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The Illinois Public Employee Relations Report provides current, nonadversarial information to those involved or interested in employer-employee relations in public employment. The authors of bylined articles are responsible for the contents and for the opinions and conclusions expressed. Readers are encouraged to submit comments on the contents, and to contribute information on developments in public agencies or public-sector labor relations. The Illinois Institute of Technology and the University of Illinois at Urbana-Champaign are affirmative action/equal opportunities institutions.

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ILLINOIS VOTES FOR CHANGE: SO WHAT KIND OF CHANGES CAN WE EXPECT?

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ILLINOIS VOTES FOR CHANGE: SO WHAT KIND OF CHANGES CAN WE EXPECT?

By James C. Franczek, Jr., Laura E. Knittle and Patrick M. DePoy

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I. INTRODUCTION

This past November, the people of Illinois chose Bruce Rauner to be their 42nd Governor. After a long and often brutally negative campaign, voters elected the man who promised to bring change and "shake up Springfield." Governor Rauner will have his hands full. This article will provide readers with a brief overview of what to expect from Governor Rauner during his first term in areas of critical importance to Illinois: pensions, labor and employment law, and public education.

II. PUBLIC SECTOR PENSIONS

Illinois faces an unprecedented and well-documented pension crisis; the state's pension system's total unfunded liability topped $100 billion dollars in Fiscal Year 2013,[1] and increased to over $111 billion dollars for Fiscal Year 2014.[2] In 2013, the General Assembly passed and Governor Quinn signed Senate Bill 1.[3] This pension reform bill altered the benefits current and future retirees receive, while ensuring the state makes its annual contributions on time.[4] Public sector unions challenged the law in court, claiming it violates Article XIII of the Illinois Constitution, which provides that the benefits of membership in any pension system "shall not be diminished or impaired."[5] On November 21, 2014, Sangamon County Circuit Judge John Belz ruled that SB 1 is unconstitutional in its entirety, and that Illinois law does not recognize a "police powers" exception that would allow the state to override Article XIII of the Constitution.[6] The Illinois Supreme Court heard oral arguments on March 11, 2015, having granted Attorney General Lisa Madigan's petition for an expedited hearing and denied plaintiffs' application for an extension of time.[7] The Supreme Court's ruling,

especially regarding the State's "reserved police powers" argument, will be critical in determining what, if anything, Governor Rauner can do to alleviate Illinois's pension crisis going forward.[8] In February 2015, Rauner revealed his proposal for a "turnaround budget" in which he proposed shifting all current public employees into the Tier II classification for new hires effective July 1, 2015,[9] with higher retirement ages and lower cost-of-living adjustments.[10] Additionally, Tier I employees hired prior to 2011 will be offered a "buyout option" which would allow a state employee to take a lump sum payment in exchange for switching to a defined contribution plan and reducing his or her cost-of-living adjustments for benefits earned prior to July 1, 2015.[11] Rauner maintains that the proposal does not affect current retirees, and promised to protect "every dollar of benefits" earned before July 1, 2015 by current employees.[12] However, AFSMCE Council 31 issued a statement shortly after Rauner's budget address, stating the changes are "in violation of the plain language" of the Pension Clause in the Illinois Constitution. Assuming these changes become law, a legal challenge similar to the suit against Senate Bill 1 is all but certain.[13]

Rauner provided few details regarding the changes he mentioned in his budget address. However, during the campaign, Rauner pointed to Rhode Island's "blended plan" as an option for Illinois.[14] Rhode Island's plan provides state employees a small guaranteed income in retirement, but also provides an investment account, similar to a 401(k), which employees can take with them if they leave state employment.[15] Rhode Island's reforms remain uncertain, as the state's largest public employee union, AFSCME Local Council 94, filed suit challenging the law.[16] In April 2014, a Rhode Island state court judge denied Governor Lincoln Chaffee's motion to dismiss the claims, holding retirees had an implied contractual right to their pension benefits.[17] The pension case will proceed to jury trial in state court on April 20, 2015.[18] Considering Illinois's constitutional protections, reforms mirroring the Rhode Island model may be unconstitutional.

Another solution might resemble the changes Governor Mike Pence has enacted in Indiana. In 2013, Indiana's Public Retirement System (INPRS) voted to eliminate state-managed annuities for new retirees.[19] Pence's plan to completely privatize the state's systems faced stiff opposition from the Assembly.[20] However, Indiana passed legislation that would allow the INPRS Board of Trustees to vote to privatize its annuity program in 2017.[21] Until then, the System will reduce annuity rates until 2016 when the rate will be pegged to market rates.[22] If Rauner focuses on prospective changes for new employees, Article XIII of the Illinois Constitution may not stand in his way.[23] The plan Rauner announced in his budget address sounds similar to the incentive structure provided under INPRS. However, it is

not yet clear whether anything resembling Rauner's plan will pass the legislature, especially considering that the 2011 pension reforms are facing a serious legal challenge.[24]

In addition to changing the benefit systems themselves, Rauner may look to shift pension contributions onto local governments.[25] Members of the General Assembly, including House Speaker Michael J. Madigan and Senate President John Cullerton, have previously expressed interest in requiring suburban and downstate school districts to contribute more to the Teacher Retirement System (TRS), the state's largest pension fund.[26] While school districts are teachers' employers, the state of Illinois makes many districts' TRS payments.[27] Rauner has not officially endorsed this idea, but the Illinois Policy Institute, a GOP-aligned policy think-tank, supports shifting the pension contribution burden onto school districts.[28]

III. LABOR UNIONS: PUBLIC SECTOR BARGAINING AND RIGHT TO WORK "ZONES"

Unions have been vocal, and often vitriolic, opponents of Governor Rauner.[29] Rauner stated that he owes nothing to teacher unions, AFSCME or the SEIU, and would take them on as Governor.[30] While Rauner softened his rhetoric during the general election campaign, he has delivered numerous speeches since taking office criticizing public sector unions and their impact on the state's fiscal circumstances.[31] Public sector union density has actually declined slightly in Illinois since 2013, when the General Assembly enacted legislation removing thousands of state employees from bargaining units by excluding them from the definition of "public employee" under the Illinois Public Labor Relations Act.[32]

Most state workers will remain members of AFSCME throughout Rauner's term, and he is set to negotiate a new Master Contract with state employees when the current contract expires, by law, in June 2015.[33] In addition to the AFSCME Master Contract, Rauner's administration will negotiate several dozen additional contracts with other unions representing state workers.[34] Indiana may serve as a model for Rauner's contract negotiation position.

Governors Mitch Daniels and Mike Pence have enacted performance-based pay systems, providing raises only to those state employees who received favorable evaluations from supervisors during the previous year.[35] The expiring AFSCME Master Contract provided across-the-board raises to state employees.[36] Rauner may seek to include performance-based compensation in any new agreement.[37]

Governor Rauner's opening salvo against public sector unions aims to decrease the funds at their disposal for collective bargaining functions. In early February, Rauner issued Executive Order 15-13, which ordered all executive agencies to withhold the "fair share" payments non-union state employees pay to unions for collective bargaining activities.[38] At the same time, Rauner filed an action in federal court seeking a declaration that fair share payments themselves are unconstitutional forced political speech.[39] Rauner argues that because "the collective bargaining process is political when taxpayer funds go to pay the negotiated wages and benefits," requiring all employees to contribute to those activities is necessarily compelled political speech.[40] Rauner's action essentially seeks to overturn the landmark 1977 Supreme Court case, *Abood v. Detroit Board of Education*.[41]

The animosity between Rauner and organized labor is real, as his Executive Order amply demonstrates. It remains unlikely that Rauner will pursue legislation severely limiting collective bargaining rights for Illinois public sector employees, as Governor Scott Walker did in Wisconsin.[42] Rauner has proposed the creation of "right to work zones," which he also referred to as "opportunity zones," with increasing regularity since taking office.[43] Individual counties and municipalities would have authority to make union dues payments optional.[44] In Maine, Governor Paul LePage proposed creating "Open for Business" zones that closely resemble Rauner's suggested initiative.[45] However, with a legislature controlled by Democrats, as in Illinois, LePage's plan to exempt certain employees within these zones from paying labor dues or fair share contributions floundered in the legislature.[46] Additionally, nine labor unions in Kentucky recently brought suit against Hardin County, alleging that a "right to work zone" ordinance passed by the County Board violated the National Labor Relations Act.[47] Attorney General Lisa Madigan seems to agree with the position of the Kentucky labor unions. On March 20, 2015, she issued an opinion letter finding that Rauner's local approach would be preempted by the National Labor Relations Act, [48] and that local "right to work" areas cannot be enacted in Illinois by referendum.[49] The political, legal and logistical challenges regarding the creation of "right to work" zones make them unlikely to become the law of the land in Illinois.

Rauner has also expressed interest in privatizing, at least partly, certain functions of Illinois government.[50] Most notably, Rauner has stated he wants to turn the Department of Commerce and Economic Opportunity (DCEO) into a private-public partnership (P3).[51] Public-private partnerships have received a great deal of attention as states seek to implement creative financing arrangements for public sector projects.[52] Illinois has experience with P3s. The Illinois Public-Private

Partnerships for Transportation Act privatized the Chicago Skyway.[53] More recently, the Digital Manufacturing and Design Innovation Institute on Goose Island in Chicago received over $70 million dollars in financing from the Department of Defense, as well as investments from state, local and private funds.[54] While P3s are not new to Illinois, Rauner's expansion of the concept is novel for Illinois.

Again, Indiana may serve as the model for such an idea. Governor Mitch Daniels created the Indiana Economic Development Corporation, which created a public-private partnership to finance large scale public works.[55] The IEDC has been mired in controversy; a 2011 audit revealed that the IEDC had inflated the number of jobs attributable to its spending projects,[56] and one high-ranking official was accused of bribery and extortion by the Chinese government.[57] Wisconsin's P3 faced similar scandals and was subject to a legislative audit.[58] If Rauner makes such changes to the DCEO, he must do so carefully to avoid similarly embarrassing scandals and mismanagement of state resources.

IV. PUBLIC EDUCATION

Governor Rauner made education a central component of his campaign. In his own words, he and his wife, Diana, have dedicated their lives to improving education in Illinois and across the country.[59] Public education is one of the remaining strongholds for public sector labor unions, and the changes Rauner has announced would drastically reshape the political and policy landscape for teachers' unions and school districts.[60] Rauner will face major challenges, but education reform is his passion, and he has planned aggressive changes.

A. Revenue

Rauner stated his top priority is to increase state funding for schools.[61] In his February 2015 budget address, Rauner proposed a 6.7 percent increase in general school spending and a $300 million increase in general state aid.[62] While Rauner touted this increase as a sign of his commitment to education, this amount still falls short of the $266 million that the Illinois State Board of Education has indicated is needed to reach the "foundational level" which is the "minimum amount of spending per student to provide a basic education."[63] Finding the money to improve education will not be easy due to the looming budget hole facing the Governor.[64] How Rauner and the General Assembly will address Illinois's fiscal situation could have major ramifications for AFSCME contract negotiations, and for the district-by-district teacher negotiations that will take place across Illinois during his tenure.[65]

On January 1, 2015, tax increases enacted by the General Assembly in 2011 lapsed, and the personal income tax and corporate income tax reverted to pre-2011 levels.[66] Rauner wants to permanently repeal the 2011 tax increases over the course of four years, reducing the personal income tax from 5 percent to 3 percent and the corporate tax rate from 7 percent to 4.8 percent.[67] A recent study by the Fiscal Futures Project at the University of Illinois projected that the state's budget deficit in Fiscal Year 2016 could be as high as $9 billion, and it's unclear what new policies or revenue streams could make up for the loss.[68]

Rauner's plan to expand the sales tax to certain services provided in Illinois may cushion the fiscal blow.[69] Illinois taxes very few services.[70] Iowa, Wisconsin and Indiana tax dozens of services provided in their states,[71] with Iowa taxing 94 separate service industries.[72] Rauner estimated that taxing 32 service providers, including accountants, lawyers and travel agents, would generate over $600 million in annual revenues.[73] Rauner's plan ex empts "essential services" like medical treatment and day care services.[74] Expanding the tax base and cutting rates is going to be a priority for Rauner.

Rauner has further pledged to "freeze" local property taxes and require that any increase be submitted to referendum before enacted.[75] The Property Tax Extension Limitation Law (PTELL) already limits increases in a district's tax extension when property values rise too quickly compared to inflation, as measured by the Consumer Price Index (CPI).[76] Freezing property taxes would have a substantial impact on school district financing.[77]

B. Changing the State Aid Formula

Rauner has criticized not just the lack of funding, but the formula for distributing state education funding as well, calling it "a complete disaster."[78] In his *Education Blueprint*, Rauner noted that Illinois's state aid system creates wide variations in the amount of funds a school receives per student, ranging from as low as $7,000 to as high as $25,000 per pupil.[79] Senate Bill 16, legislation pending in the General Assembly, is one proposal to rework the aid formula.[80]

Proponents of SB 16 point out that Illinois's current education funding system, which relies heavily on local property taxes, punishes students in poor and rural districts, while funneling state aid to "rich" districts.[81] School districts with higher property value counter that the current bill would reduce their operating budgets by millions of dollars.[82] Other districts note that SB 16 caps Special Education funding regardless of the number of disabled or special needs students in their classrooms.[83] Rauner supports the concept of reforming the funding formula but opposes SB 16.[84]

C. Tenure, Merit Pay and More

Rauner has attacked the "education bureaucracy" as a whole, complaining that Illinois's compartmentalized structure stifles innovation with red tape.[85] Rauner will likely push the General Assembly to consolidate school districts, while also eliminating unfunded mandates, and providing school districts with greater flexibility.[86] For example, Rauner wants to eliminate the statutory prohibition on schools subcontracting services during the term of a collective bargaining agreement, even where the agreement permits subcontracting.[87]

Rauner will also push to increase the number of charter schools and the funding those schools receive.[88] Rauner previously served on the Board of Directors for the Noble Charter Network, and his Education Blueprint calls for an immediate elimination of the cap on charter schools.[89] Charter schools are not included in bargaining units formed by the teachers and staff members of the school district in which the charter is located.[90] The expansion of charter schools within Illinois has been strongly opposed by teachers' unions.[91]

While Rauner firmly supports eliminating charter school caps and expanding their presence, he has also explored alternatives.[92] Specifically, Rauner mentioned Boston's "success schools" program,[93] a union-supported "middle ground" alternative to charter schools.[94] Success schools in Boston remain part of the Boston Public Schools system, and their teachers are all unionized members of the Boston Teachers' Union.[95] However, the schools operate outside of certain collective bargaining provisions,[96] answer to independent governing boards,[97] and have greater autonomy regarding their budgets and curricula.[98] Rauner cited these schools in his Blueprint as a model for innovation.[99]

Rauner supports vouchers for parents of children in underperforming schools.[100] He also supports broad changes to teacher contracts and salaries as well as the implementation of a merit pay system.[101] Specifically, Rauner's position is that Illinois should incentivize school districts to move away from the automatic step-and-lane pay schedules and provide merit pay tied to student growth and achievement.[102] He has not set forth a specific proposal for Illinois, but he has pointed to Florida,[103] which has eliminated traditional salary schedules, as a model.[104] While Rauner specifically cited Florida as a model, Louisiana[105] and Indiana[106] have enacted similar legislation and may provide additional guidance on future reforms. While districts throughout Illinois are currently implementing the student growth component required by the Performance Evaluation Reform Act (PERA) for teacher evaluations,[107] Rauner may push for even more aggressive changes.

V. BIPARTISANSHIP: NECESSARY, BUT HOW LIKELY?

The legislative dynamic in Springfield will have a major impact on Rauner's initiatives and his ability to craft meaningful public policy. Speaker Michael J. Madigan and Senate President John Cullerton retain "veto-proof" majorities in both Houses of the General Assembly.[108] Many pundits have surmised that these strong majorities will stand as road blocks to any Rauner initiatives.[109] While bipartisanship may be necessary to enact many of the sweeping changes Rauner envisions, the power of the Governor's office is immense.

First, Rauner brought in an entirely new state "cabinet" with significant administrative and bureaucratic powers to run departments and state agencies. Rauner recruited government outsiders with business and corporate experience to run major departments, such as the Department of Financial and Professional Regulation.[110] For example, Rauner appointed management-side employment attorney and well-known litigator Hugo Chaviano as the Director of the Department of Labor.[111] Chaviano replaces Joe Costigan, who previously served as Secretary-Treasurer of Workers United and Vice President of the Illinois AFL-CIO.[112] The selection could impact every facet of the Department's duties, from enforcement priorities to the Department's legislative lobbying efforts.

Additionally, Illinois state government has 355 Boards and Commissions.[113] Many members of these Boards are appointed by the Governor.[114] For example, Governor Rauner recently appointed new members to the State Board of Education (ISBE),[115] including former State Senator James Meeks as the Chairman of ISBE.[116] Meeks previously served on the Senate Education Committee and was an outspoken advocate for charter schools and school choice legislation, which may be indicative of Governor Rauner's plans for education reform in Illinois.[117] Rauner is limited by statute regarding each member's party affiliation, but has wide latitude in selecting Board members who share his views on education reform.[118] Governor Rauner will also fill upcoming vacancies on the Illinois Labor Relations Board and the Educational Labor Relations Board.[119] In short, even without the Assembly, Rauner will be able to make considerable changes to the *status quo in Illinois.*

Governor Rauner and members of the General Assembly face significant challenges moving our state forward. Specifics on the sweeping changes needed remain scare, even months after the election. However, Governor Rauner's promise to "shake up Springfield" could have significant and long-lasting effects on labor, employment and education law.

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[1] *See* Doug Finke, *State Pension Debt Tops $100 billion*, PEORIA JOURNAL-STAR, Jan. 8, 2014, *available at* http://www.pjstar.com/article/20140108/News/140109254; *see also* OFFICE OF THE AUDITOR GENERAL, SUPPLEMENTAL DIGEST TO RETIREMENT SYSTEMS' AUDITS (Jan. 8, 2014), *available at* http://www.auditor.illinois.gov/Audit-Reports/RETIREMENT-SYSTEMS-AUDITS-SUPPLEMENTAL-DIGEST-TO.asp (noting total unfunded liability for FY 2013 and further noting aggregate funded ratio for State's five systems as 39.3%).

[2] OFFICE OF THE AUDITOR GENERAL, SUPPLEMENTAL DIGEST TO RETIREMENT SYSTEMS' AUDITS (Jan. 22, 2015), *available at* http://www.auditor.illinois.gov/recent-audits-01-22-15.asp (noting unfunded actuarial accrued liability of $111.18 billion and a funded ratio of 39.3%).

[3] *See* Pub. Act 98-0599 (Ill. Dec. 5, 2013). Senate Bill 1 and its changes are complex. Entire articles have been dedicated to Illinois's constitutional protection for pensions and its implications for legislative options to change Illinois's Pension Code, *see* Eric Madiar, *Is Welching on Public Pensions Promises an Option for Illinois*?, Mar. 1, 2012, *available at* http://papers.ssrn.com/sol3/papers.cf m?abstract_id=1774163. While this article will not focus exclusively on SB 1, it is important to have a basic working knowledge of SB 1's changes to understand the constitutional challenge. SB 1 alters the cost-of-living adjustments (COLA) active and retired members receive. COLAs are now calculated using a formula based on length of service and inflation, as measured by the Consumer Price Index (CPI), to reach a "pensions threshold" which the member's annuity benefits may not exceed, rather than the previously limitless 3% automatic annual increases (AAI). *See* 40 ILCS 5/2-119.1(a-1). COLAs are to be forfeited on a staggered basis, or "skipped," for members who have not received an annuity prior to July 1, 2014, based on their age. See 40 ILCS 5/2-119.1(a-2). SB 1 caps creditable earnings, but only prospectively. See 40 ILCS 5/1-160 (b-5). Finally, state workers 45 years old and younger are required to work an additional four months for every year under the age of 46 at the time of passage to achieve eligibility for annuity benefits. See 40 ILCS 5/2-119(a-1). While these are only some of the changes enacted by SB 1, these changes are the basis of the constitutional challenge. For a robust and highly-informative discussion of SB 1's changes, and the history of Illinois's pension funding crisis, see Eric Madiar, *Illinois Public Pension Reform: What's Past is Prologue*, 31 ILL. PUB. EMP. RELATIONS REP., Summer 2014.

[4] *See supra* note 3; *see, e.g.*, 40 ILCS 5/2-124, creating the "funding guarantee" whereby if the State Comptroller fails to remit the pension contribution required

by law to any pension system, that pension system may file for relief in the Illinois Supreme Court, and obtain an order requiring the Comptroller to make proper payment. But *see* Madiar, *Illinois Public Pension Reform*, *supr*a note 3, at 206 (citing House floor debate in which Rep. Fortner asked House Speaker Madigan, chief sponsor of SB 1, whether the Legislature would still have the power through the statutory process to "change the number that would be required for [the state of Illinois] to pay" and the House Speaker answered, "The answer is yes.").

[5] Ill. Const. Art. XIII, § 5 ("Membership in any pension or retirement system of the state, and unit of local government or school district, or any agency or instrumentality therefor, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."); Heaton v. Quinn, No. 2013 CH 28406 (Cir. Ct. Cook Cnty.); *Retired State Employees Ass'n Retirees v. Quinn*, No. 2014 MR 1 (Cir. Ct. Sangamon Cnty.); *Illinois State Employees Ass'n v. Bd. of Trustees of State Employees Retirement Sys. of Illinois*, No. 2014 CH 3 (Cir. Ct. Sangamon Cnty.); Harrison v. Quinn, No. 2014 CH 48 (Cir. Ct. Sangamon Cnty.); State Univ. Annuitants Ass'n v. State Univ. Retirement Sys., No. 2014 MR 207 (Cir. Ct. Champaign Cnty.). On March 6, 2014, upon motion of Governor Quinn, these cases were consolidated and transferred to Sangamon County. *In re Pension Litigation*, No. 2014 MR 1.

[6] *In re Pension Litigation*, No. 2014 MR 1 (Cir. Ct. Sangamon Cnty. Nov. 21, 2014) (order granting union/employee plaintiffs' motion for summary judgment). Of particular importance for Governor Rauner and the Illinois General Assembly going forward is Judge Belz's holding that the Pension Protection Clause is not subject to any "state police power" or "reserved sovereignty" exception whatsoever. "The Pension Protection clause contains no exception, restriction, or limitation for an exercise of the State's police powers or reserved sovereign powers. Illinois courts, therefore, have rejected the argument that the State retains an implied or reserved power to diminish or impair pension benefits." *See In re Pension Litigati*on, Order at ¶ 3 (internal citations omitted).

[7] *In re Pension Litigation*, No. 118585. (Ill. Dec. 10, 2014) (order granting motion for accelerated docket); see also *id.*, No. 118585 (Ill. Jan. 22, 2015) (order rejecting submission of *amicus curiae* briefs and denying plaintiffs' motion for extension of time).

[8] *See supra* note 6; *see also* Rick Pearson, *State's Lawyers Argue Pension Protection Not "Absolute*,"CHI. TRIB., Jan. 13, 2015, *available a*t http://www.chicagotribune.com/news/local/politics/ct-illinois-pension-reform-met0114-20150113-story.html; *see* Brief for Appellant at 17, *In re Pension Litigation*, No.

118585 (Ill. 2015) ("[T]he circuit court's extreme view of the Pension Clause so undermines the State's sovereignty that it violates basic federal constitutional principles. The federal Constitution requires the States always to reserve enough authority to respond to extraordinary threats to the public welfare."); *see generally id*. at 28. Attorney General Madigan points out in the State's brief that, under the circuit court's interpretation of the Pension Protection Clause, the State could not, in any manner, reduce benefits and would be prohibited from even achieving pension changes as part of, for example, the collective bargaining process with members' collective bargaining units. "For example, a contractual relationship can be renegotiated. But if that renegotiation involved the reduction of future benefits, even if in exchange for valuable consideration, Plaintiffs would apparently treat the new arrangement as unconstitutional." *Id*.

[9] Rick Pearson, Monique Garcia, & Ray Long, *Rauner's 'Turnaround Budget' Has Cuts Called 'Reckless,' 'Wrong Priorities*', CHI. TRIB., Feb. 19, 2015, *available at* http://www.chicagotribune.com/news/local/politics/chi-bruce-rauner-state-budget-speech-20150218-story.html#page=1.

[10] Greg Hinz, *Rauner's First Budget: Pension Shifts, Transit Cuts, "Shared Pain*," CRAIN'S CHI. BUS., Feb. 18, 2015, *available at* www.chicagobusiness.com /article/20150218/BLOGS02/150219820?template=printart; *see generally* 40 IL CS 5/1-160 (provisions applicable to employees hired after January 1, 2011).

[11] Doug Finke, *Gov. Rauner Counting on Big Savings From Pension Changes*, STATE JOURNAL-REGISTER, Feb. 19, 2015, *available at* http://www.sj-r.com/article/20150219/NEWS/150219373/0/SEARCH.

[12] Monica Davey, *Illinois Governor Proposes $6 Billion in Cuts and Reducing Pension Benefits*, N.Y. TIMES, Feb. 18, 2015, *available at* http://www.nytimes.com/2015/02/19/us/politics/illinois-governor-proposes-6-billion-in-cuts-and-reducing-pension-benefits.html?_r=0.

[13] *AFSCME Responds to Gov. Rauner's Proposed Budget*, AFSCME Council 31 (Feb. 18, 2015), *available at* http://www.afscme31.org/news/afscme-responds-to-gov-rauners-proposed-budget.

[14] See Whet Moser, How Bruce Rauner Will Fix Illinois's Pension Mess, CHI. MAG., June 11, 2013, *available at* http://www.chicagomag.com/Chicago-Magazine/The-312/June-2013/Bruce-Rauners-Pension-Plan/ ("We should offer a

defined-contribution plan like a 401(k). We should offer a blended plan like they've done in Rhode Island when they reformed their pensions.").

[15] *See* Rhode Island Retirement Security Act (RIRSA), 2011 R.I. Pub. Laws ch. 408, 1919. RIRSA's reforms adjusted COLA calculations and suspended increases until the pension system reaches a funding level of 80% (*see* R.I. Gen. Laws § 36-10-35(g)); created a defined-contribution program to work in concert with the scaled-back defined-benefit annuity plan (see id. at § 63-10.3-1 "Defined Contribution Retirement Plan"); and increased the retirement age for active employees to match the Social Security retirement eligibility age (*see id.* § 36-10-9(c)). The defined-contribution system requires employees to contribute 5% of their salary automatically through payroll deductions, in addition to the contributions still required under the defined-benefit plan. (*See id.* § 63-10.3-4). For a thorough discussion of Rhode Island's pension reforms, and the pension crisis that precipitated RIRSA, *see* Anthony Randazzo, *Pension Reform Case Study: Rhode Island,* REASON, Policy Study 428 (2014).

[16] *See Rhode Island Council 94, AFSCME, v. Chafee*, P.C.C.A No. 12-3168 (Compl. Super. Ct. Providence Cnty. June 22, 2012). On December 8, 2012, Superior Court Justice Sarah Taft-Carter ordered the parties to participate in federal mediation. Erika Niedowski, *Rhode Island Judge Orders Federal Mediation in Pension Suit*, BENEFITS PRO, Dec. 18, 2012, *available at* http://www.benefitspro.com/2012/12/18/rhode-island-judge-orders-federal-mediation-in-pen. The parties reached a preliminary settlement agreement, but the enforcement of the agreement was contingent upon members of the pension systems voting to approve the settlement, and in April 2014, police unions rejected the settlement. *See* Katherine Gregg, *Police Reject R.I. Pension Settlement, Sending Parties Back into Mediation*, PROVIDENCE JOURNAL, Apr. 7, 2014, *available at* http://www.providencejournal.com/politics/content/20140407-police-reject-r.i.-pension-settlement-sending-parties-back-into-mediation.ece.

[17] *See Rhode Island Council 94*, P.C.C.A No. 12-3168 (Super. Ct. Providence Cnty. Apr. 25, 2014) (order denying defendants' motion for summary judgment). Applying traditional contract law, Justice Taft-Carter held that "absent some misconduct, vested employees possess a contractual right to their pension benefits that is protected and enforceable." *Id.* at 19.

[18] Ted Nesi, *Jury Trial in RI Pension Lawsuit to Start April 20*, WPRI, Dec. 2, 2014, *available at* http://wpri.com/2014/12/02/judge-rules-on-jury-trial-in-ri-pension-lawsuit/. For a more detailed explanation of Indiana's "hybrid plan," *see*

*PERF Hybrid Plan Member Handbook: Two-Part Benefit Structur*e, IN.GOV, http://www.in.gov/inprs/perfmbrhandbooktwopartbenefits.htm.

[19] In 2011, Indiana consolidated its pension funds into the Indiana Public Retirement System (INPRS) while maintaining its "hybrid" public employee retirement system. *See* 2011 Ind. Legis. Serv. P.L. 23-2011. Indiana has kept its hybrid system in place which includes a defined contribution plan funded by employee contributions (similar to private-sector savings plans), and a defined benefit planned funded by employer contributions made by government agencies. *See* Robert Clark, *Evolution of Public-Sector Retirement Plans: Crisis, Challenges, and Change,* 27 ABA J. LAB. & EMP. L. 257, 266 (2012).

[20] Dan Carden, *Annuity Changes Could Have Been Worse for Indiana*, INSURANCE NEWS NET, Aug. 3, 2014, *available at* http://insurance newsnet.com/oarticle/2014/08/03/annuity-changes-could-have-been-worse-for-indiana-retirees-a-539309.html#.VMPwt010zj0.

[21] *See* Ind. Legis. Serv., P.L. 177-2014 (H.E.A. 1075). The Act prohibits the INPRS Board from entering into an agreement with any third party provider to manage annuities for retiring and retired members before January 2, 2017. IND. CODE 5–10.5–4–2.5 (2014).

[22] *See* Ind. Legis. Serv., P.L. 177-2014 (H.E.A. 1075). The interest rate used to determine the annuity amount under the current system will be: (1) 5.75%, after September 30, 2014, and before October 1, 2015 and then thereafter (2) the greater of: (A) the interest rate for similar annuities being purchased in the private market; or (B) 4.5%; after September 30, 2015, and before January 1, 2017. Ind. Code 5–10.5–4–2.6(a) (2014). Beginning in 2017, if the Board enters into an agreement with a third party provider, the interest rate used to determine the annuity amount must be equal to rates for similar annuities being purchased in the private market. IND. CODE 5–10.5–4–2.6(b).

[23] *See* Doug Finke, *Rauner Not Ready to Change Pension Reform Plan*, STATE JOURNAL-REGISTER, July 11, 2014, *available at* http://www.sj-r.com/article /20140711/News/140719849. Rauner stated that workers should keep whatever pension benefits they've earned up to a certain date, "but after that everyone would be enrolled in a 401(k)-style savings plan. Rauner said attorneys he has consulted believe the plan is 'fair and constitutional.'" *Id.*

[24] *See* Hinz, *supra*, note 10.

[25] *See generally* Rep. David Harris, *What Are The Arguments Around the Pension Cost Shift Concept?*, REBOOT ILLINOIS, May 28, 2013, *available at* http://www.rebootillinois.com/2013/05/28/uncategorized/david-harris/arguments-around-pension-cost-shift-concept/6658/.

[26] *See* Ted Biondo, *Cullerton Wants School Districts to Help State Pay for Teacher's Pension Costs*, ROCKFORD REGISTER STAR, Feb. 27, 2011, *available at* http://blogs.e-rockford.com/tedbiondo/2011/02/27/cullerton-wants-school-districts-to-help-state-pay-for-teacher-pension-costs/#axzz3QQNle700 ("According to Cullerton, shifting this financial burden onto the districts would save the state hundreds of millions of dollars to be paid with higher taxes or even a sales tax has been suggested."); *Madigan: School Districts Should Start Contributing to Teacher Pensions*, CBS CHICAGO (Jan. 24, 2012), *available at* http://chicago.cbslocal.com/2012/01/24/madigan-school-districts-should-start-contributing-to-teacher-pensions/ ("I don't think it's out of line to ask the local districts 'Why don't you contribute to this cause? These are your employees,' Madigan said.").

[27] *See* 40 ILCS 5/16-158(a); see also 40 ILCS 5/16-158(b-3) (requiring State to make contribution equal to projected normal cost for fiscal year plus amount sufficient to bring total System assets up to 100% of actuarial liabilities by 2044).

[28] Benjamin VanMetre, *Pension Cost Shift: Why School District Would Benefit from a 401(k)-Style Retirement Plan*, ILLINOIS POLICY INSTITUTE (May 17, 2013), *available* at http://www.illinoispolicy.org/reports/pension-cost-shift-why-school-districts-would-benefit-from-a-401k-style-retirement-plan/ ("By paying the employer contribution of teachers' pensions on behalf of school districts, the state is essentially paying for spending decisions over which it has little control.").

[29] *See, e.g.*, Carol Felsenthal, *Bruce Rauner is Karen Lewis's Worst Nightmare,* CHIC. MAG., Nov. 18, 2013, *available at* http://www.chicagomag.com/Chicago-Magazine/Felsenthal-Files/November-2013/Karen-Lewis-on-Quinn-Vallas-and-on-Her-Worst-Nightmare-Bruce-Rauner/ ("Bruce Rauner is a nightmare. I have nothing good to say about him. He would be damaging to every working person in Illinois. . .").

[30] Bernard Schoenburg, *Rauner Takes on "Union Bosses" as He Jumps in Race for Governor,* STATE JOURNAL-REGISTER, June 6, 2013, *available at* http://www.sj-r. com/article/20130606/News/306069869 ("As an outsider, those government union bosses can't intimidate me," Rauner . . . said in an interview.

"I'm not dependent on them for money or support or re-election, and I bring a unique set of skills that none of the politicians have.").

[31] *Compare Rauner Explains "Right to Work Zones,"* DAILY HERALD, Oct. 13, 2014, *available at* http://www.dailyherald.com/article/20141013/news/141019293/ (Rauner stated "he won't push statewide right to work legislation or try to curb collective bargaining rights . . .") *with* Jessie Hellmann & Ray Long, *Rauner Returns to Anti-union Rhetoric While Blasting State Business Climate*, CHI. TRIB., Jan. 28, 2015, *available at* http://www.chicagotribune.com/ news/local/politics /ct-bruce-rauner-union-rhetoric-met-0128-20150127-story.html (Rauner "lambasted a 'conflict of interest' and 'corrupt' alliance in which big labor campaign contributions support Democratic candidates . . . then reap better state benefits and higher wages on public works projects.").

[32] *See* Pub. Act 97-1172 (Ill. 2013) (amending 5 ILCS 315/3(n) to remove from the definition of "public employee", among other positions, legislative liaisons, attorneys employed by Attorney General, and public service administrators at the Comptroller's Office); Pub. Act 98-100 (Ill. 2013) (amending 5 ILCS 315/3(n) to remove from the definition of "public employee", among other positions, Chief Stationery Engineer, Sewage Plant Operator, Civil Engineer (V-VII), and Realty Specialists (III-V)).

[33] *See* 5 ILCS 315/21.5 (No collective bargaining agreement entered into . . . between an executive branch constitutional officer or any agency or department of an executive branch constitutional officer and a labor organization may provide for an increase in salary, wages, or benefits starting on or after the first day of the terms of office of executive branch constitutional officers and ending June 30th of that same year.).

[34] For a complete list of the existing collective bargaining agreements between the departments and agencies of the State of Illinois and various labor unions, *see* Dept. Central Management Services, *Labor Relations*, *available at* http://www2.illinois.gov/cms/Employees/Personnel/Pages/PersonnelLaborRelations.aspx (last visited Mar. 9, 2015).

[35] *See* IND. CODE 4-15-2.2-19; *see* 31 IND. ADMIN. CODE 5-5-1("Salary advancement within the established range shall be . . . based upon meritorious service as indicated by service ratings and other pertinent data."); *see also Gov. Pence OKs bonuses for State Employees*, INDIANAPOLIS STAR, Dec. 20, 2013, *available at* http://www.indystar.com/story/news/politics/2013/12/20/gov-pence-oks-

bonuses-for-state-employees/4147921/ (Pence authorizes bonus payments for state employees who met or exceeded expectations).

[36] *See* AFSCME Master Contract, 2012-2015, Art. XXXII, § 6 "General Increases," *available at* https://www2.illinois.gov/cms/Employees/Personnel/Pages/PersonnelLaborRelations.aspx (providing for 2% wage increases on July 1, 2013 and July 1, 2014).

[37] Tom Kacich, *Rauner Still Likes Daniels' Approach*, NEWS-GAZETTE, April 6, 2014, *available at* http://www.news-gazette.com/news/local/2014-04-06/tom-kacich-rauner-still-likes-daniels-approach.html ("I'd like to see government workers be able to make more because they're more productive and efficient in their output on behalf of taxpayers. That's a better way to compensate them. That's what Mitch Daniels did in Indiana.").

[38] Exec. Order 13-15, (Ill. Feb. 9, 2015), *available at* http://www.illinois.gov/Government/ExecOrders/Pages/2015_13.aspx.

[39] *See* Complaint., *Rauner v. AFSCME Council 31.*, No. 1:15-cv-01235 (N.D. Ill. filed Feb. 09, 2015).

[40] *Id.* at ¶ 78. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

[41] *See id.* at ¶ 71-73. Notably, a group of teachers in California brought a suit against the California Teachers Association seeking to overturn *Abood*, and the Supreme Court may grant *certiorari* before the Northern District of Illinois rules on Governor Rauner's action for declaratory judgment. *See Friedrichs v. California Teachers Ass'n*, No. SACV 13-676-JLS (CWx), 2013 WL 9825479 (C.D. Cal. Dec. 5, 2013) (granting plaintiffs' motion for judgment on the pleadings and entering judgment for defendants), *aff'd*, No. 8:13-cv-00676-JLS-CW (9th Cir. Nov. 18, 2014) (granting plintiffs/appellants' motion for summary affirmance), *cert. filed* , No. 14-915 (pet. filed Jan. 26, 2015).

[42] 2011 Wis. Act 10 (Mar. 11, 2011), *available at* http://docs.legis.wisconsin.gov/2011/related/acts/10. Wisconsin's Act 10, also referred to as the Budget Adjustment Act, eliminated collective bargaining rights with respect to hours and conditions of employment for municipal and state employees who are not public safety employees. Employees may still bargain over their wages. However, public employees may not bargain over a wage increase that is greater than the percentage change in the consumer price index (CPI), unless a referendum authorizes a greater increase. Act 10 also eliminated fair-share agreements, and permits employees to remain members of a collective bargaining

unit without paying dues. For a detailed discussion of the changes enacted in Act 10, see Wisconsin Legislative Council, *Act Memorandum*, (May 9, 2011), *available at* http://docs.legis.wisconsin.gov/2011/proposals/jr1/ab11. Additionally, Governor Walker just signed Senate Bill 44, a right-to-work bill which recently passed the Wisconsin Senate and the Wisconsin Assembly, which prohibits labor contracts from requiring workers to pay union fees as a condition of employment. *See* Monica Davey, *Unions Suffer Latest Defeat in Midwest with Signing of Wisconsin Measure*, N.Y. TIMES, Mar. 9, 2015, *available at* http://www.nytimes.com/2015/03/10/us/gov-scott-walker-of-wisconsin-signs-right-to-work-bill.html?_r=0.

[43] *See Rauner Previews "Right to Work Zones" as First-Year Priority*, CRAIN'S CHI. BUS., Jan. 27, 2015, *available at* http://www.chicagobusiness.com/article/20150127/NEWS02/150129820/rauner-previews-right-to-work-zones-as-first-year-priority; James Sherk, *Bruce Rauner Is Trying Kentucky's Approach to Right-to-Work: Do It Locally*, NAT'L REV., Jan. 30, 2015, *available at* http://www.nationalreview.com/corner/397630/bruce-rauner-trying-kentuckys-approach-right-work-do-it-locally-james-sherk.

[44] Sophia Tareen, *Republican Rauner Explains "Right to Work Zones*," WASH. TIMES, Oct. 13, 2014, *available at* http://www.washingtontimes.com/news /2014 /oct/13/gop-gov-candidate-explains-right-to-work-zones/?page=all.

[45] *See* Leg. Doc. 1835, 126th ME LEG. 2014 (March 20, 2014).

[46] Christopher Cousins, *LePage's 'Open for Business Zones' Bill Rejected in Senate Behind Arguments That It's Too generous*, BANGOR DAILY NEWS, April 11, 2014, *available at* http://bangordailynews.com/2014/04/11/politics/lepages-open-for-business-zones-bill-rejected-in-senate-behind-arguments-that-its-too-generous/.

[47] *See* Complaint., *U AW. v. Hardin County, Kentucky, N*o. 3:15-CV00066 (W.D.Ky. filed Jan. 14, 2015).

[48] Op. Att'y Gen., *Authority of Counties and Municipalities to Adopt Right-to-Work Ordinances*, 15-001 (March 20, 2015). According to Madigan, Section 8(a)(3) of the National Labor Relations Act, 29 U.S.C. § 158(a)(3), preempts the regulation of union security agreements. While Section 14(b) of the Act permits states to pass "right to work" statutes, *see* 29 U.S.C. § 164(b), that section refers to "any State or Territory." Therefore, according to Madigan, states and territories as a whole may enact right to work laws, but a state's political subdivisions and local

governments may not pass ordinances or other local legislation regulating union security agreements. Op. Att'y Gen. at 13.

[49] Op. Att'y Gen., *Authority of Counties and Municipalities to Adopt Right-to-Work Ordinanc*es, 15-001 (March 20, 2015). Article 28 of the Election Code, 10 ILCS 5/28-1, provides that questions of public policy which have any legal effect are submitted to referendum only as authorized by statute or by the Constitution. No constitutional or statutory provision currently authorizes local referenda regarding "right to work" zones. Therefore, according to Madigan, any referendum on the subject would be purely advisory. *See* 10 ILCS 5/28-6; see Opp. Att'y Gen. at 14.

[50] *See Bring Back Blueprint: Jobs and Growth Agenda*, CITIZENS FOR RAUNER 11-12.

[51] *Id.*

[52] *See* Elain Povich, *Cash-Strapped States Turn to Public Private Partnerships*, Pew Charitable Trusts (Nov. 14, 2013), *available at* http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/11/14/cashstrapped-states-turn -to-publicprivate-partnerships.

[53] 630 ILCS 5/1 *et seq*.

[54] Adrienne Selko, *Chicago is New Home of Digital Manufacturing and Design Innovation Institute*, INDUS. WK., Feb. 26, 2014, *available at* http://www.industryweek.com/innovation/chicago-new-home-digital-manufacturing-and-design-innovation-institute.

[55] *See* IND. CODE 5-28-1-1 *et seq*.

[56] Bob Segall, *Where Are the Jobs? The Real Numbers Are in*, WTHR INDIANA (Jan. 20, 2011), *available at* http://www.wthr.com/story/13870940/where-are-the-jobs-the-real-numbers-are-in (finding while IEDC predicted job creation of 57,088, projects receiving IEDC funding only actually created 37,640 jobs).

[57] *See* John Russell & Alex Campbell, *The China Letter*, INDIANAPOLIS STAR, Dec. 15, 2012, *available at* http://archive.indystar.com/article/20121215/NEWS/212160310/Star-Exclusive-China-Letter.

[58] 2011 Wisconsin Act 7 (Feb. 9, 2011); WIS. STAT. 238.01 *et seq*.; *see* Jason Stein, *Wisconsin Jobs Agency Failed in Tracking Taxpayer Money, Audit*

*Find*s, MILWAUKEE JOURNAL-SENTINEL, May 1, 2013, *available at* http://www.jsonline.com/news/statepolitics/wisconsin-jobs-agency-failed-in-tracking-taxpayer-money-audit-finds-9a9pl8g-205595881.html.

[59] Bruce Rauner, *Education Reform, BRING BACK BLUEPRINT 4* (2014), *available at* http://bruceraunercom/bruce-rauner-releases-education-reform/.

[60] *Id.* at 11-14.

[61] Craig Dellimore, *Emanuel to Rauner: Keep Your School Funding Promise*, CBS CHICAGO (Jan. 13, 2015), *available at* http://chicago.cbslocal.com/2015/01/13/emanuel-to-rauner-keep-your-school-funding-promise/.

[62] Monique Garcia, *Rauner Plans to Propose Raising School Funding in First Budg*et, CHI. TRIB., Feb. 18, 2015, *available at* http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-state-budget-met-0218-20150218-story.html.

[63] *Id.*

[64] *Id.*

[65] *See* Amien Essif, *Illinois Public Employees Prepare for a Bruising Fight with Bruce Rauner*, IN THESE TIMES, Dec. 3, 2014, *available at* http://inthesetimes.com/working/entry/17411/illinois_public_employees_prepare_for_a_bruising_fight_with_bruce_rauner.

[66] Monica Davey, In Illinois, New Governor's Campaign Promises Are About to Meet Budget Realities, N.Y. TIMES, Jan. 10, 2015, *available at* http://www.nytimes.com/2015/01/11/us/politics/in-illinois-bruce-rauners-campaign-promises-are-about-to-meet-budget-realities.html?_r=0. In 2011, Pat Quinn signed into law the tax increase. The law provided for a partial rollback of the personal income tax rate to 3.75 percent in 2015. Quinn called for an extension of the increase in the middle of his campaign for re-election.

[67] *See* Lisa Black & Rick Pearson, *Rauner Urges Phase-out of Income Tax Hike, Broadening of Sales Ta*x, CHI. TRIB., July 17, 2014, *available at* http://www.chicagotribune.com/news/local/breaking/chi-rauner-urges-phaseout-of-income-tax-hike-broadening-of-sales-tax-20140717-story.html.

[68] RICHARD DYE, NANCY HUDSPETH & ANDREW CROSBY, APOCALYPSE NOW? THE CONSEQUENCES OF PAY-LATER BUDGETING IN ILLINOIS: UPDATED PROJECTIONS FROM IGPA'S FISCAL FUTURES MODEL, (Univ. of Ill. Institute of Gov't & Pub. Affairs, Fiscal

Futures Project Jan. 19, 2015), *available at* http://igpa.uillinois.edu/system/files/FF_Apocalypse_Now_Jan_2015.pdf; *see* Greg Hinz, *Rauner Unveils Plan to Revamp Illinois' Tax System*, CRAIN'S CHI. Bus., July 17, 2014, *available at* http://www.chicagobusiness.com/article/20140717/BLOGS02/140719831/rauner-unveils-plan-to-revamp-illinois-tax-system.

[69] *See Jessie Hellmann & Ray Long, Rauner Presses for Sales Tax Expansion in U. of I. Speech*, CHI. TRIB., Jan. 29. 2015, *available at* http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-champaign-appearance-met-0130-20150129-story.html.

[70] *See Paul Merrion, Rauner, the Anti-Tax Candidate, Finds a Tax He Liked: On Services*, CRAIN'S CHI. BUS., July 26, 2014, *available at* http://www.chicagobusiness.com/article/20140726/ISSUE01/307269986/rauner-the-anti-tax-candidate-finds-a-tax-he-likes-on-services.

[71] Iowa Department of Revenue, *Iowa Sales and Use Tax: Taxable Services*, https://tax.iowa.gov/iowa-sales-and-use-tax-taxable-services-0; Wisconsin Department of Revenue, *Wisconsin Taxable Services,* http://www.revenue.wi.gov/faqs/ise/taxable.html; *See* Indiana Fiscal Policy Institute, Sales Taxation of Services in Indiana: Concepts and Issues (Information Brief 2009), *available a*t http://www.google.com/url?sa =t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.indianafiscal.org%2FResources%2FDocuments%2FSales-Taxation-Services-Indiana.pdf&ei=tVHNVJ39NcXksASE94J4&usg=AFQjCNGsQDht0Wi0bKKz8-v7unvRmo3jtw&sig2=8SWsrrDqDXYY8Pz8mpz5gw.

[72] Iowa Department of Revenue, *Iowa Sales and Use Tax: Taxable Services*, https://tax.iowa.gov/iowa-sales-and-use-tax-taxable-services-0.

[73] Bruce Rauner, Jobs and Growth Agenda, BRING BACK BLUEPRINt 8-9(2014), *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fbrucerauner.com%2Fwp-content%2Fuploads%2F2014%2F07%2Fbring-back-blueprint-jobs-and-growth.pdf&ei=BVDNVMHcO4P7sASE3YKgAg&usg=AFQjCNHOAlVgO-wVRdx7osDx0qlUr7r9cg&sig2=3V5IbK54ZPSP1f2CeQkEHQ. In his blueprint, Rauner identified possible sales tax revenue of services such as the following: general warehousing and storage, check and debt collection, printing, attorneys, interior design and decorating, membership fees in golf clubs, chartered flights, and personal property rentals.

[74] *Id.*

[75] Natasha Korecki, *Rauner: Freeze Property Taxes, Cut Income Tax, Create Service Tax*, CHI. SUN TIMES, July 18, 2014, *available at* http://chicago.Suntimes.com/politics/7/71/162447/rauner-freeze-property-taxes-cut-income-tax-create-service-tax.

[76] 35 ILCS 200/18-185.

[77] *See* Sally Ho & John P. Huston, *District 113 and 112 Nervous About Potential Property Tax Freeze*, CHI. TRIB., April 8, 2013, *available at* http://articles.chicagotribune.com/2013-04-08/news/ct-tl-lk-0411-ptell-changes-2013 040 8_1_property-values-property-taxes-inflation.

[78] Bruce Rauner, *Education Reform*, BRING BACK BLUEPRINT 7 (2014), *available at* http://bruceraunер.com/wp-content/uploads/2014/09/Bring-Back-Blueprint- Education-Reform.pdf.

[79] *Id.*

[80] *See* Liz Chaplin, *From the Community: Meeting the Challenge of Senate Bill 16*, CHI. TRIB., Sept. 29, 2014, *available at* http://www.chicagotribune.com/suburbs/downers-grove/community/chi-ugc-article-meeting-the-challenge-of-senate-bill-16-2014-09-30-story.html. State Senator Andy Manar has reintroduced the bill as Senate Bill 1, the School Funding Reform Act of 2015. *See Manar Unveils School Funding Reform Details*, OFFICE OF SEN. ANDY MANAR (Feb. 3, 2015), *available at* http://senatorandymanar.com/multimedia/press-releases/146-manar-unveils-school-funding-reform-details.

[81] Andrew Ujifusa, I*llinois Moves Towards Significant Shift in How Schools are Funde*d, EDUC. WK., July 9, 2014, *available at* http://blogs.edweek.org/edweek/state_edwatch/2014/07/illinois_moves_towards_significant_.html.

[82] Chaplin, *supra* note 80; Stephanie K. Baer, *District 102 Could Lose $2.7 Million in State Aid Under Proposed Bill*, CHI. TRIB., Nov. 7, 2014, *available at* http://www.chicagotribune.com/suburbs/la-grange/ct-district-102-sb-16-resolution-tl-1113-20141107-story.html.

[83] Dr. Michael Lubelfeld, *Financial Impact of Proposed Legislation*, SUPERINTENDENT'S OFFICE DPS109, Sep. 18, 2014, *available at* http://dps109supt.edublogs.org/2014/09/18/financial-impact-of-proposed-legislation/.

[84] *See* Natasha Korecki, *Rauner Wants to Revamp School Funding Formula, Not Sure How*, CHI. SUN-TIMES, Sept. 8, 2014, *available at* http://chicago.sun

times.com/politics/7/71/159110/rauner-wants-to-revamp-school-funding-formula-not-sure-how; *see generally* Bruce Rauner, *Education Reform*, Bring Back Blueprint (2014) *available at* http://brucerauner.com/bruce-rauner-releases-education-reform/.

[85] Bruce Rauner, *Education Reform*, BRING BACK BLUEPRINT 11 (2014), *available at* http://brucerauner.com/wp-content/uploads/2014/09/Bring-Back-Blueprint-Education-Reform.pdf.

[86] *Id.*

[87] *Id.* at 12.

[88] *Id.* at 15.

[89] *Id.* The current cap on charter schools in Illinois is set forth in the Illinois School Code at 105 ILCS 5/27A-4(b). Pursuant to the School Code, "[t]he total number of charter schools operating under this Article at any one time shall not exceed 120. Not more than 70 charter schools shall operate at any one time in any city having a population exceeding 500,000, with at least 5 charter school devoted exclusively to students from low-performing or overcrowded schools operating at any one time in that city; and not more than 45 charter schools shall operate at any one time in the remainder of the State, with not more than one charter school that has been initiated by a board of education, or by an intergovernmental agreement between or among boards of education, operating at any one time in the school district where the charter school is located. In addition to these charter schools, up to but no more than 5 charter school devoted exclusively to re-enrolled high school dropouts and/or students 16 or 15 years old at risk of dropping out may operate at any one time in any city having a population exceeding 500,000." 105 ILCS 5/27A-4(b).

[90] Rebecca Vevea, *Unions Move in at Chicago Charter Schools, and Resistance is Swift*, N.Y. TIMES, Apr. 7, 2011, *available at* http://www.nytimes.com/2011/04/08/us/08cncharter.html?pagewanted=all&_r=0.

[91] Stephanie Banchero, *Charter-School Flares up in Illinois*, WALL ST. J., Apr. 8, 2014, *available at* http://www.wsj.com/articles/SB10001424052702304819004579489932675910294.

[92] Bruce Rauner, *Education Reform,* BRING BACK BLUEPRINT 16 (2014), *available at* http://brucerauner.com/wp-content/uploads/2014/09/Bring-Back-Blueprint-Education-Reform.pdf.

[93] *Id.* at 15.

[94] Atila Abdulkadiroglu et al., *Accountability and Flexibility in Public Schools: Evidence from Boston's Charters and Pilots 2* (Nat'l Bureau Econ. Research Working Paper 15549, Nov. 2009), *available at* http://www.nber.org/papers /w15549.pdf.

[95] *See id.*

[96] *See id.* at 1 ("the extent to which they operate outside collective bargaining provisions is spelled out in school-specific election-to-work agreements signed by pilot faculty").

[97] *Id.* at 6.

[98] *Id.* at 1.

[99] Bruce Rauner, Education Reform, Bring Back Blueprint 15 (2014), *available at* http://brucerauner.com/wp-content/uploads/2014/09/Bring-Back-Bluepr int -Education-Reform.pdf.

[100] *Id.* at 15-18.

[101] *Id.* at 13-14.

[102] *Id.*

[103] Senate Bill 736, codified at FLA. STAT. § 1012.34, provides that at least 50% of the teacher evaluation system is based on student gains. Florida teachers are evaluated and rated as 1) highly effective; 2) effective; 3) needs improvement; and 4) unsatisfactory. Effective July 1, 2014, districts must have two salary schedules: a "grandfathered" schedule and a performance salary schedule. The "grandfathered" schedule is the basis for paying any teacher hired before July 1, 2014. Teachers on the "grandfathered" schedule will be paid the salary they earned the prior year, including any adjustment for a "highly effective" or "effective" evaluation. The performance salary schedule provides annual salary adjustments for the teachers. The annual salary adjustment for teachers on the performance salary schedule is higher than that on the "grandfathered" schedule, an incentive for teachers to be on the performance schedule. Teachers who were hired before July 1, 2014 can opt to enter the performance salary schedule but cannot later go back to the "grandfathered" schedule. All employees hired after July 1, 2014 are placed on the performance salary schedule.

[104] Bruce Rauner, *Education Reform*, Bring Back Blueprint 14 (2014), *available at* http://brucerauner.com/bruce-rauner-releases-education-reform/.

[105] Act 1, codified at LA. REV. STAT. ANN. § 17:148, provides that salaries for teachers must be based upon the following criteria, with no one criterion counting for more than fifty percent of the formula used to compensate salaries: 1) effectiveness; 2) demand (inclusive of certification, particular school need, geographic area, and subject area) which may include advanced degree levels; and 3) experience. School districts are charged with determining the percentage of each of the factors in developing the compensation structure. Teachers who earn an ineffective rating are not eligible for a salary increase for the year following that evaluation. Districts may determine whether to reward teachers with a permanent increase to the base or with a one-time stipend. The merit pay system is controversial because the law requires local school systems to pay bonus money out of their own budgets during a time when some systems have frozen their regular "step" pay scales for many years. For instance, St. Charles Parish Schools had projected spending $150,000 on merit stipends in 2013-2014 but the actual cost was $400,000. Michele Molar, *Financial Lesson Learned in La. Merit-Pay Measure Shared*, EDUC. WK., Sept. 22, 2014, *available at*http://blogs.edweek.org/edweek/marketplacek12/2014/09/financial_lessons_learned_in_la_merit-pay_measure_shared.html)).

[106] Senate Bill 1, codified at IND. CODE § 20-28-9-1.5, provides that increases in the salary scale must be based upon the following: 1) 1/3 for seniority and academic degrees; 2) evaluation results; 3) assignment for instructional leadership roles; and 4) academic needs of students in school (hard to staff schools). In order to determine effectiveness, school districts must implement annual evaluations that place teachers in one of four categories: 1) highly effective; 2) effective; 3) improvement necessary or 4) ineffective. Only those teachers receiving an "effective" rating or above are eligible for pay increases. Districts can opt to pay the raise as a stipend rather than an increase to the teacher's base pay.

[107] The Performance Evaluation Reform Act (105 ILCS 5/24A-1 et seq.) provides that the order of teacher layoff is no longer determined strictly by seniority. Each teacher must be categorized into one or more positions for which the teacher is qualified to hold based upon legal qualifications and any other qualifications in a district job description on or before May 10 prior to the school year during which the RIF occurs. Each teacher must be placed in one of four groups based on ratings. Student growth is a factor which comprises at least 25% of a teacher's evaluation. Districts must then create a sequence of honorable dismissals in consultation with the union, categorized by positions and groupings. If a teacher

receives a "needs improvement" rating, he or she must receive a professional development plan. If a teacher receives an "unsatisfactory" rating, he or she must receive a remediation plan. If the teacher's rating at the end of the remediation plan is not proficient or higher, dismissal proceedings begin.

[108] Qudsiya Siddiqui, *GOP Hopes Dashed in Tight Race, Madigan Retains Supermajority*, CHI. SUN TIMES, Nov. 18, 2014, *available at* http://chicago.suntimes.com/politics/7/71/153895/gop-hopes-dashed-in-tight-race-madigan-retains-supermajority. The Illinois Constitution provides that if the Governor vetoes all or part of any bill passed by both Houses of the General Assembly, the bill shall be returned to the house in which it originated, and become law if and only if both houses pass the bill by a three-fifths majority in each house. See ILL. CONST., art. IV, § 9.

[109] *See, e.g.*, John Kass, Rauner *Still Has to Deal with Speaker Madigan*, CHI. TRIB., Nov. 4, 2015, *available at* http://www.chicago tribune.com/news/columnists/kass/ct-madigan-quinn-rauner-governor-kass-met-1105-20141104-column.html.

[110] *Governor Announces Latest Round of Agency Appointments*, ILL. GOV'T NEWS NETWORK, Jan. 23, 2015, *available at* http://www3.Illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=2&RecNum=12955 (appointing Bryan Schneider, general counsel for Walgreens, Co., as Director of Illinois Department of Financial and Professional Regulation).

[111] *See id.*

[112] *Joseph Costigan*, BALLOTOPEDIA, http://ballotpedia.org/Joseph_Costigan (last visited Jan. 31, 2015).

[113] Office of Executive Appointments, *Illinois Board, Commission, Task Force and Council List*, *available a*t http://appointments.illinois.gov/appointmentsListing.cfm (last viewed Jan. 24, 2015).

[114] *See, e.g.*, 5 ILCS 315/5(a-5) (2014) (Governor appoints 5 members of Illinois Labor Relations Board, State Panel).

[115] See Board and Commissions, *State Board of Education,* ILLINOIS. GOV, *available at* http://appointments.illinois.gov/appointmentsDetail.cfm?id=79 (last viewed Jan. 24, 2015). Chairman Meeks replaced Gerry Chico as Chairman, whose term expired January 14, 2015. In addition to Chico, three members' terms expired on January 14, 2015: Andrea Brown (D-Chicago); David

Fields (D-Vermillion); and Vinni Hall (D-Cook). *Id.* Additionally, one of the Board's seats is vacant. *Id.*

[116] Rick Pearson, *Rauner Names Meeks as Illinois State Board of Education Chairma*n, CHI. TRIB., Jan. 10, 2015, *available at* http://www.chicagotribune.com/news/local/politics/chi-rauner-names-meeks-as-illinois-state-board-of-education-chairman-20150110-story.html.

[117] Phil Kadner, *Rauner, Meeks, and Public Schools*, SOUTHTOWN STAR (Jan. 12, 2015), *available at* http://southtownstar.chicagotribune.com/news/kadner/32158194-452/kadner-rauner-meeks-and-public-schools.html#.VMQDHU10zjo ("In an effort to reach across party lines to gain support for school reform, Meeks advocated for charter schools and student vouchers, two ideas often embraced by Republicans.").

[118] *See* 105 ILCS 5/1A-1(c); see *Rauner Rolls Out Fourth Wave of Appointment*s, ILL. OBSERVER, Jan. 31, 2015, *available at* http://www.illinoisobserver. net/?s=%22Rauner+Rolls+Out+Fourth+Wave%22 (appointing four new members to the State Board of Education).

[119] *See Educational Labor Relations Board, Boards and Commissions Detail*, *available at* http://appointments.illinois.gov/appointmentsDetail.Cfm?id=80 (last viewed Jan. 31, 2015) (one Board position vacant, Chair Sered and Member O'Brien terms expire June 1, 2016); *see Labor Relations Board*, Boards and Commissions Detail, *available at* http://appointments.illinois.gov/appointmentsDetail.cfm?id=165 (last viewed Jan. 31, 2015) (Member Brennwald's term expired January 26, 2015, Member Hartnett's term expires January 25, 2016, and Member Gierut's term as Chair of the Local Panel expires January 23, 2017).

RECENT DEVELOPMENTS

By, Student Editorial Board:

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Recent Developments is a regular feature of the Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the public employee collective bargaining statutes.

I. IELRA DEVELOPMENTS

A. Duty to Bargain

In SIUC Non-Tenure Track Faculty Association, IEA-NEA, Association of Civil Service Employees, IEA-NEA,and SIUC *Tenure-Track Faculty Association, IEA-NEA, and Southern Illinois University Carbondale*, 31 PERI ¶ 98 (IELRB 2014), the IELRB found that the university violated sections 14(a)(5) and14(a)(l) of the IELRA, by unilaterally implementing its "last, best and final" offers without bargaining in good faith to impasse over mandatory subjects of bargaining.

A review of the evidence, including an exchange between the University's Associate General Counsel and the Assistant Provost, showed that the employer failed to keep an open mind during negotiations with three unions. Specifically, the University held its position that a budget shortfall be resolved by requiring employees across the three bargaining units to take four unpaid furlough days—thereby altering the status quo. Each union raised the issue that attrition alone would lead to the same cost-savings result, but was ignored. The university also failed to engage in substantive dialogue about other issues, such as a full fair share provision. After each bargaining unit's respective exclusive representative rejected the University's offers for three-year agreements, the University allowed no time for union counter proposals. Instead, the University offered one-year agreements to each union, as its "last, best and final" offer, ultimately implementing each offer unilaterally. Accordingly, the IELRB found that the University violated the Act, not only because it altered the status quo concerning mandatory subjects, but also because it lacked a sincere desire to reach an ultimate agreement.

In *Campus Faculty Association, Non-Tenure Track, Local 6546, AFT/IFT/AAUP, and Board of Trustees of the University of Illinois,* 31 PERI ¶ 72, 31 IELRB 2014), the IELRB decided to seek preliminary injunctive relief against the university's

withholding of 2.5 percent merit pay raises to non-tenure track full time faculty represented by the union. Pub. Employee Rep. for Illinois ¶ 72, 2014 WL 5840673.

On July 8, 2014, the union was certified as the representative of a bargaining unit of the full-time non-tenure track faculty at the University of Illinois Urbana-Champaign campus. On June 16, 2014, the University of Illinois announced a merit-based general salary increase of 2.5 percent, effective August 2014 and applicable to all university employees whose wages were not set by collective bargaining agreements. In August 2014, the university and union had yet to begin negotiations, but the university stated that it would not implement salary increases because doing so would be a unilateral change without bargaining.

In response, the union communicated its position that the fall 2014 raises were previously established and should go forward in order to maintain the status quo. The university declined, arguing that the policy of the university was to bargain with the union prior to awarding any salary increases. The union then alleged a violation of sections 14(a)(1), 14(a)(2) and 14(a)(5) of the IELRA, by unilaterally freezing wages for bargaining unit members and by refusing to bargain with the union.

The IELRB voted to seek preliminary injunctive relief against the denial of merit increases. The IELRB found that the unfair labor practice charges had a substantial likelihood of success. The IERLB found that the university engaged in a practice of regular merit-based increases, and therefore the university changed that status quo by refusing to award the increases. *See Vienna Sch. Dist. No. 55 v. IELRB*, 162 Ill. App. 3d 503, 508, 515 N.E.2d 476, 479 (1987). The merit based raises were announced prior to the certification of the union as exclusive bargaining representative and, thus, defined the status quo for purposes of bargaining. The IELRB found that preliminary injunctive relief was proper because the university's denial of previously scheduled salary increases shortly after forming a collective bargaining relationship would cause irreparable harm, even if the injury were not particularly great. The court only references one salary, the refusal of the University to honor a $50 salary increase.

II. IPLRA DEVELOPMENTS

A. Arbitration

In *McGreal v. ILRB State Panel,* 2014 IL App (1st) 133634-U, the First District Appellate Court affirmed the State Panel's decision that the parties' waiver of contractual qualifications of an arbitrator conferred on the arbitrator the power to preside over the arbitration of a grievance. The case arose when the Metropolitan

Alliance of Police ("MAP") filed an unfair labor practice charge against the Village of Orland Park concerning the village's treatment of Officer Joseph McGreal. MAP charged that the village disciplined Officer McGreal because of his union activities.

The Board's executive director deferred further proceedings on the charge pending arbitration, in accordance with the grievance procedure established in the collective bargaining agreement between MAP and the village. The collective bargaining agreement provided that if the parties were unable to agree upon an arbitrator they would jointly request the Federal Mediation and Conciliation Service to submit a panel of arbitrators who were members of the National Academy of Arbitrators. The parties would pick an arbitrator by alternatively striking names. The parties followed this method and selected Dennis Stoia as the arbitrator to preside over the grievance.

About a year into the arbitration, McGreal objected to Mr. Stoia's jurisdiction on the ground that Mr. Stoia did not belong to the National Academy of Arbitrators. The village and MAP chose to allow Mr. Stoia to continue to preside. Mr. Stoia issued his decision on November 14, 2012, and neither the village, nor MAP, nor McGreal filed any timely challenge to the decision. The Board's executive director deferred to the arbitration award and dismissed the charge.

McGreal appealed raising the issue of Mr. Stoia's jurisdiction to hear the case since he was not a member of the National Academy of Arbitrators as required by the collective bargaining agreement. The court denied his appeal reasoning that arbitration rights like any other contractual rights can be waived. The court reasoned MAP and the village waived their rights to insist on an arbitrator who was a member of the National Academy of Arbitrators when they agreed that Mr. Stoia should continue to preside over the arbitration. This waiver, the court reasoned, conferred on Mr. Stoia the power to preside over the arbitration of the grievance. Therefore, the court affirmed the Board's ruling that the parties had waived their right to object to the arbitrator and affirmed its deferral to the arbitration award.

B. Discrimination

In *International Union of Operating Engineers, Local 399, and Village of Stickney*, Case No. S-CA-12-121, 31 PERI ¶ 77 (ILRB State Board Panel 2014), the State Panel affirmed the administrative law judge's ruling that the Village of Stickney did not violate Sections 10(a)(1) and 10(a)(2) of the Act when it terminated three of its employees who were involved in a union organizing campaign. The union claimed that the terminations were in retaliation for employees' organizing efforts while the village claimed that the terminations were an economic decision.

In upholding the terminations as lawful the State Panel reasoned that there was no causal connection between the village's anti-union animus and the terminations. The panel found credible the mayor's testimony that he decided on the terminations before he found out about the employees' involvement in organization efforts. It reasoned that the testimony was supported by other documentary evidence, including a screenshot of a spreadsheet demonstrating that the mayor contemplated terminating at least three employees on November 18, 2011, before he learned of the organizing efforts. The Panel viewed the mayor's use of different terms to explain the firings to the employees as consistent since they shared economic efficiency as a unifying theme. The panel did not view them as shifting explanations.

Member Coli dissented. He believed that the village retaliated against the employees because of their organizing efforts. He noted that the employees were fired 11 days after the mayor learned of their organizing efforts. Member Coli found the mayor's reasoning for the firings to be pre-textual and shifting. He noted that the mayor gave different reasons to different employees as for firing them. The mayor told one employee that overstaffing was the reason for the decision yet he told another employee that the decision was due to budget cuts. Member Coli reasoned that evidence of the mayor's contemplation of terminations in November did not prove that he finalized the decision in November. Rather, he believed that the evidence suggested the mayor finalized his decision to fire the employees after he learned of their organizing efforts.

C. Fair Share Fees

On February 9, 2015, Governor Bruce Rauner issued Executive Order 15-13 prohibiting the Illinois Department of Central Management Services and other state agencies from enforcing fair share provisions of the state's collective bargaining agreements. Instead, the fee deductions are to be held in escrow pending court determination. Governor Rauner's executive order relied upon the Supreme Court's recent ruling in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), which had held that compelled fair share fees for home health care assistants were unconstitutional. The Governor quoted *Harris* for the "bedrock principle that no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support because compelling funding of the speech of other private speakers or groups presents the same dangers as compelled speech." (Internal quotes omitted). The Governor continued by noting that the Court in *Harris* criticized the Court's previous ruling in *Abood v. Detroit Board of Education*. 431 U.S. 209 (1977), which had upheld the constitutionality of fair share fees that did not encompass expenditures for political or ideological

activities. In light of the *Harris* criticism, the Governor argued that there is "no doubt" that the current fair share provisions "violate Illinois state employees' freedoms of speech and association." In conjunction with the executive order, the Governor filed a complaint in United States District Court in Chicago for Declaratory Judgment against twenty-six public sector labor unions requesting that the fair share provisions be found unconstitutional. The unions have filed a complaint in the Circuit Court of St. Claire County seeking a preliminary injunction against the executive order.

D. Representation Proceedings

In *Illinois Council of Police, Village of Lyons, Illinois Fraternal Order of Police, Metropolitan Alliance of Police, and Aaron Gatterdam*, Case No. S-RC-14-073, 31 PERI ¶ 110 (ILRB State Panel 2014), the State Panel affirmed the administrative law judge's finding that six laid off police officers were eligible to vote in a representation election. The election involved police officers employed by the Village of Lyons who at the time were represented by the Illinois Fraternal Order of Police ("FOP"). On March 11, 2014, the Illinois Council of Police ("ICOP") filed a petition for an election to replace FOP. Two weeks later the Metropolitan Alliance of Police ("MAP") filed a petition to intervene in the election. The election was held and 17 ballots were cast. Six of the ballots, which were cast by recently laid off employees, were challenged and set aside.

The State Panel noted that bargaining units include both active duty employees and inactive employees who have a reasonable expectation of future employment. The expectations of future employment must be objectively reasonable. The Panel adopted the National Labor Relations Board's four factors test for determining objective reasonableness: 1) the employer's past experiences; 2) the employer's future plans; 3) circumstances surround the layoff; and 4) what the employees were told about the likelihood of recall.

The Panel held that the first three factors weighed in favor of finding a reasonable expectation of future employment while it found the fourth factor to be neutral. In support of its analysis of the first factor, employer's past experiences, the panel relied on village manager's statements that because of their role in public safety he would recall the police officers before recalling other types of employees. The Panel also reasoned that the village had recalled a police officer five years earlier. In reasoning that the second factor, employer's future plans, weighed in favor of reasonable expectation of future employment the Panel relied on the village manager's statement that he intended to recall the police officers when the village's fiscal restraints subsided. The Panel found the third factor, circumstances

surrounding the layoff, to be the strongest weighing in favor of finding a reasonable expectation of future employment. The Panel considered that the village's need for police services would not diminish and that the village had a contractual and statutory duty to recall laid off police officers. Finally, the panel held that the fourth factor, what the employees were told about the likelihood of recall, was neutral. Therefore, the Panel held that the factors weighed in favor of finding reasonable expectation of future employment.

E. Retaliation

In *Logan and City of Chicago*, Case No. L-CA-12-041 (ILRB Local Panel 2015), the Local Panel held that the city did not violate section 10(a)(3) of the IPLRA when it sent an employee a notice of a pre-disciplinary hearing after the employee filed an unfair labor practice charge alleging that the city had violated his *Weingarten* rights. The Local Panel found that issuing a notice of pre-disciplinary hearing did not constitute an adverse employment action.

The Local Panel acknowledged that an adverse action need not result in financial consequences; however, it must affect a qualitative change in an employee's terms or conditions of employment. The notice was at most a threat of discipline, but not discipline itself and therefore not prohibited under the Act.

Local Panel Chairman Gierut dissented. He argued that "the clear and intended chilling effect of the disciplinary notice" amounted to an adverse action triggering the protections of section 10(a)(3).

F. Subjects of Bargain

On January 7, 2015, Governor Pat Quinn signed House Bill 5845 at Public Act 98-1151. This new law amends Section 14(i) of the Illinois Public Labor Relations Act (the "Act") and reads as follows:

> In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (including manning and also including residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) . . . 5 ILCS 315/14.

The amendment clarifies the law concerning whether minimum manning is a mandatory subject of bargaining for firefighters. Previously, in *Village of Oak Lawn*, 26 PERI ¶ 118, (ILRB State Panel 2010), the State Panel found that firefighter minimum manning was a mandatory subject of bargaining. The Panel affirmed a decision of its administrative law judge. The ALJ had applied the

balancing test set forth in *Central City Education Ass'n v. IELRB*, 149 Ill. 2d 496, 599 N.E.2d 892 (1992) and also relied on section 14(i) of the IPLRA which excluded minimum manning from interest arbitration for peace officers. The State Panel relied on the exclusion of fire fighters from the prohibition of minimum manning as a subject of interest arbitration for each officers.

On appeal, the First District Appellate Court observed that merely because a matter was not excluded from interest arbitration by section 14(i) did not necessarily mean that it was a mandatory subject of bargaining under the *Central City* balancing test. However, the court noted that the village did not challenge the ALJ's application of *Central City* and, therefore affirmed the ILRB's decision.

In *City of Danville and IAFF*, No. S-DR-15-003 (ILRB Gen. Counsel 2014), the employer successfully argued that the union's manning and staffing proposals were not mandatory subjects under the *Central City* test. The union argued that establishing minimum equipment and fire station levels affected firefighter safety. In part, the union's proposal required the City to fill vacancies if the city's fire suppression force fell below 51. However, the City argued that these levels affected both the City's budget and its standards of service, and bargaining over one of its primary functions as a city placed too much burden on its managerial rights. The General Counsel advised that the city had no obligation to bargain over manning.

Similarly, in *Village of Glenview*, Case No. S-CA-11-201, 31 PERI ¶ 79 (ILRB State Panel 2014), the State Panel found that the village could unilaterally remove one ambulance from rotation during non-peak hours. After balancing the village's budgetary needs against the safety of the firefighters, among other things, the State Panel held that the *Central City* test came out in favor of the village. The new law puts the issue to rest. If the union submits a minimum manning proposal in bargaining, or if a public employer needs to change its fire department's staffing levels, the employer may no longer act unilaterally and must bargain with the union.