

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2023

July 1, 2022 – June 30, 2023

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ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

December 18, 2023

Dear Governor Pritzker:

Thank you for providing us the opportunity to present our Annual Report to you and the Illinois General Assembly for the 2023 calendar year. The attached report summarizes the highlights of the Board's work.

This year, the Board was able to move forward with a number of initiatives that resulted in the improvement of services to the public. As many of these programs were essentially put on hold during the COVID era, it has been encouraging to revive and advance them. For instance, we finally moved forward with promulgating new Rules which will now more accurately reflect our legal procedures, streamline our administrative processes, and reduce paperwork through the use of technology. This month, our newly Proposed Rules were accepted by the Illinois Joint Committee on Administrative Rules (JCAR) and we are awaiting final approval.

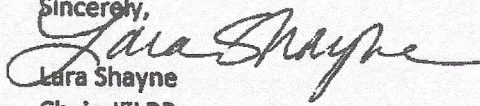
We also resumed interviews of new attorneys to fill current vacancies within the agency and bring quality employees on board to help level the caseloads of current staff. The Board's IT program has significantly advanced this year as well following our partnership with DoIT. We are in the process of revamping our current database to an upgraded program which will provide real-time accurate data on all agency cases.

As a measure of our progress, from FY22 to FY23, overall petitions filed in Representation (R) cases increased by 15%; Board activity in R cases increased by 20% and agency productivity in Unfair Labor Practice cases increased by nearly 40%. As we anticipated an uptick in cases following the reopening of Illinois schools, the Board adequately prepared to manage the increase in its caseload ahead of time by shifting some operational responsibilities among its staff and the results were favorable.

As we head into 2024, the Board expects to continue making significant progress in HR by hiring well-qualified staff to fill available vacancies. It also intends to implement technological enhancements to our website that better serve the public. And it plans to continue promoting its summer legal internship program which offers qualified Illinois students the experience of learning labor law as they work with a staff-mentor at our agency.

The Board plans to remain focused on its core mission of promoting labor harmony between management and labor in Illinois public schools recognizing that labor peace is critical to maintaining the continuity of quality education in our schools. The Board will also continue its role serving as the primary administrative forum for labor and management to resolve labor issues and disputes.

Finally, the Board is greatly appreciative of the support and assistance that it received from the Governor's office of Management and Budget, the Department of Information and Technology, and Central Management Services as they helped the Board meet all of its annual goals.

Sincerely,

Lara Shayne
Chair, IELRB

HISTORY AND FUNDING SOURCES

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

The Illinois Educational Labor Relations Board's had an appropriated budget of \$2,361,200 during Fiscal Year 2023. The Illinois Educational Labor Relations Board receives its funding from the Personal Property Tax Relief Fund.

The IELRB is comprised of five members who are appointed by the Governor and confirmed by the Illinois Senate. By statute, Board members must be residents of Illinois and have a minimum of five years of direct experience in labor and employment relations. Each Board Member must devote his entire time to the duties of the office and engage in no other work. During FY23, the Board was comprised of Chair Lara Shayne and Board Members Steven Grossman, Chad Hays, and Michelle Ishmael.

AGENCY MISSION AND STRUCTURE

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

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

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

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

The Board Members during FY23:

Lara Shayne, Chair

Appointment 02/26/21 – 06/01/26 Chair

Appointment 09/19/16 – 02/25/21 Member

Steven Grossman, Member

Appointment 03/01/21 – 06/01/26

Chad Hays, Member

Appointment 01/04/21 – 06/01/26

Michelle Ishmael, Member

Appointment 03/01/21 – 06/01/28

Lara Shayne, Chair

Lara Shayne was first appointed to the Illinois Educational Labor Relations Board by Governor Bruce Rauner in September 2016. In February 2021, Governor JB Pritzker appointed Ms. Shayne to be Chairman of the Illinois Educational Labor Relations Board.

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

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

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

Steven Grossman, Member

Steve Grossman was appointed to the Illinois Educational Labor Relations Board on March 1, 2021 by Governor JB Pritzker.

Prior to his appointment, Mr. Grossman spent 27 years as a high school teacher of social studies, serving for much of that time in union leadership. He taught in the Chicago Public Schools from 1991 through 1995 – three years at Whitney M. Young Magnet High

School, and one year at Mather High School – before moving on to Niles West High School for the next 23 years. It was at District 219 where Mr. Grossman became actively involved with his union, joining the executive board of the Niles Township Federation of Teachers in 1997 and serving at all levels of leadership, including a four-year stint as president, until his retirement from teaching in 2018. During that time, Mr. Grossman also joined the executive board of the North Suburban Teachers Union, IFT-AFT Local 1274, and served as its president from 2010 until his appointment to the IELRB. And since 2010, he has served on the Executive Board of the Illinois Federation of Teachers as one of 40 elected Vice Presidents.

In 2017 Mr. Grossman joined the faculty DePaul University's Labor Education Center where he served on a part-time basis as Assistant Director (2017-19), instructor, and advisory committee member (2017-2021). At the LEC, Mr. Grossman taught courses in Arbitration, Collective Bargaining, and Introduction to Union Leadership. He also led its high school summer school program and brought its collective bargaining role play to dozens of area high schools.

Mr. Grossman lives in Chicago with his wife, Food Stylist Mary Valentin, and nearby his two adult children.

Chad Hays, Member

Chad Hays served for 4 terms in the Illinois House of Representatives and was Assistant Minority Leader from 2013-2018. He was the Minority Spokesperson for the Higher Education Committee, Executive Committee and Community College Access Committee and on the Legislative Ethics Commission, among a myriad of leadership responsibilities.

Chad Hays served as the Chief Executive Officer of Crosspoint Human Services in Danville, IL from 2018-2021. Crosspoint works with the Developmentally Disabled and individuals diagnosed with Mental Illness. Crosspoint also operates the Domestic Violence and Transitional Housing Shelters and Early Childhood programs in Vermilion County.

Prior to serving in the IL General Assembly Chad was Vice President and Executive Director of Development and Mission Services at Provena United Samaritans Medical Center in Danville.

His healthcare administration background also includes being the Clinic Manager at the Family Medical Center/Paris Community Hospital as well as Director of Development at the Danville Polyclinic.

A Vermilion County native, Chad served as Mayor of his hometown of Catlin for 8 years where he balanced 8 consecutive budgets. He was named Catlin's Citizen of the Year in 2005.

Chad is a graduate of Danville Area Community College, where he was named the Distinguished Alumni in 2014, and Southern Illinois University.

Chad and his wife Ruth reside in Danville, Illinois. They have three grown sons and four grandchildren.

Michelle Ishmael, Member

Michelle Ishmael was appointed to the Illinois Educational Labor Relations Board by Governor JB Pritzker in March 2021.

For the past 30 years, Ms. Ishmael has combined her skills and knowledge of the legislative and political process with her passion for public education to improve the lives of educators and students. She has worked as a lobbyist for the Illinois Education Association (IEA), in various roles in Illinois State government, and for an education non-profit.

While with the IEA, Ms. Ishmael was the lead lobbyist for the Senate Education and Labor Committees. She analyzed and drafted legislation, provided testimony in committees, and developed position papers resulting in the advancement of many major public education policies. She successfully collaborated with local unions, school districts, policy makers, and coalitions to improve and protect employee rights and benefits, increase school funding and address education reform issues.

Ms. Ishmael created a nationally recognized grassroots organizing program that trained educators to be effectively engaged in policy advocacy and political action. Her work as a champion of education was recognized by being elected to serve multiple terms as the Vice-President and Secretary of the National Association of Legislative and Political Specialists in Education (NALPSE).

Ms. Ishmael resides in Springfield.

Victor E. Blackwell, Executive Director

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

Ellen Strizak, General Counsel

Ellen Maureen Strizak is the General Council of the Illinois Educational Labor Relations Board. She began working for the Illinois Educational Labor Relations as a Board Writer in 2002. Ms. Strizak was Staff Counsel for the Illinois Labor Relations Board from 2006 until 2010. She returned to the Illinois Educational Labor Relations Board in 2010 as Associate General Counsel and became General Counsel in 2019. Ms. Strizak received her B.A. in Psychology from the University of Iowa and her J.D. from the John Marshall Law School. Prior to law school, Ms. Strizak organized tenants as an AmeriCorps VISTA volunteer in Austin, Texas.

AGENCY ACTIVITIES

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

Representation Cases

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

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

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

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

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

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

Representation Cases FY 2023

Representation Cases Filed in FY 2023:

Petition to Determine Representative (RC)	19
Petition to Decertify Representative (RD)	2
Petition to Determine Unit (RS)	33
Petition to Determine Unit/Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	34
Amendment to Certification Petition (AC)	8
MIP Cases (includes RC and RS figures above/not added to total)	52
Total	96

Agency Activity on Representation Cases for FY 2023:

Certification of Representation	0
Certification of Results	0
Certification of Voluntary Representation	0
MIP Order of Certification	46
Withdrawal	2
Executive Director's Recommended Decision & Order	43
ALJ's Recommended Decision & Order	2
Elections/Polls	1
Cases mediated by Board Agents	0
Total	94

Unfair Labor Practice Cases

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

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

Mediation Cases

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

Unfair Labor Practice Cases FY 2023

Unfair Labor Practice Charges Filed in FY 2023:

Charge Against Employer (CA)	61
Charge Against Labor Organization or Agents (CB)	35
Total	96

Agency Activity on Unfair Labor Practice Cases for FY 2023:

Withdrawn (including w/d by settlement)	33
Executive Director's Recommended Decision and Order	22
ALJ's Recommended Decision and Order	8
Complaints issued	38
Cases mediated by Board Agents	1
Total	102

Board Activity FY 2023

Board Opinion and Orders	13
Board Final Orders	52
Total	65

IM Cases

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

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

Strike Activity FY 2023
(July 1, 2022 – June 30, 2023)

School County	Union Unit /No.	Strike Date Date Settled	Make-up/ Dock Days
University of IL	United Faculty IFT tenure/tenure track, App. 850 employees	1/17/23 1/22/23	4/0
University of IL	United Faculty IFT Non-tenure track, App. 700 employees	1/17/23 1/22/23	4/0
Chicago State Univ.	UPI Tenure, non-tenure & Academic support pros, 242 employees	4/03/23 4/14/23	10/2
Eastern IL Univ.	UPI Faculty, librarians, annual Contract faculty, acad. Sup. Prof& some civil service, 415 employees	4/06/23 4/13/23	6/0
Governors State Univ.	UPI Tenure-line, non-tenure line 275 employees	4/11/23 4/17/23	5/2

School County	Union Unit /No.	Notice Filed Date Settled	Make-up/ Dock Days
Proviso TSHD 209	WSTU, #571, IFT Teachers 278 employees	3/04/23 3/23/23	10/0
Gen. Geo. Patton 133	IFT Teachers 19 employees	3/08/23 3/14/23	0/5
University of IL (Chicago)	GEO Graduate employees 1,500 employees	4/18/23 4/26/23	0/7

Total Notices Filed for FY2023: 11
Total Strikes for FY2023: 8

MAJOR BOARD AND COURT CASES FY JULY 1, 2022 – JUNE 30, 2023

REPRESENTATION CASES

Exclusions from Status as Educational Employee

**Managerial Employee
Confidential Employee
Supervisory Employee**

Unit Appropriateness

- **Rockford Public School Dist. #205/Rockford Association of Educational Personnel, IEA-NEA, Case No. 2022-RS-0001-C (IELRB Opinion and Order, July 20, 2022)**

The Union filed a majority interest petition seeking to add two titles to an existing bargaining unit. The Employer opposed the petition, asserting that that petitioned-for positions did not share a community of interest with the existing unit. The ALJ found the petitioned-for unit appropriate. The ALJRDO mistakenly stated the deadline for filing exceptions was fourteen, rather than seven, days after the parties received the ALJRDO. The Employer's exceptions to the ALJRDO were filed fourteen days after receipt of the ALJRDO. The Board recognized that ordinarily it would strike the exceptions as untimely filed, but because the ALJRDO stated the deadline for filing exceptions was fourteen days it would consider the exceptions timely under these very limited circumstances. The Board found no merit to the Employer's exception that the ALJ incorrectly placed the burden of proof as to unit appropriateness. In representation cases, the party asserting a position is excluded from a bargaining unit, the Employer in this case, has the burden of proof. The Board rejected the Employer's argument that the ALJ erred when he relied on a few similarities between the petitioned-for employees and those in the existing unit in finding a community of interest and ignored evidence of differences between the employees. More than one appropriate bargaining unit may cover the same employees. It is whether the petitioned-for unit is an appropriate unit, not the most appropriate unit. The Board found the petitioned-for unit was appropriate under Section 7 of the Act and affirmed the ALJRDO.

- **University of Illinois, Chicago/UIC United Faculty, Local 6456, IFT-AFT, AFL-CIO, Case No. 2022-RS-0013-C (IELRB Opinion and Order, July 20, 2022)**

The Union filed a majority interest petition seeking to add Bridge to Faculty Program Scholars to existing unit of full-time non-tenure track faculty members. The University objected to the petition, arguing the petitioned-for unit was inappropriate under both the presumptively appropriate bargaining unit rules applicable only the University of Illinois bargaining units (U of I Rules) and under the traditional community of interest factors in Section 7(a) of the Act. Because the petition did not seek to establish a new unit, the Board found that the U of I Rules did not apply and instead the petitioned-for unit only needed to be appropriate under Section 7 of the Act. Recognizing that more than one appropriate bargaining unit may cover the same employees and rejecting any requirement of maximum coherence or selection of a most appropriate unit if more than one potential configuration would be appropriate, the Board determined there was a community of interest between the petitioned-for employees and those in the existing unit. The Board found the petitioned-for unit appropriate under Section 7 of the Act.

Unit Clarification

- **North Palos Education Association, IEA-NEA/North Palos School District 117, 39 PERI 107, Case No. 2022-UC-0024-C (IELRB Opinion and Order, March 8, 2023)**

North Palos School District created a new non-bargaining unit position, Behavior Specialist, and hired an employee to fill the position. The District then expanded the role and changed the job title to Behavior Specialist/MTSS coordinator. The Union filed a petition to clarify its existing unit to include the Behavior Specialist/MTSS coordinator. The IELRB affirmed the ALJ's dismissal of the petition. The unit clarification process is appropriate in only the following limited circumstances: (1) a newly created job classification that entails job functions similar to those already in the unit; (2) an existing classification's job functions have been substantially altered, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from the unit; or (3) there has been a change in law that affects bargaining unit rights of employees. The petition was not timely. The position was not newly created because the Behavior Specialist was created nearly three years before the petition was filed. There was significant overlap in duties between the Behavior Specialist and the Behavior Specialist/MTSS Coordinator, thus the position had not undergone substantial change.

Unfair Labor Practices
Employer Unfair Labor Practices
Violations of Employee Rights

- **Bean/State Universities Civil Service System, 39 PERI 10, Case No. 2021-CA-0061-C (IELRB Opinion and Order, July 20, 2022)** (appeal pending)

Board dismissed unfair labor practice, affirming EDRDO finding that Respondent was not an educational employer within the meaning of the Act. The Board noted that it would not consider Charging Party's claims that Respondent violated the Civil Service Act and portions of the Illinois Administrative Code concerning Respondent because it was not authorized to enforce such rights.

- **DeBerry v. Illinois Educ. Labor Rels. Board, 2021 IL App (1st) 201127-U**

In an unpublished order, the Court affirmed the Board's dismissal of the unfair labor practice charge where there was no evidence that Charging Party was disciplined for engaging in protected activity or treated differently than similarly situated employees.

- **Ramos/City Colleges of Chicago, District 508, 39 PERI 45, Case No. 2021-CA-0084-C (IELRB Opinion and Order, September 21, 2022) & 39 PERI 46, Case No. 2022-CA-0037-C (IELRB Opinion and Order, September 21, 2022)**

The Board affirmed EDRDOs dismissing 14(a)(1) charges. The Board refused Charging Party's request in her exceptions to EDRDO to defer her charge to arbitration. The Board nixed Charging Party's argument that the EDRDO should be reversed because it did not recite all the details contained in documents she submitted during the investigation. The Executive Director properly distilled what was relevant from those documents and dismissed the charge because there was no evidence that the Union violated the Act. The Board agent's failure to ask Charging Party for additional information or clarification on unclear issues did not warrant overturning the charge. Section 1120.30(b)(1) of the Board's Rules provides that a charging party shall submit all evidence relevant to or in support of their charge.

Retaliation

- **North Shore Education Association, IEA-NEA/North Shore School District 112, 2022 IL ERB LEXIS 50, Case No. 2022-CA-0003-C (IELRB Opinion and Order, October 20, 2022)**

Teacher Ms. K used her personal Apple ID to log in to her District iPad. Prior to beginning a leave of absence, Ms. K returned her District iPad to Respondent District so that her substitute, Ms. N, could use it. According

to the Charging Party Union, Ms. K was assured that her personal information and passwords would be deleted. Yet Ms. K's personal login remained active on the District iPad after she returned it and it was transferred to Ms. N. As a result, Ms. N discovered two text message threads between Ms. K and other District teachers on the District iPad with commentary about Ms. N and her teaching abilities. In a text thread between Ms. K and several other teachers, one of Ms. K's coworkers recalled her previous experience with Ms. N and described Ms. N in unfavorable terms. The other thread is between Ms. K and District teacher Ms. A. It contained a multitude of negative comments from both women about Ms. N's teaching ability and referenced Ms. K's potential discipline over a parent complaint. Ms. K participated in the text threads at issue from her personal cell phone while she was on leave from District employment. According to the Union, none of the conversation participants were aware the messages were being mirrored to the District iPad while it was in Ms. N's possession. Ms. N filed a formal internal complaint with the District over the texts on the District iPad. The District investigated whether the texts in question were in violation of any of its policies. As a result, Ms. K was issued a written warning for violating the District's Access to Electronic Networks policy stemming from her use of a District device for personal purposes. According to the District, when Ms. K was in possession of the District iPad, she logged in using her personal Apple ID instead of her District ID. The District deduced this because Ms. K's personal email address was set as the login default on the District iPad. Because Ms. K linked her personal account to her District iPad, the contents of her personal communications were available to anyone with access to her District iPad, Ms. N in this case. None of the other teachers who participated in the text threads at issue were disciplined or found to have violated the District's policies. The Union then filed an unfair labor practice charge alleging the District violated Section 14(a)(1) of the Act under the Neponset standard requiring proof of unlawful motivation. The Executive Director dismissed the charge because the Union failed to make the requisite showing of protected activity and the Board affirmed the dismissal. Nothing in the text threads was concerted protected activity on Ms. K's part. Ms. K's references in the texts to her own potential discipline were gripes and concerns of a personal nature and not concerted activity that contemplated group action. The communications, although they were between a group of bargaining unit members, did not contemplate group

action, but instead were a mutual venting or a group concern about Ms. N and not activity protected by the Act. The Board rejected the theory advanced by the Union in its exceptions that the District engaged in covert surveillance in violation of 14(a)(1) under the objective test. It was Ms. N, not the District, who initiated the view into Ms. K's texts and filed a complaint with the District and Ms. N saw the texts because Ms. K signed into the District iPad with her personal information.

Violations of Employee Rights

Retaliation

- **Geneva Education Association, IEA-NEA/Geneva CUSD 304, 39 PERI 77, Case No. 2019-CA-0080-C (IELRB Opinion and Order, November 17, 2022)**

The Union filed an unfair labor practice charge regarding making up instructional days after a strike. The District proposed to make up one day, while the Union proposed to make up all five. The Board affirmed the ALJ's Recommended Decision and Order finding the District's conduct did not violate the IELRA. The District's proposal was not an adverse employment action because it had the ability to bargain for terms that most favored them, just as the Union did. The Board noted that it would be against the spirit of the IELRA to allow the Union to use the Board's processes rather than collectively bargain.

Domination or Interference with a Labor Organization

Refusal to Bargain in Good Faith

- **Board of Educ. of Deerfield Public Schools District No. 109 v. Deerfield Educ. Ass'n, 2022 IL App (4th) 210359, appeal denied, 2022 Ill. LEXIS 678 (Sep. 28, 2022)**

The Court affirmed the Board's finding that the Employer was required to disclose notes from outside counsel, who investigated complaints against a teacher, to the Union because the notes were relevant to the Union's function as exclusive bargaining representative and were reasonably necessary for the performance of that function; the Employer did not meet its burden of demonstrating that the interview notes were made in preparation for trial or that the notes contained outside counsel's mental impressions or thoughts.

○ **Chicago Teachers Union/Chicago Board of Education, 39 PERI 95, Case No. 2022-CA-0053-C (IELRB Opinion and Order, January 18, 2023)**

The Union alleged that CBE violated Section 14(a)(5) of the IELRA for unilaterally implementing a mask-optional policy, thus repudiating their COVID safety agreement. Because employee safety is a mandatory subject of bargaining, absent agreement or a clear waiver by the Union, CBE had to bargain with the Union before rescinding the parties' safety agreement. The Union did not waive bargaining on this issue and even if the parties had bargained to some extent prior to the change, the Union did not agree to the rescind the agreement. Thus the unilateral change amounted to bad faith bargaining in violation of Section 14(a)(5) of the IELRA. The safety agreement was not void simply because it was highly probably, based on a circuit court judge's previous ruling, that that circuit court judge would find the agreement in conflict with the Illinois Department of Public Health Act. This does not amount to an actual conflict with a law at the time the unilateral change was made that would have rendered what the parties negotiated void per Section 10(b) of the IELRA, which voids collective bargaining agreement provisions that conflict with any Illinois statute. That is, at the time the parties entered agreement, the mask mandate was enforceable. The unilateral change was a repudiation of the safety agreement because masking was a key component of the safety agreement. The Board rejected CBE's argument that referral of the matter to arbitration was compelled. The Board noted that its ability to defer cases raising statutory and contractual issues is discretionary and it was not required to do so, particularly where referral would not further the resolution of the parties' dispute.

Refusal to Arbitrate

○ **Ball-Chatham Community Unit School District No. 5 v. State Educational Labor Rels. Board, 2022 IL App (4th) 210428-U**

In a Rule 23 (unpublished) order, the Court affirmed the Board's decision that the Union's grievance was arbitrable and by refusing to arbitrate, the Employer violated the Act.

- **East Aurora Council of American Federation of Teachers, Local 604, IFT-AFT, AFL-CIO/East Aurora School District No. 131, 39 PERI 103, Case No. 2020-CA-0029-C (IELRB Opinion and Order, February 23, 2023)**

The Union grieved the termination of bargaining unit member Gonzalez. After the District denied the grievance, the Union sent letter requesting the District hold the grievance in abeyance until the results of DCFS investigation and court case were determined and that if the District did not agree to the abeyance, the Union conveyed its request that the grievance be advanced to arbitration. The District would not agree to abeyance. The Union filed a demand to arbitrate with AAA, and the parties were provided a list of arbitrators by AAA in May 2018. Neither party took any further action until July 2021, when the Union notified the District that they were proceeding with striking arbitrators for the Gonzalez grievance. The District replied that it did not intend to move forward with the grievance because the timeline had expired. The Union's unfair labor practice charge was filed in November 2021. The Board rejected the District's arguments that the charge was untimely. The charge was timely because it was filed less than six month after the District's September 2021 refusal to arbitrate the grievance, which was the alleged unlawful conduct, not Gonzalez's discharge or the date the District refused to hold the grievance in abeyance. There are two valid defenses to a refusal to arbitrate charge: (1) there is no contractual agreement to arbitrate the dispute; or (2) The grievance is not arbitrable due to conflict with an Illinois statute. The District raised neither of these defenses. The Board rejected the District's contention that the Board, rather than the arbitrator, must determine whether the demand for arbitration was timely, noting longstanding precedent that matters of procedural arbitrability, such as timeliness, are generally decided by an arbitrator rather than by labor boards or courts. The Board found that the District's refusal to arbitrate violated Section 14(a)(1) of the IELRA.

Refusal to Reduce CBA to Writing and Sign

Violating the Rules Regarding the Conduct of a Representation Election

Refusal to Comply with Arbitration Award

Union Unfair Labor Practices

- **Kugler/Chicago Teachers Union, 39 PERI 78, Case No. 2022-CB-0009-C (IELRB Opinion and Order, December 14, 2022)** (see below in Untimely Exceptions)

- **Kugler/Chicago Teachers Union, 39 PERI 117, Case No. 2022-CB-0005-C (IELRB Opinion and Order, May 10, 2023)**

The CTU issued a correspondence asking members to report organized resistance to mask wearing in schools. Kugler alleged that the Union breached its duty of fair representation by disseminating the correspondence. The IELRB determined that Kugler lacked standing because he was not an educational employer within the meaning of the Act, nor was the Union an educational employer. Furthermore, the Board's processing of his charge did not qualify as recognition of standing.

Unfair Labor Practice Procedures

Untimely Charge

- **East Aurora Council of American Federation of Teachers, Local 604, IFT-AFT, AFL-CIO/East Aurora School District No. 131, 39 PERI 103, Case No. 2020-CA-0029-C (IELRB Opinion and Order, February 23, 2023)** (see above in Refusal to Arbitrate)

Untimely Exceptions

- **Kugler/Chicago Teachers Union, 39 PERI 78, Case No. 2022-CB-0009-C (IELRB Opinion and Order, December 14, 2022)**

Kugler filed an unfair labor practice charge against CTU after he was terminated from his role of Field Representative. The Board struck his exceptions to the EDRDO dismissing his charge because his exceptions, filed one day after they were due, were untimely filed. A charging party waives their right to contest an RDO when they do not file timely exceptions to that RDO.
- **Kugler/Chicago Board of Education, 39 PERI 79, Case No. 2022-CA-0079-C (IELRB Opinion and Order, December 14, 2022)**

Kugler filed an unfair labor practice charge against the Chicago Board of Education for his termination from employment with CTU. Kugler filed exceptions to the EDRDO dismissing his charge because he was not an educational employee and therefore lacked standing. The Board struck the exceptions because they were filed one day late, making them untimely. A charging party waives their right to contest an RDO when they do not file timely exceptions to that RDO.

