, that the union failed to show that petitioned-for sworn police officers shared a significant and distinct community of interest or that they maintained conflicts with other segments of the existing unit. Thus, no cause existed to sever the sworn officers from the existing unit, the ALJ concluded.

Metropolitan Water Reclamation District of, Greater Chicago v. Illinois Council of Police; Firemen and Oilers Union, Local 7, 22 PERI 61.

Union is certified as representative of public service administrators
(Ill. LRB Gen. Coun. 2007. The LRB State Panel's General Counsel finalized an ALJ's recommended decision and order in representation/certification proceedings. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive representative of public service administrator, option 3. The ALJ determined that the petition, seeking to represent only those individuals serving in the classification of public service administrator, option 3, was appropriate for bargaining purposes. The ALJ further determined that those individuals in that classification didn't fall under the supervisory, managerial or confidential exclusions from the unit. *Illinois Department of Central Management Services v. AFSCME, Council 31*, 23 PERI 74.

The ALJ found that the union's petition didn't constitute an attempt to artificially and arbitrarily carve out a small segment of the Public Service Administrator classification for the purposes of collective bargaining. The ALJ reasoned that the Option 3 grouping was the employer's creation resulting from the position's common requirements and functions.

LRB, SP certifies union as representative of police corporals, sergeants
Ill. LRB State Panel 2007. The LRB State Panel, considered the parties' respective exceptions to the ALJ's recommended decision concerning a union's petition. The union sought certification as exclusive representative of a unit consisting of municipal police corporals and sergeants. The LRB found that the sergeants lacked significant discretionary authority to affect their subordinates' terms and conditions of employment, and, therefore, their responsibility for subordinates' work performance didn't constitute supervisory authority to direct within the PLRA's meaning. It ordered the union's certification as exclusive representative for all corporals and sergeants. *MAP, Burr Ridge Command Chapter No. 13 v. Burr Ridge, Village of*, 23 PERI 102.

C. Majority Interest

See discussion at Section II, supra.

D. Unit Clarification

Appeals court revives parties' joint unit clarification petitions
Ill. App. Ct., 4th 2006. The Appellate Court of Illinois, Fourth District reversed the decisions of the Illinois Labor Relations Board, State Panel, in consolidated cases (see 21 PERI 48 [LRB SP 2005] and 21 PERI 49 [LRB SP 2005], respectively). In those decisions, the LRB dismissed jointly stipulated bargaining unit clarification petitions seeking to exclude an information systems analyst and three drug screeners from two separate bargaining units. The four positions in question were allegedly confidential. The appeals court held that a unit-clarification petition may appropriately be used to sever confidential employees from a bargaining unit. It rejected the LRB's argument that the unit clarification petitions were barred by equitable estoppel. Contrary to the LRB's determination

that the petitions were untimely, the court concluded that the state employer could file a unit clarification petition to remove a confidential employee from a bargaining unit at any time. *Illinois Department of Central Management Services (Department of Corrections) v. Illinois, State of; Ill. LRB, State Panel, et al.*, 364 Ill. App. 3d 1028, 848 N.E.2d 118 (4th Dist. 2006) 22 PERI 54.

Union waives right to accrete probationary officers into unit

Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of unit clarification petition, through which the union sought to include probationary police officers in a bargaining unit of police patrol officers. The Director found the petition didn't fall within any of the five circumstances for which use of the unit clarification procedure is authorized. Since at least 2001, the parties had addressed the status of probationary employees in bargaining agreements, the Director determined. The union waived whatever right it had to accrete the petitioned-for title into the existing unit by failing to act with due diligence, the Director concluded. *Bloomington, City of v. Policemen's Benevolent Labor Committee*, 22 PERI 22.

State Panel clarifies unit to include certain employees

Ill. LRB State Panel 2007. The LRB State Panel, accepted an ALJ's decision recommending the grant of a union's unit clarification petition. It agreed with the ALJ that the petitions were appropriate because the disputed job titles had been excluded from a bargaining unit of public works personnel. The LRB upheld the ALJ's conclusions with respect to exclusions for supervisory and seasonal employees. It clarified the unit to include the petitioned-for employees. *LIUNA, Local 231 v. Washington, City of,* 23 PERI 101.

LRB finalizes recommended order combining bargaining units

Ill. LRB Gen. Coun. 2007. Where no exceptions were filed, the LRB State Panel's Acting General Counsel finalized ALJ's non-precedential recommended decision and order. The Acting General Counsel noted that the ALJ's decision was final and binding on parties to the proceeding. In consolidated cases, the ALJ recommended the grant of a unit clarification petition in order to combine two separate bargaining units. The union's "majority interest" petition would then result in adding the correctional officer lieutenant rank to the now-combined unit, the ALJ determined. *FOP. Illinois v. Livingston, County of; Livingston County Sheriff*, 23 PERI 76.

Existing unit will include position of Superintendent of Public Works

Ill. LRB Gen. Coun. 2007. Where no exceptions were filed, the LRB State Panel's Acting General Counsel found the parties waived all exceptions to an ALJ's recommended determination with respect to a clarification petition. The ALJ directed the clarification of the existing unit to include the title of Superintendent of Public Works employed by the municipal employer. The ALJ found the superintendent didn't fall under the supervisory, confidential or managerial exclusions from the bargaining unit. The Acting General Counsel concluded that the ALJ non-precedential recommendation was final and binding upon the parties to the proceeding. *Millstadt, Village of v. IUOE, Local 148*, 23 PERI 65.

Unit clarification petition inappropriate
Ill. LRB Gen. Coun. 2007
City collector performed duties that were excluded from the bargaining unit could not be added to the bargaining unit by way of the unit clarification. Unit clarification can only be used in a limited circumstance, when a newly created job classification entails job functions that are similar to those classifications covered by the existing unit. The position for job classification was not newly created. *LIU, Local 1197 v. City of Newton*, 23 PERI 85.

LRB, State Panel rejects untimely certification petition
Ill. LRB State Panel 2007. The LRB State Panel, upheld an ALJ's recommended dismissal of a union's petition seeking certification as exclusive representative of a bargaining unit. The unit consisted of firefighters, firefighter/EMTs, and firefighter/paramedics. The LRB noted that, in May, 2006, the unit had been clarified pursuant to the parties' stipulated unit clarification petition. It agreed with the ALJ that the petition was untimely filed, under Section 1210.35(b) of the Rules and Section 9(a) of the PLRA, within 12 months of unit clarification. *IAFF, Plainfield Firefighters v. Plainfield Fire Protection District: MAP, Plainfield Paramedics Chapter 2*, 23 PERI 105.

E. Labor Organization Status

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F. Section 3(n) Independent Contractors

Emergency medical service providers are independent contractors
Ill. App. Ct., 1st 2007. The Appellate Court of Illinois, First Judicial District, affirmed the decision of an LRB Local Panel majority (see 22 PERI 87 [LRB LP 2006]). The LRB majority ruled that a representation petition should be dismissed. The court agreed with the LRB majority's conclusion that the petitioned-for emergency medical service providers utilized by the employer-exposition authority qualified as independent contractors rather than public employees. It relied, in part, upon the fact that the employer wasn't the providers' primary employer. *Teamsters, Local 714 v. Ill. LRB, Local Panel; Metropolitan Pier & Exposition Authority,* 23 PERI 57.

Emergency medical service providers qualify as independent contractors
Ill. LRB Local Panel 2006. The majority of the LRB Local Panel, upheld an ALJ's recommended dismissal of a representation petition. The ALJ rejected the petition on the ground that the petitioned-for emergency medical service providers utilized by the employer-exposition authority qualified as independent contractors rather than public employees. The ALJ cited the fact that the employer isn't the providers' primary employer, the fact that no taxes are withheld from their paychecks, and the fact that they receive no fringe benefits. The ALJ also relied on the fact that the providers determine their ,own schedules and the fact that they work independently and require no direct supervision or monitoring, subject only to minor directives governing their presence at employer facilities arid certain record-keeping. The LRB majority agreed with the ALJ's conclusion because the employer controlled only the services rendered by the providers at its facilities and didn't

employees in the same bargaining unit. A separate unit composed of correctional officers and corporals would constitute an appropriate unit, the ALJ further determined. *Stephenson, County of et al. v. UAW, Local 2261; Policemen's Benevolent Labor Committee*, 22 PERI 30.

Village employees don't fall under confidential, supervisory exclusions

Ill. LRB Gen. Coun. 2006. Where no exceptions were filled from the acting ALJ's recommended decision, the LRB State Panel's General Counsel determined that the parties waived their exceptions to that non-precedential decision, which was final and 'binding only on parties to the proceeding. The Executive Director found that the employer's comptroller didn't qualify as a confidential employee and therefore, wasn't excluded from the PLRA's coverage. The ALJ concluded the public works director wasn't excluded from the PLRA's coverage because he didn't qualify as a supervisor, the Executive Director concluded. *Pleasant Hill, Village of v. IUOE, Local 965*, 22 PERI 97.

Computer technicians don't qualify as confidential employees

Ill. LRB Gen. Coun. 2007. The LRB State Panel's General Counsel found that the parties waived all exceptions to an ALJ's recommended decision and order, where no exceptions were filed. The ALJ directed a preparation of a tally and finding of majority support clarifying the union as exclusive bargaining representative of the positions of management information support technician (MIT) and desktop support technician (DST) in an existing bargaining unit. The ALJ found that the MIT and DST didn't qualify as confidential employees, since their access to the employer's confidential labor relations information was only incidental to their primary duties. *Rockford Housing Authority v. AFSCME, Council* 31, 23 PERI 67.

Under the "authorized access" test for confidential employee status, an individual is a confidential employee if he or she has authorized access to information concerning sensitive matters arising from the collective bargaining process, such the employer's strategy in dealing with an organizational campaign, actual collective bargaining proposals and information relating to matters dealing with contract administration.

Union is certified as rep of public service administrators

(Ill. LRB Gen. Coun. 2007. The LRB State Panel's General Counsel finalized an ALJ's recommended decision and order in representation/certification proceedings. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive representative of public service administrator, option 3. The ALJ determined that the petition, seeking to represent only those individuals serving in the classification of public service administrator, option 3, was appropriate for bargaining purposes. The ALJ further determined that those individuals in that classification didn't fall under the supervisory, managerial or confidential exclusions from the unit. *Illinois Department of Central Management Services v. AFSCME, Council 31*, 23 PERI 74.

The ALJ found that the union's petition didn't constitute an attempt to artificially and arbitrarily carve out a small segment of the Public Service Administrator classification for the purposes of collective bargaining. The ALJ reasoned that the Option 3 grouping was the employer's creation resulting from the position's common requirements and functions.

Existing unit will include position of Superintendent of Public Works
Ill. LRB Gen. Coun. 2007. Where no exceptions were filed, the LRB State Panel's Acting General Counsel found the parties waived all exceptions to an ALJ's recommended determination with respect to a clarification petition. The ALJ directed the clarification of the existing unit to include the title of Superintendent of Public Works employed by the municipal employer. The ALJ found the superintendent didn't fall under the supervisory, confidential or managerial exclusions from the bargaining unit. The Acting General Counsel concluded that the ALJ non-precedential recommendation was final and binding upon the parties to the proceeding. *Millstadt, Village of v. IUOE, Local 148*, 23 PERI 65.

Union receives certification as representative of deputy chiefs
Ill. LRB Gen. Coun. 2007. Where no exceptions were filed with respect to an ALJ's recommended determination on a representation/certification petition, the LRB Local Panel's Acting General Counsel finalized that determination. The ALJ found that the petitioned-for deputy chiefs (serving the employer-county sheriff) didn't fall under the confidential, managerial or supervisory exclusions from the unit. The ALJ further found the union maintained majority support and certified it as exclusive bargaining representative of a unit of county employees. *Cook, County of: Cook County Sheriff v. MAP, Chapter 438*, 438, 23 PERI 75.

H. Section 3(j) Managerial Employees

ALJ must consider whether police chief is confidential employee
Ill. LRB State Panel 2006. Upon considering the ALJ's recommended order concerning two representation/certification petitions, the LRB State Panel upheld, in part, the ALJ's determination that the petitioned-for employees -- the assistant chief of the police, the superintendent of the street and alley department, and the superintendent of the water and sewer department -- were neither supervisory nor managerial. The ALJ directed a tally of majority support and certification of majority interest in two bargaining units of municipal employees. However, with respect to the police chief alone, the LRB remanded the matter to the ALJ for the taking of additional evidence and further consideration as to whether that position qualifies as a confidential employee under the City of Burbank's "authorized access" test. *Delavan, City of v. UAW, Local 974,* 22 PERI 41.

Union is certified as rep of public service administrators
(Ill. LRB Gen. Coun. 2007. The LRB State Panel's General Counsel finalized an ALJ's recommended decision and order in representation/certification proceedings. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive representative of public service administrator, option 3. The ALJ determined that the petition, seeking to represent only those individuals serving in the classification of public service administrator, option 3, was appropriate for bargaining purposes. The ALJ further determined that those individuals in that classification didn't fall under the supervisory, managerial or confidential exclusions from the unit. *Illinois Department of Central Management Services v. AFSCME, Council 31*, 23 PERI 74.

The ALJ found that the union's petition didn't constitute an attempt to artificially and arbitrarily carve out a small segment of the Public Service Administrator classification for the purposes of collective bargaining. The ALJ reasoned that the Option 3 grouping was the employer's creation resulting from the position's common requirements and functions.

Director of Public Works position belongs in bargaining unit

Ill. LRB Gen, Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision, the LRB State Panel's General Counsel determined that the parties waived the exceptions from that non-precedential decision, which was final and binding only on parties to the proceeding. The ALJ found no merit in the municipal employer's argument that the position of Director of Public Works should be excluded from the bargaining unit as a result of the position's managerial, supervisory or executive status. The ALJ directed the Clarification of the pertinent bargaining unit to include the position. *New Baden Public Works Department v. IUOE, Local 148*, 22 PERI 98.

ALJ places public service administrators in existing unit

(Ill. LRB Gen. Coun. 2007). The LRB State Panel's Acting General Counsel finalized an ALJ's recommended decision and order. The ALJ found that the petitioned-for employees, in the classification of public service administrator (PSA) Option 4 and public service administrator Option 6E, didn't fall under the supervisory or managerial exclusions. The ALJ further found the proposed bargaining unit was appropriate. The Acting General Counsel cautioned that the ALJ's non-precedential order was final and binding only on the parties. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive bargaining representative of the petitioned-for classifications. *Illinois Department of Central Management Services v. AFSCME, Council* 31, 23 PERI 73.

Existing unit will include position of Superintendent of Public Works

Ill. LRB Gen. Coun. 2007. Where no exceptions were filed, the LRB State Panel's Acting General Counsel found the parties waived all exceptions to an ALJ's recommended determination with respect to a clarification petition. The ALJ directed the clarification of the existing unit to include the title of Superintendent of Public Works employed by the municipal employer. The ALJ found the superintendent didn't fall under the supervisory, confidential or managerial exclusions from the bargaining unit. The Acting General Counsel concluded that the ALJ non-precedential recommendation was final and binding upon the parties to the proceeding. *Millstadt, Village of v. IUOE, Local 148*, 23 PERI 65.

City collector performed duties that were excluded from the bargaining unit could not be added to the bargaining unit by way of the unit clarification. Unit clarification can only be used in a limited circumstance, when a newly created job classification entails job functions that are similar to those classifications covered by the existing unit. The position for job classification was not newly created. *LIU, Local 1197 v. City of Newton*, 23 PERI 85.

Union receives certification as representative of deputy chiefs
Ill. LRB Gen. Coun. 2007. Where no exceptions were filed with respect to an ALJ's recommended determination on a representation/certification petition, the LRB Local Panel's Acting General Counsel finalized that determination. The ALJ found that the petitioned-for deputy chiefs (serving the employer-county sheriff) didn't fall under the confidential, managerial or supervisory exclusions from the unit. The ALJ further found the union maintained majority support and certified it as exclusive bargaining representative of a unit of county employees. *Cook, County of: Cook County Sheriff v. MAP, Chapter 438*, 438, 23 PERI 75.

LRB, SP rules telecommunications employees lack supervisory status
Ill. LRB State Panel 2007. The LRB State Panel, declined to accept an ALJ's decision recommending dismissal of a representation petition. In that petition, the union sought to represent telecommunications supervisors in its existing bargaining unit. The LRB rejected the ALJ's conclusion that the telecommunications supervisors qualified as supervisors within the meaning of Section 3(r) of the PLRA. It found the record didn't show that the petitioned-for employees maintained day-to-day oversight of subordinates, accompanied by the authority to issue discipline. Oversight authority combined with authority only to issue low-level discipline wasn't sufficient to constitute supervisory direction under the PLRA, the LRB reasoned. It directed the Executive Director to certify the union as exclusive representative of the telecommunications supervisors. *AFSCME, Council 31 v. Illinois Departments of Central Management Services and State Police*, 23 PERI 38.

I. Section 3(r) Supervisory Employees

E.D. directs election among state administrative employees
Ill. LRB State Panel 2007. The LRB State Panel, upheld an Executive Director's decision and order directing a secret ballot election among petitioned-for public service administrators (option 7). The Director declined to order a hearing on the issue of whether the petitioned-for administrators qualified as supervisory employees. The Director relied on the stipulation of the petitioner-union and the state employer that the unit was a supervisory one pursuant to Section 3(s)(2) of the PLRA. *Illinois State Employees Ass'n et al. v. Illinois Department of Central Management Services*, 23 PERI 47.

Police sergeants fall under supervisory exclusion from unit
Ill. LRB State Panel 2006. The LRB State Panel, dismissed a representation petition. It found that the petitioned-for bargaining unit of municipal police sergeants couldn't be certified because they qualified as supervisors under Section 3(r) of the PLRA. The sergeants exercised statutory authority to discipline and direct their subordinates, the LRB determined. *Hinsdale, Village of v. FOP, Illinois Labor Council,* 22 PERI 176.

LRB rules: police sergeants don't fall under supervisory exclusion
Ill. LRB State Panel 2007. The LRB State Panel, declined to accept an ALJ's recommended dismissal of a petition filed by the union. The union sought certification as the exclusive

representative of a bargaining unit consisting of police sergeants serving the municipal police department. The LRB found the petitioned for sergeants lacked authority, within the PLRA's meaning, to discipline their subordinates. The LRB further found the sergeants didn't fall under the supervisory exclusion under Section 3(r) of the PLRA and, accordingly, weren't excluded from the PLRA's coverage under Section 3(s). It ordered the LRB's Executive Director to certify the union as exclusive representative for the sergeants. MAP, *South Elgin Sergeants Chapter No. 205 v. South Elgin, Village of*, 23 PERI 58.

Quality control supervisor doesn't fall under supervisory exclusion

Ill. LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended determination that the state employer's public aid quality control supervisor didn't qualify as a supervisor under Section 3(r) of the PLRA. The LRB determined that the supervisors' oversight and review functions didn't involve the consistent use of independent judgment and didn't rise to the level of supervisory direction, absent evidence that the supervisors were able to impact their subordinates' terms and conditions of employment. Therefore, the LRB accepted the ALJ's recommendation for it to certify the public aid quality control supervisor into the existing bargaining unit. *Illinois Department of Central Management Services v. AFSCME, Council 31,* 22 PERI 158.

Village's police sergeants don't fall under supervisory exclusion

Ill. LRB State Panel 2007. The LRB State Panel, upheld an ALJ's order recommending the grant of a representation-certification petition. It agreed with the ALJ's determination that the petitioned-for municipal police sergeants didn't qualify as supervisors, even though they met the "principal work" requirement, since they didn't possess authority to perform any of the statutory indicia with the requisite independent judgment. The LRB also agreed with the ALJ's conclusion that a bargaining unit comprised solely of sergeants was appropriate for bargaining purposes. It directed the Executive Director to certify the petitioner-union as exclusive representative for the sergeants. *MAP, Sergeants Chapter 435 v. Morton Grove, Village of,* 23 PERI 72.

ALJ must consider whether police chief is confidential employee

Ill. LRB State Panel 2006. Upon considering the ALJ's recommended order concerning two representation/certification petitions, the LRB State Panel upheld, in part, the ALJ's determination that the petitioned-for employees -- the assistant chief of the police, the superintendent of the street and alley department, and the superintendent of the water and sewer department -- were neither supervisory nor managerial. The ALJ directed a tally of majority support and certification of majority interest in two bargaining units of municipal employees. However, with respect to the police chief alone, the LRB remanded the matter to the ALJ for the taking of additional evidence and further consideration as to whether that position qualifies as a confidential employee under the City of Burbank's "authorized access" test. *Delavan, City of v. UAW, Local 974,* 22 PERI 41.

Police sergeants don't fall under supervisory exclusion from the unit

Ill. LRB State Panel 2007. The LRB State Panel, accepted an ALJ's recommended decision with respect to a union's petition. The ALJ found that the petitioned for municipal police sergeants didn't qualify as supervisors. Despite the employer's exceptions to the ALJ's decision, the LRB agreed

with the ALJ that the sergeants lacked authority to perform any of the statutory indicia of supervisory status with the requisite independent judgment. It directed the union's certification as exclusive representative of the sergeants. *MAP, Sergeants Chapter No. 22 v. New Lenox, Village of*, 23 PERI 104.

Village employees don't fall under confidential, supervisory exclusions

Ill. LRB Gen. Coun. 2006. Where no exceptions were filled from the acting ALJ's recommended decision, the LRB State Panel's General Counsel determined that the parties waived their exceptions to that non-precedential decision, which was final and 'binding only on parties to the proceeding. The Executive Director found that the employer's comptroller didn't qualify as a confidential employee and therefore, wasn't excluded from the PLRA's coverage. The public works director wasn't excluded from the PLRA's coverage because he didn't qualify as a supervisor, the Executive Director concluded. *Pleasant Hill, Village of v. IUOE, Local 965*, 22 PERI 97.

Union is certified as rep of public service administrators

(Ill. LRB Gen. Coun. 2007. The LRB State Panel's General Counsel finalized an ALJ's recommended decision and order in representation/certification proceedings. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive representative of public service administrator, option 3. The ALJ determined that the petition, seeking to represent only those individuals serving in the classification of public service administrator, option 3, was appropriate for bargaining purposes. The ALJ further determined that those individuals in that classification didn't fall under the supervisory, managerial or confidential exclusions from the unit. *Illinois Department of Central Management Services v. AFSCME, Council 31*, 23 PERI 74.

Director of Public Works position belongs in bargaining unit

Ill. LRB Gen, Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision, the LRB State Panel's General Counsel determined that the parties waived the exceptions from that non-precedential decision, which was final and binding only on parties to the proceeding. The ALJ found no merit in the municipal employer's argument that the position of Director of Public Works should be excluded from the bargaining unit as a result of the position's managerial, supervisory or executive status. The ALJ directed the Clarification of the pertinent bargaining unit to include the position. *New Baden Public Works Department v. IUOE, Local 148*, 22 PERI 98.

ALJ rules city's police sergeants don't qualify as supervisors

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB State Panel's General Counsel finalized an ALJ's non-precedential recommended decision and order. The General Counsel said the parties waived all exceptions to the ALJ's finding that police sergeants serving the municipal employer didn't qualify as supervisory employees within the meaning of Section 3(r) of the PLRA. The ALJ directed a secret ballot election among the petitioned-for sergeants. *Fairview Heights, City of v. FOP, Illinois Labor Council*, 22 PERI 14.

Detention center's shift supervisory don't qualify as 'supervisors'
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB State Panel's General Counsel finalized an ALJ's recommended determination that shift supervisors employed by a detention center did not qualify as supervisors within the meaning of Section 3(r) of the PLRA. The ALJ directed the clarification of a bargaining unit to include those shift supervisors. The General Counsel cautioned that the ALJ's determination was non-precedential and was binding only on the parties to the proceeding. *12th Judicial Circuit (Chief Judge, River Valley Detention Center) v. Metropolitan Alliance of Police, Chapter 228, River Valley Detention Center*, 22 PERI 73.

LPN supervisors are not subject to supervisory exclusion under PLRA
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision concerning a representation-certification petition, the LRB State Panel's General Counsel finalized that non-precedential decision, which was final and binding only on parties to the proceeding. The ALJ rejected the county employer's argument that the position of licensed practice nurse supervisor (LPN supervisor) should be excluded from the bargaining unit as a supervisor within the meaning of Section 3(r) of the PLRA. The ALJ directed the inclusion of the LPN supervisor title in the unit. *Knox County Board/Knox County Nursing Home v. AFSCME, Council 31*, 22 PERI 58.

Police sergeants fall under supervisory exclusion from unit
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed to an ALJ's supplemental determination that municipal police sergeants qualified as supervisors, the LRB State Panel's General Counsel determined that the parties waived all exceptions to that determination. Upon remand from the LRB State Panel, the ALJ found that the sergeants maintained authority to issue verbal reprimand. The General Counsel explained that the ALJ's non-precedential decision was binding only on parties to the proceeding. *Niles, Village of v. MAP, Chapter 358, Niles Police Sergeants*, 22 PERI 83.

ALJ places public service administrators in existing unit
(Ill. LRB Gen. Coun. 2007). The LRB State Panel's Acting General Counsel finalized an ALJ's recommended decision and order. The ALJ found that the petitioned-for employees, in the classification of public service administrator (PSA) Option 4 and public service administrator Option 6E, didn't fall under the supervisory or managerial exclusions. The ALJ further found the proposed bargaining unit was appropriate. The Acting General Counsel cautioned that the ALJ's non-precedential order was final and binding only on the parties. The ALJ directed the preparation of a tally and finding of majority support certifying the union as exclusive bargaining representative of the petitioned-for classifications. *Illinois Department of Central Management Services v. AFSCME, Council* 31, 23 PERI 73.

Existing unit will include position of Superintendent of Public Works
Ill. LRB Gen. Coun. 2007. Where no exceptions were filed, the LRB State Panel's Acting General Counsel found the parties waived all exceptions to an ALJ's recommended determination with respect to a clarification petition. The ALJ directed the clarification of the existing unit to include the title of Superintendent of Public Works employed by the municipal employer. The ALJ found the superintendent didn't fall under the supervisory, confidential or managerial exclusions from the

bargaining unit. The Acting General Counsel concluded that the ALJ non-precedential recommendation was final and binding upon the parties to the proceeding. *Millstadt, Village of v. IUOE, Local 148*, 23 PERI 65.

Union receives certification as representative of deputy chiefs
Ill. LRB Gen. Coun. 2007. Where no exceptions were filed with respect to an ALJ's recommended determination on a representation/certification petition, the LRB Local Panel's Acting General Counsel finalized that determination. The ALJ found that the petitioned-for deputy chiefs (serving the employer-county sheriff) didn't fall under the confidential, managerial or supervisory exclusions from the unit. The ALJ further found the union maintained majority support and certified it as exclusive bargaining representative of a unit of county employees. *Cook, County of: Cook County Sheriff v. MAP, Chapter 438*, 23 PERI 75.

J. Election Issues

LRB, SP directs hearing on several election objections
Ill. LRB State Panel 2006. The LRB State Panel, agreed with the Executive Director's decision, in a report on election objections, that several objections should proceed to a hearing. Those objections included the allegation that the employer provided supporters of the petitioner-union paid time to perform campaign work. The Executive Director dismissed other objections. The evidence didn't show that the employer withheld a wage increase for the purpose of supporting one union in the election; instead, the evidence showed that the delay in implementing the step increases resulted from the budgetary process, the Executive Director found. The LRB State Panel directed other objections to proceed to a hearing, including the allegation that supporters of the petitioned-union engaged in electioneering in and about the polling area on election days. *Cook County Circuit Court (Clerk) v. Teamsters, Local 714; AFSCME, Council 31*, 22 PERI 84.

Election stipulation no longer applicable
Ill. LRB Local Panel 2007. The LRB Local Panel declined to accept an ALJ's recommendation dismissing a petition, finding Policemen's Benevolent and Protective Association, Unit 156 (PBPA), was no longer bound by the 1995 election stipulation whereby the City of Chicago and the Fraternal Order of Police (FOP) had stipulated to exclude the lieutenants petitioned for herein. The Board noted that it has long held parties to their stipulations regarding bargaining unit inclusions and exclusions, in the absence of circumstances warranting a reevaluation of the original agreement. Likewise, the Board further noted, in keeping with Section 1210.50(c) of the Rules, it has held intervenors to the stipulations of petitioners and employers, in the resulting elections. However, it concluded that twelve years after the City and FOP stipulated to exclude the petitioned-for employees, and after the ALJ in this case had determined that certain of the petitioned-for employees are not statutorily excluded from collective bargaining, that there is no longer a rational basis to continue to hold PBPA to that agreement. The Board ordered its Executive Director to certify PBPA as the exclusive representative of the twenty-seven petitioned-for lieutenants the ALJ determined public employees pursuant to Section 3(n) of the Act. *City of Chicago -Police Department, LRC-05-019 (Sept. 24, 2007).*

LRB, SP rejects incumbent union's election objections

Ill. LRB State Panel 2007. The LRB State Panel, accepted an ALJ's recommended order to the extent it directed the certification of the petitioner-union as exclusive representative of county court employees. The LRB found that the complained-of conduct by the incumbent representative didn't affect the outcome of the election in the case. The record indicated that the complained-of electioneering ended in a public hallway up to ten feet away from the door to another hallway, leading to the door of the polling place, the LRB decided. In keeping with the board agent's conclusion, the LRB determined that further restrictions on electioneering were unnecessary. *Teamsters, Local 714 v. Cook County Clerk of Circuit Court; AFSCME, Council* 31, 23 PERI 69.

Rival union's gift-giving doesn't impact election outcome

Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's recommended dismissal of an incumbent union's election objections to a representation election. In that election, voters selected a rival union to be their exclusive representative. The incumbent union alleged that the rival union engaged in objectionable conduct by giving objects of value to bargaining unit members. The ALJ found that the rival union provided insignificant amounts of prepared food items, away from the employer's grounds, at times far removed from the date of the election to its most ardent supporters. The complained-of conduct regarding the gift distribution had no impact on the election's outcome, te Director further found. The Director concluded that the employer's failure to provide the *Excelsior* list complete with addresses was an inadvertent and harmless error. *PACE Heritage Division v. Teamsters; ATU, Local 241, 22 PERI 59.*

Glitch in eligibility list won't delay mail ballot election

Ill. LRB State Panel 2007. The LRB State Panel, affirmed the Executive Director's direction of an election among petitioned-for circuit court employees. It rejected the intervener-union's objection to the employer's list of eligible voters, in which it asserted that the names of 18 eligible voters were omitted from the employer's list. The LRB reasoned that sufficient time existed in which errors in the eligibility list could be corrected. *Teamsters, Local 714 v. Cook County Circuit Court (Chief Judge); AFSCME, Council 31,* 23 PERI 109.

Parties waives exceptions to rejection of election objections

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB Local Panel's General Counsel finalized an ALJ's recommended dismissal of objections to a representation election. The General Counsel found the parties waived all exceptions to the ALJ's recommended determination, which was final and binding only on parties to the proceeding. The ALJ found that none of the incidents cited by the petitioner-union, including remarks by managers and supervisors, affected the outcome of the election. The ALJ further found that the employer-hospital didn't treat the incumbent union differently before the petition was filed as compared to after the petition was filed. No grounds existed for setting aside the election, and the incumbent union should be certified as exclusive bargaining representative of the petitioned-for employees. The ALJ concluded. *Cook, County of (Oak Forest Hospital) v. American Federation of Professionals; SEIU, Local 20,* 22 PERI 165.

ALJ issues direction of election pursuant to county employer's petition
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB State Panel's General Counsel finalized an ALJ's direction of election pursuant to the county employer's representation petition concerning an existing bargaining unit at its nursing home facility. The employer set forth facts indicating that two decertification petitions had previously been dismissed on procedural grounds. The ALJ found the petitions indicated that the incumbent union's support among employees was in serous question. The General Counsel explained that the ALJ's non-precedential decision was binding only on the parties to the proceeding. However, in a footnote, the General Counsel cautioned that the LRB has not yet addressed whether the PLRA authorizes an election in the circumstances presented here. *Livingston, County of (Livingston Manor) v. SEIU, Local 4,* 22 PERI 76.

IV. EMPLOYER UNFAIR LABOR PRACTICES

A. Section 10(a)(1) Restraint, Interference and Coercion

LRB, SP approves pre-certification changes to health Insurance
Ill. LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended dismissal of an unfair practice charge. Charging party alleged that the employer-public hospital violated Section 10(a)(1) of the PLRA when it altered its employee health care plan during the period between the filing of majority interest petition by the union and the union's certification as exclusive bargaining representative of certain hospital employees. The record supported the ALJ's conclusion that the employer fulfilled its obligation to maintain the status quo, the LRB found, where insurance changes clearly affected all employees. *SEIU, Local 73 v. Sarah D. Culbertson Memorial Hospital,* 22 PERI 140.

Fire fighter's suspension results from misconduct, not protected activity
Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge. The union alleged, in the charge, that the employer-municipal fire department violated PLRA provisions by suspending a fire fighter. The LRB agreed with the Executive Director's finding that charging party failed to allege circumstances between the employee's protected activity and the adverse employment action he suffered. Rather, the evidence indicated that the fire fighter was suspended because he admittedly referred to a patient who requested emergency transport as a "gang banger" and "drug user," the Executive Director concluded. *IAFF, Local 4308 v. Princeton Fire Department,* 22 PERI 139.

Police chief's 'threatening' memo violates PLRA provisions
Ill. LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended determination that the municipal employer violated PLRA provisions when its chief of police issued a memorandum to an employee that set forth threats of reprisal for the employee's union and/or protected activities. The memo stated, in part, that the employee's filing of grievances was "impeding" department operations and that "your continued position to harass, obstruct and conspire to disrupt the operation of this administration will not be tolerated." The LRB agreed with the ALJ's

finding that the employee engaged in protected activity and that the statements in the police chief's memo contained implied threats, in violation of Section 10(a)(1) of the PLRA. The LRB issued a cease and desist order and directed the employer to expunge from its files any reference to the memo issued by its chief of police. *FOP, Illinois Labor Council v. Calumet Park, Village of*, 22 PERI 23.

Worker's misconduct not protected activity, prompted discharge

Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge. The individual charging party alleged, in the charge, that the employer-county housing authority violated Section 10(a) of the PLRA when it terminated his employment. It agreed with the Executive Director's determination that charging party failed to make the requisite showing that he was discharged or disciplined as a result of any statutorily protected activity. The Executive Director concluded that charging party was terminated for failing to observe the employer's rules and policies and for his disregard of his supervisor's directions. *Clark v. Kankakee County Housing Authority*, 22 PERI 137.

Complaint issues on challenge to employer's no-solicitation rule

Ill. LRB State Panel 2006. The LRB State Panel, rejected the Executive Director's dismissal of an unfair practice charge in which the union alleged that the employer violated PLRA provisions by preventing union representatives from soliciting employees and distributing literature in connection with an organizing campaign. The LRB found the charge raised issues, of fact and/or law concerning whether the employer maintained an overbroad no-solicitation rule and otherwise restrained or coerced employees in their exercise of statutorily guaranteed rights. The LRB agreed with the Executive Director that the evidence was insufficient to warrant blocking an election on the pending representation petition. *ATU, Local 1028 v. PACE, Northwest Division*, 22 PERI 15.

Police chief's statement supports finding of retaliatory discipline

Ill. LRB State Panel 2007. Despite the municipal employer's exceptions to an ALJ's recommended determination, the LRB State Panel, accepted that determination. It decided that the employer violated Section 10(a)(1) and (2) of the PLRA by threatening and suspending an employee as a result of his union activities. The LRB relied on the police chief's statement that the employee would be disciplined as result of his grievance filing. The LRB issued a cease and desist order and directed the employer to make the employee whole. It also directed the employer to expunge any reference to the discipline from its personnel files. *FOP, Illinois Labor Council v. Calumet Park, Village of*, 23 PERI 108.

Promotion of supervisory sergeants doesn't violate PLRA

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB State Panel's General Counsel finalized an ALJ's dismissal of an unfair practice charge. The ALJ's non-precedential decision was final and binding only on the parties to the proceeding, the General Counsel explained. In the charge, the union alleged the municipal employer violated PLRA provisions by promoting two police sergeants (who were also union supporters) to newly created police commander positions. The promotion removed the sergeants from a bargaining unit of police sergeants and patrol officers that the union had previously sought to represent. The ALJ reasoned that the sergeants' promotion

couldn't constitute a PLRA violation because they were both supervisors at the time of that promotion. *Metropolitan Alliance of Police, Plainfield Sergeants, Chapter 94 v. Plainfield, Village of*, 22 PERI 71.

B. Section 10(a)(2) – Discrimination

Absent union activity, county worker's retaliation claim lacks merit
Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge, in which charging party alleged the county employer discharged her in retaliation for her union activities. The Director found that charging party failed to make the requisite showing that she was engaged in union or protected activity. For example, charging party failed to identify any co-worker who could corroborate her claim that she was a union contact, the Director explained. The Director also cited the employer's contention that charging party's termination resulted from two critical violations of its personnel policy. The charge failed to present a question of law or fact sufficient to warrant a hearing, the Director concluded. *Anderson, Brenda v. Winnebago County Department of Public Health*, 22 PERI 25.

County employer's discharge of union steward wasn't retaliatory
Ill. LRB Local Panel 2006. The LRB Local Panel upheld the Executive Director's dismissal of an unfair practice charge. In the charge, charging party alleged that the county employer disciplined and then discharged him in retaliation for his actions as union steward, in furtherance of bargaining unit members' safety concerns. The Executive Director determined that a portion of the charge was untimely filed over six months after the allegedly wrongful discipline, including the elimination of charging party's flex time and the denial of his request for one hour of vacation time. The Director further determined that charging party failed to establish a prima facie PLRA violation with respect to the timely portion of the charge, concerning his termination. No evidence established a causal connection between charging party's protected activity and his termination, the Director concluded. *Doggett, David v. Cook, County of (John H. Stroger Hospital)*, 22 PERI 40.

E.D. properly dismisses charge pursuant to post-arbitral deferral
Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge, in which the individual charging party alleged the state employer violated PLRA provisions by disciplining him for engaging in union and/or protected concerted activity. The Executive Director observed that, in proceedings on charging party's grievance, an arbitrator determined that the employer maintained just cause to discipline charging party for the manner in which she conducted herself in performing union activity. The Director reviewed the arbitration award and determined that the result wasn't repugnant to the IPLRA. *Cheatem v. Illinois Department of Central Management Services (Human Services)*, 22 PERI 178.

Village's denial of 'equity increases' to unit members violates PLRA
Ill. LRB State Panel 2007. The LRB State Panel, considered an unfair practice charge contending that the municipal employer violated PLRA provisions by failing to grant an "equity,' increase to

bargaining unit members. The "equity" increase was granted to unrepresented employees. Contrary to the ALJ's recommended decision, LRB found the employer discouraged union membership by failing to grant schedule wage increases to represented employees. It cited evidence that the "equity" increase was part of the parties' established practice since it was part of the annual merit increase. The LRB issued a cease and desist order and a make-whole order. *IUOE, Local 150 v. Lisle, Village of*, 23 PERI 39.

Layoff of part-time public works employees isn't retaliatory

Ill. LRB. Gen. Coun. 2006. Where no exceptions were filed in response to an ALJ's recommended dismissal of an unfair practice charge, the LRB State Panel's General Counsel determined that the parties waived all exceptions to that dismissal and that the ALJ's non-precedential recommendation was final and binding only on parties to the proceeding. The ALJ rejected charging party's allegation that the municipal employer discharged part-time public works department employees in April 2005 in retaliation for their union activity and their filing of representation petitions with the LRB. Although the employer was aware of charging party's union activity, the record indicated that the employer's budgetary shortfalls, not anti-union sentiment, resulted in the layoffs, the ALJ found. *American Federation of Professionals v. Calumet City, City of,* 22 PERI 24.

Anti-union animus doesn't motivate hygienists' layoff

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed to an ALJ's recommended dismissal of an unfair practice charge, the LRB State Panel's General Counsel determined that the ALJ's non-precedential recommendation was final and binding only on parties to the proceedings. The General Counsel explained that the parties had waived all exceptions to the ALJ's determination that the employer-public health district didn't violate Section 10(a)(2) and (I) of the PLRA in deciding to layoff its dental clinic hygienists following the resignation of the clinic dentist. The ALJ found that charging party failed to show that union animus motivated the employer's layoff decision. *AFSCME, Council 31 v. Champaign-Urbana Public Health District*, 22 PERI 164.

C. Section 10(a)(4) refusal to bargain

(1) In General

County employer should have bargained layoff decision

Ill. App. Ct., 1st 2006. The Illinois Appellate Court, First District affirmed the decision of the LRB Local Panel (see21 PERI 42 [LRB LP 2005]). The LRB decided that the county employer's layoff of bargaining unit employees violated Sections 10(a)(1) and (a)(4) of the PLRA. The court decided that the ALJ properly permitted amendment of the unfair practice complaint and that a second ALJ properly issued the ultimate recommended decision to the LRB. It rejected the employer's waiver argument. The court upheld the LRB's directive for the employer to reinstate laid-off employees and for the employer to bargain, upon request, with the union about the layoff decision. *Forest Preserve District of Cook County v. Illinois labor Relations Board et al.*, No. 01-05-0813, *369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist. 2006),* 22 PERI 171.

Appeals court rules: state employer must engage in interest arbitration

Ill. App. Ct., 4th 2007). The Appellate Court of Illinois, Fourth District adopted the decision of the LRB State Panel. The LRB ruled that state employer's refusal to proceed to interest arbitration with the union constituted an unfair practice. The state refused to engage in that arbitration, despite the existence of certain unresolved issues resulting from the closure of several state correctional facilities. The court rejected the employer's argument that the plain language of Section 14 of the PLRA, entitled "Security Employees, Peace Officers, and Fire Fighter Disputes," didn't grant security employees the statutory right to interest arbitration in order to resolve midterm interest disputes. *Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007);petition leave to appeal denied, (9/26/07)Council* 31, 23 PERI 59.

The court reasoned that employees who lack the statutory right to strike, such as the security employees in this case, wouldn't be on equal footing with the employer if the employer implemented its final offer upon reaching impasse.

LRB, SP rules: state employer must engage in interest arbitration

Ill. LRB State Panel 2005. Addressing an issue of first impression the LRB State Panel, adopted an ALJ's recommended determination that the state's refusal to proceed to interest arbitration with the union constituted an unfair practice. The state refused to engage in that arbitration, despite the existence of certain unresolved issues resulting from the closure of several state correctional facilities. The LRB issued a cease and desist order and directed the state, upon request, to proceed to interest arbitration concerning the impact of the facilities' closure upon security employees. *AFSCME, Council 31 v. Illinois Department of Central Management Services*, 22 PERI 10.

Charging party waives claim regarding refusal to supply info

Ill. LRB State Panel 2006. The LRB State Panel, upheld an Executive Director's dismissal of an unfair practice charge. In the charge, charging party alleged that the employer-state corrections department violated Section 10(a), of the PLRA by refusing to provide it with certain information, including bids solicited far the subcontracting of dietary services performed by bargaining unit members. The LRB agreed with the Executive Director's conclusion that the issue concerning information was waived. The remainder of the charge was moot because no "successful" bid was made, the Executive Director concluded. *AFSCME v. Illinois Department. of Central Management Services (Corrections)*, 22 PERI 106.

LRB remands charge for E.D. to make additional findings

Ill. LRB State Panel 2006. The LRB State Panel's Executive Director issued a partial dismissal of. an unfair practice charge alleging the municipal employer violated various PLRA provisions through its failure to perform certain actions, including its alleged failure to bargain with charging party concerning a training officer position. In its appeal, the Illinois disputed the accuracy of the Executive Director's factual finding that the employer failed to provide the job description of training officer to it. The LRB remanded the case for the Executive Director to consider the evidence

provided by the union and to take further action consistent with his resolution of this factual issue. *IAFF, Local 717, Cicero Fire Fighters v. Cicero Fire Department*, 22 PERI 113.

LRB, State Panel directs issuance of amended complaint

Ill. LRB State Panel 2006. The LRB State Panel, reviewed exceptions to the Executive Director's recommended dismissal of an unfair practice charge. The LRB found the charge also raised issues of fact or law as to whether the employer failed to bargain in good faith with respect to several issues. It remanded the matter for the issuance of an amended complaint including the additional allegations. *IAFF. Local 3234, Downers Grove Professional Firefighters Union v. Downers Grove, Village of*, 22 PERI 161.

(2) **Subjects of Bargaining**

Reduction in work hours for part-time employees constitutes mandatory bargaining topic

Ill. App. Ct., 1st 2004. The Appellate Court of Illinois, First Judicial District upheld the LRB Local Panel's decision concerning an unfair practice charge. The LRB ruled that the employer-park district violated Section 10(a)(4) and 10(a)(1) of the PLRA by unilaterally reducing the hours of its part-time hourly employees without providing notice or an opportunity to bargain with the union. The court initially determined that it had to affirm the LRB's determination unless it was clearly erroneous. Since all three prongs of the Central City analysis had been met, the LRB's conclusion that the employer's reduction in hours was a mandatory subject of bargaining wasn't clearly erroneous, it found. The court also rejected the employer's waiver argument "Because the management rights clause in the contract at issue here simply does not address the right to reduce the established schedules of hourly employees, we cannot concur with the District's claim that the Union had contractually waived its right to bargain over this issue," the court said. *Chicago Park District v. Illinois LRB, Local Panel; SEIU, Local 73, 346 Ill. App. 1169, 866 N.E.2d 708 (1st Dist. 2004)*, 22 PERI 47.

County employer should have bargained layoff decision

Ill. App. Ct., 1st 2006. The Illinois Appellate Court, First District affirmed the decision of the LRB Local Panel (see21 PERI 42 [LRB LP 2005]). The LRB decided that the county employer's layoff of bargaining unit employees violated Sections 10(a)(1) and (a)(4) of the PLRA. The court decided that the ALJ properly permitted amendment of the unfair practice complaint and that a second ALJ properly issued the ultimate recommended decision to the LRB. It rejected the employer's waiver argument. The court upheld the LRB's directive for the employer to reinstate laid-off employees and for the employer to bargain, upon request, with the union about the layoff decision. *Forest Preserve District of Cook County v. Illinois labor Relations Board et al.*, No. 01-05-0813, *369 Ill. App. 3d 733 861 N.E2d 231 (1st Dist. 2006)*, 22 PERI 171.

Court rules university has duty to bargain over employee parking

Ill. 2007. In consolidated cases, a majority of the Supreme Court of Illinois reversed the rulings of the state appeals court in two consolidated cases (see 21 PERI 169 [Ill. Ct. App. 2005] and 21 PERI 170[Ill. Ct; App.2005]). It decided that the appellate court erred in holding that the issue of parking

for state university employees didn't constitute a mandatory bargaining topic under the Central City test. *Illinois, University of (Board of Trustees) v. IELRB; LRB, State Panel et al.*, Nos. 101450,101508, and 101558, 224 Ill. 2d 88, 862 N.E.2d 944 (2007), 22 PERI 186.

Subcontracting of paramedic services presents no PLRA violation
Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge in which charging party alleged that the municipal employer violated Section 10(a)(4) and (1) of the PLRA by subcontracting paramedic services to a private company. It agreed with the ALJ's reasoning that no specific evidence supported the claim that the employer failed to bargain over any mandatory subjects of bargaining. The ALJ found that charging party raised no facts distinguishing this case from the fact involved in the City of Belvidere decision, in which the state Supreme Court ruled that a municipal employer lacked a duty to bargain over the decision to contract for paramedic services. IAFF, Local 4232, *Bellwood Professional Firefighters Ass'n v. Bellwood, Village of*, 22 PERI 122.

Village needn't bargain hiring of part-time firefighters
Ill. LRB Gen. Coun. 2006. Where no exceptions were filled, the LRB.. State Panel's General Counsel finalized an ALJ's non-precedential, recommended dismissal of an unfair practice charge. The charge alleged that the municipal employer violated PLRA provisions by unilaterally enacting an ordinance creating part-time firefighter positions; The ALJ found that the ordinance didn't affect a mandatory subject of bargaining because it didn't institute any change in full-time firefighters' working conditions. *Bridgeview Fire Fighters Alliance, Local 4330 v. Bridgeview, Village of*, 22 PERI 101.

(3) Unilateral Change

Appeals court rules state employer must engage in interest arbitration
Ill. App. Ct., 4th 2007). The Appellate Court of Illinois, Fourth District adopted the decision of the LRB State Panel. The LRB ruled that state employer's refusal to proceed to interest arbitration with the union constituted an unfair practice. The state refused to engage in that arbitration, despite the existence of certain unresolved issues resulting from the closure of several state correctional facilities. The court rejected the employer's argument that the plain language of Section 14 of the PLRA, entitled "Security Employees, Peace Officers, and Fire Fighter Disputes," didn't grant security employees the statutory right to interest arbitration in order to resolve midterm interest disputes. The court reasoned that employees who lack the statutory right to strike, such as the security employees in this case, wouldn't be on equal footing with the employer if the employer implemented its final offer upon reaching impasse. *Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007);petition leave to appeal denied, (9/26/07)*, 23 PERI 59.

LRB, SP approves pre-certification changes to health insurance

Ill. LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended dismissal of an unfair practice charge. Charging party alleged that the employer-public hospital violated Section 10(a)(1) of the PLRA when it altered its employee health care plan during the period between the filing of majority interest petition by the union and the union's certification as exclusive bargaining representative of certain hospital employees. The record supported the ALJ's conclusion that the employer fulfilled its obligation to maintain the status quo, the LRB found, where insurance changes clearly affected all employees. *SEIU, Local 73 v. Sarah D. Culbertson Memorial Hospital*, 22 PERI 140.

Transit authority must bargain change in guidelines

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended determination concerning an unfair practice charge, the LRB Local Panel's General Counsel found the parties waived all exceptions to that non-precedential determination, which was final and binding only on parties to the proceeding. The ALJ found the employer-transit authority violated Section 10(a)(4) and (1) of the PLRA by unilaterally altering correctional guidelines for several groups of employees. Regardless of whether the employer's changes in its guidelines were a matter of inherent managerial authority, they were a mandatory subject of bargaining over which the employer was required to bargain prior to implementation, the ALJ decided. The ALJ issued a cease and desist order. The ALJ also directed the employer to bargain, upon request with the union, to restore the status quo ante, to make bargaining unit members whole, and to expunge disciplinary records of affected employees. *CTA Trade Coalition v. Chicago Transit Authority,*22 PERI 120.

City should have bargained deductions for fire lieutenants

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed to an ALJ's recommended determination with respect to an unfair practice charge, the LRB State Panel's General Counsel determined that the parties waived their exceptions to that determination, which was final and binding only on parties to the proceeding. The ALJ found the municipal employer violated PLRA provisions by failing to bargain in good faith before deducting part of health insurance premiums, as well as dues, for fire lieutenants after the lieutenant title was placed in the existing firefighter/paramedic bargaining unit. The ALJ rejected the employer's defense that it bargaining in good faith by "applying the contract" to the lieutenants. The ALJ issued a cease and desist order as well as other unfair practice remedies. *IAFF, Local 473, Waukegan Firefighters v. Waukegan Fire Department*, 22 PERI 100.

Village must bargain change to sick leave procedure

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed, the LRB State Panel's General Counsel finalized an ALJ's non-precedential recommended order with respect an unfair practice charge. The General Counsel explained that the parties waived all exceptions to that order, which was final and binding only on parties to the proceeding. The ALJ found that the municipal employer violated Section 10(a)(4) and (1) of the PLRA by unilaterally altering its procedures for using sick leave without notice to, or bargaining with, charging party. The ALJ issued several unfair practice remedies. *Elk Grove Village Firefighters Ass'n v. Elk Grove, Village of*, 22 PERI 119.

(4) Waiver of the Right to Bargain

Reduction in work hours for part-time employees constitutes mandatory bargaining topic
Ill. App. Ct., 1st 2004. The Appellate Court of Illinois, First Judicial District upheld the LRB Local Panel's decision concerning an unfair practice charge. The LRB ruled that the employer-park district violated Section 10(a)(4) and 10(a)(1) of the PLRA by unilaterally reducing the hours of its part-time hourly employees without providing notice or an opportunity to bargain with the union. The court initially determined that it had to affirm the LRB's determination unless it was clearly erroneous. Since all three prongs of the Central City analysis had been met, the LRB's conclusion that the employer's reduction in hours was a mandatory subject of bargaining wasn't clearly erroneous, it found. The court also rejected the employer's waiver argument "Because the management rights clause in the contract at issue here simply does not address the right to reduce the established schedules of hourly employees, we cannot concur with the District's claim that the Union had contractually waived its right to bargain over this issue," the court said. *Chicago Park District v. Illinois LRB, Local Panel; SEIU, Local 73, 346 Ill. App. 1169, 866 N.E.2d 708 (1st Dist.2004),* 22 PERI 47.

County employer should have bargained layoff decision
Ill. App. Ct., 1st 2006. The Illinois Appellate Court, First District affirmed the decision of the LRB Local Panel (see21 PERI 42 [LRB LP 2005]). The LRB decided that the county employer's layoff of bargaining unit employees violated Sections 10(a)(1) and (a)(4) of the PLRA. The court decided that the ALJ properly permitted amendment of the unfair practice complaint and that a second ALJ properly issued the ultimate recommended decision to the LRB. It rejected the employer's waiver argument. The court upheld the LRB's directive for the employer to reinstate laid-off employees and for the employer to bargain upon request with the union about the layoff decision. *Forest Preserve* District of Cook *County v. Illinois labor Relations Board et al., No. 01-05-0813, 369 Ill. App. 3d 733,861 N.E2d 231 (1st Dist. 2006),* 22 PERI 171.

City violates PLRA by refusing to negotiate successor agreement
Ill. LRB Gen. Coun. 2006. Where no exceptions were field from an ALJ's recommended decision concerning an unfair practice charge, the LRB State Panel's General Counsel finalized that non-precedential decision, which was final and binding only on the parties to the proceeding. The General Counsel explained the parties waived their exceptions to the ALJ's determination that the municipal employer violated Section 10(a)(4) and (1) of the PLRA by refusing to bargain in good faith with the union as exclusive representative of two bargaining units. The ALJ found that the union didn't waive its statutory right to negotiate a successor agreement, where it had already begun to bargain with the employer over such an agreement. The ALJ recommended issuance of a cease and desist order as well as a directive for the employer to bargain in good faith with the union and for it to make affected employees whole. *FOP, Illinois Labor Council v. City of Carlinville,* 22 PERI 35.

(5) Settlement Agreements

City's refusal to honor grievance settlement violates PLRA

Ill. LRB State Panel 2006. Upon considering an unfair practice charge, the LRB State Panel adopted an ALJ's recommended determination that the municipal employer violated Section 10(a)(4) and (1) of the PLRA by refusing to honor a grievance settlement with charging party. The elected city clerk agreed to settle the grievance by giving certain employees $1,000 raises. The LRB rejected the employer's defense that it wasn't required to honor the agreement because the city council never approved the "wage modification" and because it never gave the city clerk authority to enter into the settlement. The LRB issued a cease and desist order. It directed the employer to implement the grievance settlement and to make clerical employees whole for any losses they might have suffered through the failure to implement the settlement. *Teamsters, Local 726 v. Oak Forest, City of*, 22 PERI 13.

(6) Status Quo

Village's denial of 'equity increases' to unit members violates PLRA

Ill. LRB State Panel 2007. The LRB State Panel, considered an unfair practice charge contending that the municipal employer violated PLRA provisions by failing to grant an "equity,' increase to bargaining unit members. The "equity" increase was granted to unrepresented employees. Contrary to the ALJ's recommended decision, LRB found the employer discouraged union membership by failing to grant schedule wage increases to represented employees. It cited evidence that the "equity" increase was part of the parties' established practice since it was part of the annual merit increase. The LRB issued a cease and desist order and a make-whole order. *IUOE, Local 150 v. Lisle, Village of*, 23 PERI 39.

County should have bargained change in family leave policy

Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision regarding an unfair practice charge, the LRB Local Panel's General Counsel determined that the parties waived all exceptions to that non-precedential decision, which was binding only on parties to the case. The ALJ found that deferral of the unfair practice charges to the parties' grievance and arbitration procedure would be inappropriate. The ALJ also allowed the union to amend its complaint to include the county recorder as an employer. The county employers violated Section 10(a)(4) and (1) of the PLRA by unilaterally requiring employees to take other leave concurrently with family medical leave, the ALJ concluded. The ALJ issued a cease and desist and other unfair practice remedies. *SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds*, 22 PERI 99.

(D) Remedies

Certain fire captains lack entitlement to COLA increases

Ill. App. Ct., 1st 2006. The Appellate Court of Illinois, First District affirmed the decision of the majority of the LRB State Panel (see 21 PERI 19 [LRB SP 2005]). The court determined that, in

compliance proceedings, fire captains were not entitled to back pay for cost of living increases denied them in 1999 and subsequent years. It decided that the union never moved to amend its complaint and that the issue of the COLA increases was never litigated. *SEIU, Local 73 v. Illinois LRB; Pleasantview Fire Protection District,* 23 PERI 68.

Basis of make-whole remedy was elimination of fire captains' rank, which occurred almost two years after the freeing of COLA increases. The loss of COLA increases was not a consequence of the ULP.

Appeals court rules: state employer must engage in interest arbitration
Ill. App. Ct., 4th 2007). The Appellate Court of Illinois, Fourth District adopted the decision of the LRB State Panel. The LRB ruled that state employer's refusal to proceed to interest arbitration with the union constituted an unfair practice. The state refused to engage in that arbitration, despite the existence of certain unresolved issues resulting from the closure of several state correctional facilities. The court rejected the employer's argument that the plain language of Section 14 of the PLRA, entitled "Security Employees, Peace Officers, and Fire Fighter Disputes," didn't grant security employees the statutory right to interest arbitration in order to resolve midterm interest disputes. *Illinois Department of Central Management Services (Department of Corrections) v. Illinois Labor Relations Board, State Panel; AFSCME, 373 Ill. App. 3d 242, 869 N.E.2d 274 (4th Dist. 2007);petition leave to appeal denied, (9/26/07)Council* 31, 23 PERI 59.

The court reasoned that employees who lack the statutory right to strike, such as the security employees in this case, would not be on equal footing with the employer if the employer implemented its final offer upon reaching impasse.

E.D. properly dismisses charge pursuant to post-arbitral deferral
Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge in which the individual charging party alleged the state employer violated PLRA provisions by disciplining him for engaging in union and/or protected concerted activity. The Executive Director observed that, in proceedings on charging party's grievance, an arbitrator determined that the employer maintained just cause to discipline charging party for the manner in which she conducted herself in performing union activity. The Director reviewed the arbitration award and determined that the result wasn't repugnant to the IPLRA. *Cheatem v. Illinois Department of Central Management Services (Human Services),* 22 PERI 178.

LRB, SP defers to arbitration award directing firefighters' reinstatement
Ill. LRB State Panel 2006. The LRB State Panel, upheld an Executive Director's dismissal of an unfair practice charge and deferral to two arbitration awards. In the charge, the union alleged that the termination of two firefighters violated the Illinois Public Labor Relations Act. Two arbitrators directed the employer to reinstate the firefighters with full back pay. The LRB found that"post-arbitral" deferral was proper because both arbitrators considered the unfair practice issues that were presented to them. Despite the arbitrators' refusal to award interest on the back pay awards, the LRB further found that deferral and dismissal weren't repugnant to the Act's purposes, especially

where deferral would serve administrative efficiency. *IAFF, Local 1255, Alton Firefighters Ass'n v. Alton, City of,*. 22 PERI 102.

City must bargain promotions to rank of assistant fire chief

Ill. LRB State Panel 2006. The LRB State Panel, adopted a modified version of an ALJ's recommended determination concerning an unfair practice charge. The LRB agreed with the ALJ's conclusion that the municipal employer violated PLRA provisions by refusing to bargain with the union concerning promotions to the rank of assistant chief. The LRB modified the remedies recommended by the ALJ. It issued a cease and desist order, directed the employer to rescind any changes in promotional criteria for the rank of assistant chief, and directed the union to bargain, upon request, with the union concerning the issue of promotions to the position of assistant fire chief. *IAFF, Local 49 v. Bloomington, City of,* 22 PERI 107. This decision was affirmed on appeal.

The majority of the Appellate Court of Illinois affirmed the decision of the LRB State Panel (see 22 PERI 107 [LRB SP 2006]). The LRB ruled that the municipal employer committed an unfair practice by refusing to bargain with the union concerning promotions to the rank of assistant fire chief, a position outside the bargaining unit represented by the union. The 2003 version of the Fire Department Promotion Act (FDPA) required the city to bargain with the union over that promotion, the court majority held. *Bloomington, City of v. Illinois Labor Relations Board, State Panel; IAFF, Local 49*, 373 Ill. App. 3d 599, 871 N.E.2d 752, (4th Dist. 2007).

Union steward's pursuit of grievance violates Section 10(b)(1)

LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended determination that the union violated Section 10(b)(1) of the PLRA when its steward acted for his own benefit, in derogation of bargaining unit employees' interests through the filing of a certain grievance. The LRB found that the union waived its defense that the individual charging party lacked standing to bring his charge. The LRB agreed with the ALJ's issuance of a cease and desist order. The ALJ also properly required the union to make a good faith request for the state employer to reopen and post a certain position and properly required it to adopt internal safeguards to ensure that union stewards do not manipulate the grievance procedure for their own benefit, the LRB decided. *Tipsword, Robert v. Illinois Federation of Public Employees, Local 4408*, 22 PERI 60.

Parties waive exceptions to ALJ's dismissal of ULP complaint

Ill. LRB Gen. Coun. 2005. Where no exceptions were filed from an ALJ's recommended dismissal of unfair practice charges, the LRB Local Panel's General Counsel determined that the parties waived all exceptions to that dismissal. The ALJ found that the only remedy available to charging party would be to grant her an administrative assistant II position, which she didn't want. The ALJ recommended dismissal of the unfair practice complaint after determining that charging party would accept that dismissal, since she couldn't obtain the remedy she desired. *Edwards, Patricia v. Cook, County of et al.; AFSCME, Council 31*, 22 PERI 6.

V. UNION UNFAIR LABOR PRACTICES

A. Section 10(b) (1) duty of fair representation

Executive Director rejects DFR claim as untimely, meritless
Ill. LRB Local Panel 2005. The LRB Local Panel, upheld the Executive Director's recommended dismissal of an unfair practice charge. Charging party alleged in the charge that the union violated its duty' of fair representation toward her following her discharge. The Director found the charge was untimely filled over six months after an arbitrator denied charging party's grievance challenging her discharge. Even if the charge wasn't untimely, the union proved that it effectively represented charging party, the Director concluded. *Dujmovic v. ATU, Local 308*, 22 PERI 7.

Union steward's pursuit of grievance violates Section 10(b)(1)
LRB State Panel 2006. The LRB State Panel, adopted an ALJ's recommended determination that the union violated Section 10(b)(1) of the PLRA when its steward acted for his own benefit in derogation of bargaining unit employees' interests, through the filing of a certain grievance. The LRB found that the union waived its defense that the individual charging party lacked standing to bring his charge. The LRB agreed with the ALJ's issuance of a cease and desist order. The ALJ also properly required the union to make a good faith request for the state employer to reopen and post a certain position and properly required it to adopt internal safeguards to ensure that union stewards don't manipulate the grievance procedure for their own benefit, the LRB decided. *Tipsword, Robert v. Illinois Federation of Public Employees, Local 4408*, 22 PERI 60.

Union's refusal to arbitrate grievance doesn't violate IPLRA
Ill. LRB Local Panel 2006. Pursuant to the reasons set forth by the Executive Director, the LRB Local Panel, upheld the dismissal of an unfair practice charge. In the charge, charging party alleged that the union violated Section 10(b)(1) of the PLRA when it refused to arbitrate his termination grievance. The Executive Director found no evidence that any union representative harbored any lingering animosity toward charging party after he filed a claim with the state Department of Human Rights concerning an overtime issue. The available evidence wasn't sufficient to raise an issue concerning the union's decision to decline to proceed with the matter, the Director concluded. *Khan, Basharath v. AFSCME, Council 31,* 22 PERI 177.

Union's representation of charging party doesn't contravene IPLRA
LRB Local Panel 2006. Despite charging party's contention that the union violated its duty of fair representation toward him by failing to represent him properly following his termination, the LRB Local Panel, upheld the Executive Director's recommended dismissal of his unfair practice charge. The Executive Director found that even if the union presumably engaged in intentional misconduct toward charging party there was no showing of retaliatory intent. *Chaney, Ronald v. SEIU, Local 73,* 22 PERI 64.

Union's expulsion of member doesn't present DFR violation

Ill. LRB Local Panel 2006. The LRB Local Panel upheld the Executive Director's dismissal of an unfair practice charge in which the individual charging party alleged the union violated Section 10(b)(1) of the PLRA by taking certain actions with respect to his membership. Following a hearing, the union expelled charging party from its membership, and charging party became a fair share fee payer. The Executive Director found that the matters raised by charging party, including the union's refusal to permit him to attend union meetings, involved internal union matters over which the LRB lacked jurisdiction. *Harej, Wayne v. FOP, Lodge 7,* 22 PERI 63.

Union's grievance handling doesn't support Section 10(b)(1) claim

Ill. LRB State Panel 2006. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge alleging the union failed to properly handle a grievance concerning the individual charging party's termination by the county employer. The Executive Director found no evidence indicating the union intentionally took any action either designed to retaliate against charging party or that it took any action as a result of his status. *Wright, Mike v. IUOE, Local 318, 22* PERI 138.

B. Section 10(b)(1) interplay with Section 10(c)

Alleged harassment doesn't establish Section 10(b).

Ill. LRB State Panel 2007. The LRB State Panel, upheld the Executive Director's dismissal of an unfair practice charge. In the charge, the individual charging parties alleged the union violated Section 10(b) of the PLRA by sanctioning their harassment by coworkers. The harassment allegedly began after charging parties initiated an investigation into a union official's use of union funds. The Executive Director found that charging parties failed to provide evidence that the coworkers' statements involved threats or promises, as required by Section 10(c) of the PLRA. *Biller, Douglas et al. v. AFSCME, Council 31,* 23 PERI 51.

VI. PROCEDURAL ISSUES

A. Replacement of Administrative Law Judges

County employer should have bargained layoff decision

Ill. App. Ct., 1st 2006. The Illinois Appellate Court, First District affirmed the decision of the LRB Local Panel (see21 PERI 42 [LRB LP 2005]). The LRB decided that the county employer's layoff of bargaining unit employees violated Sections 10(a)(1) and (a)(4) of the PLRA. The court decided that the ALJ properly permitted amendment of the unfair practice complaint and that a second ALJ properly issued the ultimate recommended decision to the LRB. It rejected the employer's waiver argument. The court upheld the LRB's directive for the employer to reinstate laid-off employees and for the employer to bargain, upon request, with the union about the layoff decision. *Forest Preserve District of Cook County v. Illinois labor Relations Board et al.*, No. 01-05-0813, *369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist.2006),* 22 PERI 171.

B. Summary Judgment Motions

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C. Default

County employers 'admit' allegations of unfair practice complaint
Ill. LRB Local Panel 2006. The LRB Local Panel, adopted an ALJ's recommended determination that the county employers failed to file a timely answer to an unfair practice complaint and, therefore, admitted that they violated PLRA provisions by subcontracting. certain work. The ALJ found that the negligence of the employers' counsel, in filing an answer to the complaint twenty-two days past the due date, presented no grounds for a variance from or suspension of its Rule 1220.40(b). The LRB rejected the employers' contention that they should be granted a variance because there was no finding of specific injury to charging party and because they had a meritorious defense to the complaint. Therefore, it upheld the ALJ's issuance of a cease and desist order and other unfair practice remedies. *SEIU, Local 73 v. Cook, County of; Cook County Sheriff*, 22 PERI 94.

Charging party doesn't attend hearing; ULP charge dismissed
Ill. LRB State Panel 2006. Despite the individual charging party's allegation that the union violated Sectioin 10(b)(1) of the PLRA, the LRB. State Panel, adapted the ALJ's recommended dismissal of the charge. The ALJ determined the charge should be dismissed because charging party failed to appear at the hearing and, thus, failed to present any evidence in support of the allegations set forth in the complaint for hearing. *Coleman, Lawrence v. Teamsters, Local 705*, 22 PERI 26.

Employer doesn't answer complaint, admits unfair practice allegations
Ill. LRB Gen. Coun. 2005. The LRB Local Panel's General Counsel determined that an ALJ's recommended decision on an unfair practice complaint was final and binding only on parties to the proceeding, where the parties waived all exceptions to that decision. The ALJ found that the respondent-park district admitted all allegations in the unfair practice complaint by failing to file a untimely answer to the complaint. Thus, the district admitted that it failed to bargain in good faith and committed other PLRA violations, the ALJ further found. The ALJ issued a cease and desist order. *SEIU. Local 73 v. Chicago Park District*, 22 PERI 9.

Through late answer, city library admits PLRA violations
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision, the LRB State Panel's General Counsel determined that the parties waived all exceptions to that non-precedential decision, which was final and binding only on the parties to the proceeding. The ALJ found that the municipal library employer admitted its violation of Section 10(a)(4) of the PLRA through its failure to file a timely answer to the union's unfair practice complaint. As a result of the employer's deemed admission, the ALJ further found that the employer unilaterally rescinded a wage increase for bargaining unit employees. The ALJ issued a cease and desist order and other unfair practice remedies. *SEIU, Local 73 v. East St. Louis, City of (Public Library)*. 22 PERI 95.

Employer 'admits' allegations of unfair practice complaint

Ill. LRB State Panel 2007. The LRB State Panel, upheld an ALJ's recommended determination that the municipal employer was deemed to have admitted material facts and legal conclusions alleged in an unfair labor practice complaint through its failure to file an answer to that complaint. The ALJ properly determined that the employer violated Section 10(a)(1) of the IPLRA by discharging an employee in retaliation for his request for union representation in an investigatory interview, the LRB found. It directed the employer to reinstate the employee to his former position, to make him whole and to expunge any reference to his termination form its files. *LIU, Local 773 v. Anna, City of,* 23 PERI 103.

ALJ rejects unfair practice charge for lack of prosecution

Ill. LRB Gen. Coun. 2005. Where no exceptions were filed from an ALJ's recommended dismissal of an unfair practice charge, the LRB Local Panel's General Counsel determined the parties waived their exceptions to that dismissal. The General Counsel further determined that the non-precedential recommendation was final and binding only on parties to the proceeding. After neither charging party nor his attorney responded to the ALJ's queries concerning whether he wanted to proceed with his case, the ALJ found the charge should be dismissed, with prejudice, for want of prosecution. *Randazzo, Bruce v. Chicago, City of,* 22 PERI 8.

D. Deferral To Arbitration

LRB, SP defers to arbitration award directing firefighters' reinstatement

Ill. LRB State Panel 2006. The LRB State Panel, upheld an Executive Director's dismissal of an unfair practice charge and deferral to two arbitration awards. In the charge, the union alleged that the termination of two firefighters violated the Illinois Labor Relations Act. Two arbitrators directed the employer to reinstate the firefighters with full back pay. The LRB found that"post-arbitral deferral was proper because both arbitrators considered the unfair practice issues that were presented to them. Despite the arbitrators' refusal to award interest on the back pay awards, the LRB further found that deferral and dismissal weren't repugnant to the Act's purposes, especially where deferral would serve administrative efficiency. *IAFF, Local 1255, Alton Firefighters Ass'n v. Alton, City of,.* 22 PERI 102.

Unfair practice charge is stayed pending resolution of grievance

Ill. LRB State Panel 2007. The LRB State Panel, upheld the Executive Director's order holding an unfair practice charge in abeyance pending the completion of a grievance. The grievance disputed the individual charging party's discharge for allegedly directing his work crew to remove debris from his personal property. In finding that holding the charge in abeyance was proper, the LRB relied on the Executive Director's determination that the grievance process was fair and regular and could be used to determine whether just cause existed for the discipline. *Rodeghero, Robert v. AFSCME, Local 1019*, 23 PERI 88.

The LRB also relied on the Executive Director's adoption of a policy of holding charges in abeyance under circumstances such as these.

State Panel determines charge must be deferred to arbitration
Ill. LRB State Panel 2007. The LRB State Panel, upheld the Executive Director's order deferring an unfair practice charge to grievance arbitration. The charge alleged that the municipal employer violated Section 10(a)(4) of the PLRA by unilaterally changing the work hours of police sergeants and lieutenants. The Executive Director found the charge was appropriate for deferral since it involved whether the employer maintained the right under the parties' bargaining agreement to engage in the complained-of action. *Policemen's Benevolent and Protective Ass'n v. Peoria, City of,* 23 PERI 99.

County should have bargained change in family leave policy
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision regarding an unfair practice charge, the LRB Local Panel's General Counsel determined that the parties waived all exceptions to that non-precedential decision, which was binding only on parties to the case. The ALJ found that deferral of the unfair practice charges to the parties' grievance and arbitration procedure would be inappropriate. The ALJ also allowed the union to amend its complaint to include the county recorder as an employer. The county employers violated Section 10(a)(4) and (1) of the PLRA by unilaterally requiring employees to take other leave concurrently with family medical leave, the ALJ concluded. The ALJ issued a cease and desist order and other unfair practice remedies. *SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds*, 22 PERI 99.

E. Filing Period For Exceptions To Recommended Orders

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F. Sufficiency of Evidence/Evidence Unavailable At Time of Hearing

Certain job description doesn't support confidential exclusion
Ill. State Panel 2007. The LRB State Panel, considered a representation petition through which the union sought to represent titles serving the municipal employer. The titles in dispute were executive secretary and executive secretary/deputy clerk. The LRB accepted the ALJ's recommendation that the title of executive secretary/deputy clerk qualified as a confidential employee that should be excluded from bargaining. It also upheld the ALJ's determination that employees in the executive secretary title weren't subject to the confidential exclusion from the unit. The LRB concluded the evidence didn't support the employer's motion to introduce evidence unavailable at the time of hearing. *SEIU, Local 73 v. Bloomingdale, Village of,* 23 PERI 40.

LRB rules insufficient evidence supports DFR claim against union
Ill. LRB Local Panel 2006. The LRB Local Panel upheld the Executive Director's dismissal of an unfair practice charge in which the individual charging party contended that the union violated its duty of fair representation toward him through its handling of his discharge grievance. The Director found the charge had no merit because charging party failed to address issues specifically raised by

the Board agent. The evidence submitted by charging party suggested the charge fails to state a claim under the PLRA, the Director concluded. *Cook, Karl v. ATU, Local 241,* 22 PERI 27.

LRB, State Panel remands case for charging party to present evidence
Ill. LRB State Panel 2006. The Executive Director dismissed an unfair practice charge in which the individual charging party alleged that the employer discharged her in retaliation for her grievance filing activity. The Director found that charging party failed to respond to a Board agent's request for evidence supporting her charge. Charging party filed a timely appeal in which she asserted she didn't receive the Board agent's letters requesting information from her. The LRB State Panel remanded the case to give charging party an opportunity to present her evidence. *Panikowski, Ursula v. PACE Northwest Division*, 22 PERI 28.

G. Amendment of Complaint

County employer should have bargained layoff decision
Ill. App. Ct., 1st 2006. The Illinois Appellate Court, First District, affirmed the decision of the LRB Local Panel, (see21 PERI 42 [LRB LP 2005]). The LRB decided that the county employer's layoff of bargaining unit employees violated Sections 10(a)(1) and (a)(4) of the PLRA. The court decided that the ALJ properly permitted amendment of the unfair practice complaint and that a second ALJ properly issued the ultimate recommended decision to the LRB. It rejected the employer's waiver argument. The court upheld the LRB's directive for the employer to reinstate laid-off employees and for the employer to bargain, upon request, with the union about the layoff decision. *Forest Preserve District of Cook County v. Illinois labor Relations Board et al.*, No. 01-05-0813, *369 Ill. App. 3d 733, 861 N.E2d 231 (1st Dist. 2006)*, 22 PERI 171.

County should have bargained change in family leave policy
Ill. LRB Gen. Coun. 2006. Where no exceptions were filed from an ALJ's recommended decision regarding an unfair practice charge, the LRB Local Panel's General Counsel determined that the parties waived all exceptions to that non-precedential decision, which was binding only on parties to the case. The ALJ found that deferral of the unfair practice charges to the parties' grievance and arbitration procedure would be inappropriate. The ALJ also allowed the union to amend its complaint to include the county recorder as an employer. The county employers violated Section 10(a)(4) and (1) of the PLRA by unilaterally requiring employees to take other leave concurrently with family medical leave, the ALJ concluded. The ALJ issued a cease and desist order and other unfair practice remedies. *SEIU, Local 73 v. Cook, County of; Cook County Recorder of Deeds*, 22 PERI 99.

(H) Appellate Review

Sheriff's failure to name county as respondent dooms appeal
Ill. App. Ct., 2nd 2004. In a non-precedential decision, the Appellate Court of Illinois, Second District, dismissed the employer-county - sheriff's appeal from the LRB State Panel's decision (see 19 PERI 74 [LRB State Panel 2003]). In that decision, the LRB found that the employer's assistant

jail superintendent didn't qualify as supervisory or managerial employees within the meaning of the PLRA. The court observed that the employer failed to name all parties of record, as required by Section 3-113(b) of the Administrative Review Law. The plain language of that statutory provision requires a party seeking appellate review of an administrative agency's order to include the agency and all parties of record as respondents in the petition for review, it explained. As a result of the employer-sheriffs failure to name the county as respondent, the court concluded that it couldn't consider the merits of the employer's contention on appeal. *Boone County Sheriff v. LRB, State Panel et al.*, 22 PERI 48.