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ILLINOIS PUBLIC LABOR RELATIONS LAWS:
A COMMENTARY AND ANALYSIS

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In 1984, Illinois granted public employees legally protected bargaining rights through the enactment of the Illinois Public Labor Relations Act (IPLRA) and the Illinois Educational Labor Relations Act (IELRA). The primary purpose of this article is to provide an analysis of the two new acts. Specifically, the article seeks to ascertain the legislature's intent by examining the underlying legislative history of the Acts. The article does not attempt to resolve all of the potential issues raised by the Acts. Rather, it seeks to identify some of the more significant issues and analyze those portions of the legislative history relevant to those issues. This analysis is based upon a review of the following materials: (1) Senate and House Debates; (2) House Committee on Elementary and Secondary Education, Hearings on H.B. 1530; (3) House Committee on Labor and Commerce, Hearings on S.B. 536; (4) Governor's Amendatory Veto Messages of H.B. 1530 and S.B. 536; and (5) House Minority Veto Analysis for H.B. 1530.

It should be noted that the committee hearings were contained on cassette tapes; thus, citations to those materials do not include specific page numbers. As another preliminary note, the legislature, in discussing the IPLRA, expressly stated that it intended to follow the National Labor Relations Act (NLRA) to the extent feasible.

I. COVERAGE

A determination of whether or not a specific employee is covered by either the IPLRA or the IELRA must begin with an analysis of the various definitional subsections found in the Acts. Section 3(m) of the IPLRA defines a "public employee" or "employee" as: "any individual employed by a public employer," including interns and residents at...
The language of the NLRA contains no similar inclusion of interns and residents.\(^2\) Furthermore, in Cedars-Sinai Medical Center,\(^3\) the NLRB specifically found that interns and residents are not employees as defined in § 2(3) of the NLRA.\(^4\) The legislative history of the IPLRA makes no reference to the inclusion of interns and residents. Therefore, one can only speculate as to why the legislature directly departed from the private sector precedent. Under § 18(a) of the IPLRA, an employer can seek to enjoin a strike by employees whose absence from work poses a clear and present danger to the health and safety of the public.\(^5\) It is likely that the legislature's inclusion of interns and residents was based upon the following two factors:

1. a concern for potential disruption of medical services; and
2. a concern that interns' and residents' absence from work would pose a clear and present danger to the health and safety of the public. The legislature apparently felt that these factors warranted allowing the courts to enjoin interns from striking.

Section 3(m) of the IPLRA specifically excludes certain individuals from the definition of "public employee," and, accordingly, the following individuals are not covered by the IPLRA:

1. elected officials;
2. executive heads of a department;
3. members of boards or commissions;
4. employees of any agency, board, or commission created by the IPLRA;
5. non-State peace officers;
6. all peace officers in the State Department of Law Enforcement;
7. non-State firefighters and paramedics employed by fire departments and fire protection districts;
8. employees appointed to State positions of a temporary or emergency nature;
9. all employees of school districts and higher education institutions;
10. managerial employees;
11. short-term employees;
12. confidential employees;
13. independent contractors; and
14. supervisors, except as otherwise provided in the IPLRA. The legislative
history indicates that managerial, confidential, and supervisory employees were eliminated from coverage under the IPLRA in an effort to put management and labor on a more even footing.6

Subsections 3(j), (p), (c), and (q), respectively, define managerial employees,7 short-term employees,8 confidential employees,9 and supervisors. For purposes of the IPLRA, a supervisor is:

An employee whose principal work is substantially different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust their grievances, or to effectively recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. The term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority, State supervisors notwithstanding.10

This language is substantially the same as that used to define the term "supervisor" under the NLRA.11 The italicized clauses above are those which do not appear in the NLRA definition.12 The legislative history seems to indicate that the percentage of time devoted to "supervisory duties" will be a factor, if not the only factor, used in determining whether an individual devotes a preponderance of his time to exercising "supervisory authority."13 This is clearly contrary to the private

7. For purposes of the IPLRA, a "managerial employee" is an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of such management policies and practices. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(j) (1983).
8. A "short-term employee" is defined as an employee who is employed for less than two consecutive calendar quarters during a calendar year and who does not have a reasonable assurance that he or she will be rehired by the same employer for the same service in a subsequent calendar year. ILL. REV. STAT. Ch. 48 ¶ 1603, § 3(p) (1983).
9. Under the IPLRA, a "confidential employee" is an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(c) (1983).
10. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(q) (1983).
13. During the House Debates on S.B. 536, the following dialogue took place:

Representative Hoffman:

"I'm chairman of a social studies department at a small suburban high school where I spend . . . 40% of my time in the classroom and then . . . 10% of the time . . . with the responsibility as the chairman of the department or, to translate it into total percentage, I guess it would be 80% and 20%. And that's fairly typical of the supervisors or the department chairmen in our high school. Would this language prohibit the department chairmen in the high school where I teach from organizing their own bargaining unit?"
sector practice in which the percentage of time spent on supervisory duties is immaterial to the determination of whether or not an individual is a supervisor. ¹⁴

The legislative history reflects that supervisors were excluded from the coverage of the IPLRA (except as otherwise provided) as a result of the legislature's belief that supervisory personnel should not be members of the same bargaining unit as non-supervisory personnel. The legislature was concerned with management's right to have someone on its side of the bargaining table. ¹⁵ In addition, there was a concern that the inclusion of supervisors and non-supervisors in the same unit could lead to "unions really having a stranglehold on certain operations in certain state agencies." ¹⁶

According to Representative Grieman, the final definition of "supervisors" was the result of a compromise between management and labor. Labor had its own definition, ¹⁷ while management argued for one that more closely resembled the language contained in the NLRA. ¹⁸ In the House debate on Amendment No. 38, Representative Davis expressed the opinion that the ultimate definition is so narrow that very few individuals will be deemed supervisors under the IPLRA. ¹⁹ Although he did not point to any language in particular, Representative Davis probably was referring to the following: "The term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority. . . ." ²⁰

There are two exceptions to the general exclusion of supervisors found in § 2(m) of the IPLRA. First, existing bargaining units consist-

Representative Grieman:
"Are you presently organizing a supervisory unit?"

Representative Hoffman:
"No."

Representative Grieman:
"Then you could not under this Bill . . . [S]upervisors, unless they are presently in a supervisory unit, cannot organize in supervisory units after this Bill."

Representative Hoffman:
"But since a preponderance of my time is not spent in supervision, I would be required to become part of the teachers bargaining unit. Is that correct?"

Representative Grieman: "I guess if you're a teacher, you're a teacher. You would not have been a supervisor before either."


16. Id.
17. Representative Grieman did not state the terms of the definition proposed by labor.
19. Id.
20. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(q) (1983).
ing of supervisors only, or supervisors and non-supervisors, are "grandfathered" into coverage.\(^1\) Second, an employer can agree to permit its supervisory employees to form bargaining units.\(^2\) While the legislative concern focused on the inclusion of supervisors and non-supervisors in one unit, the Act does not merely exclude supervisors from non-supervisory units. Rather, supervisors are completely excluded from coverage under the Act, except as provided in the above-mentioned exceptions.\(^3\)

Under the IELRA, the following individuals are excluded from the definitions of "educational employee" and "employee": (1) supervisors; (2) managerial employees; (3) confidential employees; (4) short-term employees; (5) student and part-time academic employees of community colleges employed full or part time by an educational employer;\(^4\) (6) elected officials; and (7) appointees of the Governor with the advice and consent of the Senate.\(^5\)

The IELRA defines a supervisor as:

Any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term 'supervisor' includes only those individuals who devote a preponderance of their employment time to the exercise of such authority.\(^6\)

The italicized language, recommended by the Governor in his Amendatory Veto Message,\(^7\) significantly restricted the group of individuals which could potentially be deemed supervisors.

The terms "managerial employees"\(^8\) and "confidential employees"\(^9\) are defined by the IELRA in precisely the same language used in

\(^{21}\) ILL. REV. STAT. Ch. 48, \$ 1603, \$ 3(r)(1) (1983).
\(^{22}\) ILL. REV. STAT. Ch. 48, \$ 1603, \$ 3(r)(2) (1983).
\(^{23}\) These exceptions are also discussed in \$ II, infra at 891-92.
\(^{24}\) The IELRA defines an "educational employer" or "employer" as:

The governing body of a public school district, combination of public school districts, including the governing body of joint agreements of any type formed by 2 or more school districts, public community college district or State college or university, and any State agency whose major function is providing educational services.

\(^{25}\) ILL. REV. STAT. Ch. 48, \$ 1702, \$ 2(b) (1983).

It is interesting to note that the exclusion of managerial, confidential, short-term employees, student and part-time academic employees of community colleges was recommended by Governor Thompson. See Governor's Amendatory Veto Message of H.B. 1530, p. 2 (September 23, 1983).

\(^{26}\) ILL. REV. STAT. Ch. 48, \$ 1702, \$ 2(g) (1983).
\(^{27}\) Governor's Amendatory Veto Message of H.B. 1530, pp. 2-3 (September 23, 1983).
\(^{28}\) ILL. REV. STAT. Ch. 48, \$ 1702, \$ 2(o) (1983).
\(^{29}\) ILL. REV. STAT. Ch. 48, \$ 1702, \$ 2(n) (1983).
the IPLRA. The IELRA does not define "short-term employee" and the legislative history does not indicate whether the meaning given to this term under § 3(p) of the IPLRA is intended to apply.

House Bill 1530, as passed by the General Assembly, did not exclude part-time academic employees of community colleges from the definition of employee. During the debates, concern was expressed with respect to the possibility of part-time faculty and full-time faculty forming a single bargaining unit. The legislature realized that from a practical standpoint, the inclusion of part-time instructors in the bargaining unit would "cause serious governance problems." Part-time faculty at community colleges often significantly outnumber full-time faculty. If included in the same unit, a group of part-time instructors who do not rely on their positions at the community college as their primary source of income could outvote the full-time instructors. There was also a concern that the cost of providing collective bargaining to part-time faculty would exceed the revenues and fundings received by community colleges.

The Governor addressed these concerns in his Amendatory Veto Message. He recommended that part-time faculty be excluded from the definition of "employee" under the IELRA. In addition, he recommended that part-time academic employees of community colleges be defined as: "those employees who provide less than 6 credit hours of instruction per academic semester." The House Minority Staff Veto Analysis pointed out that this definition is not terribly useful because a typical part-time academic employee of a community college teaches two classes—each worth three credit hours. Accordingly, the Analysis suggested that a more useful definition would be: "six or fewer credit hours per semester." Ultimately, the legislature rejected the suggestions of the Analysis and adopted the Amendatory Veto definition of part-time faculty.

The concern regarding the inclusion of part-time faculty and full-time faculty in one bargaining unit could have been alleviated by

30. See supra notes 6 and 9. These definitions of the terms "managerial employee" and "confidential employee" were recommended for inclusion in the IELRA by Governor Thompson. See Governor's Amendatory Veto Message of House Bill 1530, p. 3 (September 23, 1983).
31. See supra note 8.
33. Id.
merely providing that each must form its own unit. Instead, part-time academic employees of community colleges were completely excluded from the coverage of the Act. This suggests that the legislature felt that the cost of providing collective bargaining to such employees outweighed their need for the protections of the Act.

Part-time faculty at universities are not mentioned in the legislative history, nor in the IELRA itself. Because of the extended discussion regarding part-time faculty at community colleges, it seems reasonable to conclude that the lack of discussion with respect to universities indicates an intention that part-time faculty at universities be included in the definition of an employee.

One further provision deserves mention in the discussion of coverage. Section 20(b) of the IPLRA provides that the Act does not apply to units of local government employing less than twenty-five employees, with the exception of units in existence on July 1, 1984.37 Section 2(m) defines the term “employee” for purposes of the Act. Therefore, it is reasonable to conclude that the twenty-five employees required under § 20(b) must be employees as defined in § 2(m), not merely employees as the term is generically used.

II. ELECTIONS AND RECOGNITION

Section 9 of the IPLRA and Sections 7 and 8 of the IELRA describe the procedures for the determination of an appropriate bargaining unit, as well as the procedures for recognition and election of the exclusive representative of such a unit.

A. Determination of an Appropriate Bargaining Unit

Under both the IPLRA and the IELRA, the Board determines whether or not a particular unit is appropriate for purposes of collective bargaining.38 The IPLRA states that the Board’s decision shall be based upon, but not limited to, the following factors: (1) historical pattern of recognition; (2) community of interest, including employee skills and functions; (3) degree of functional integration; (4) interchangeability and contact among employees; (5) fragmentation of employee groups; (6) common supervision; (7) wages, hours, and other working conditions of the employees involved; and (8) the desires of the employees. The IPLRA specifically provides, however, that it shall not use fragmentation as the sole or predominant factor in determining

37. There is no similar provision contained in the IELRA.
38. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(b), ¶ 1707, § 7(a) (1983).
an appropriate bargaining unit. Under the *IELRA*, the list of factors is
the same as above, except that "fragmentation of employee groups" is
not mentioned.

The *IPLRA* and the *IELRA* both provide that, notwithstanding
the factors listed above, where the majority of a particular "craft" decide that they want to form a bargaining unit, the Board must design-
ate it as an appropriate bargaining unit.\(^4\) This clearly departs from
the craft severance precedent in the private sector.\(^4\) Under the *NLRA*,
a craft severance vote is not determinative.\(^4\) In deciding whether to
sever a group of craft employees, the *NLRB* relies on several factors:
(1) the history and pattern of collective bargaining in the industry in-
volved; (2) the degree of integration of the employer's production
processes; (3) the qualifications of the union seeking to "carve out" a
separate unit; and (4) the history of collective bargaining of the em-
ployees sought.\(^4\) Governor Thompson recommended the craft sever-
ance provision found in § 9(b) of the *IPLRA* and § 7(a) of the
*IELRA*.\(^4\) Although the legislative history is silent with respect to this
provision, it is reasonable to assume that the Governor believed that
the protection of the rights and interests of members of skilled crafts
outweighed the potential harm to employers that can result from
fragmentation.\(^4\)

Both Acts prohibit their respective Boards from designating as ap-
propriate a unit which includes both professional and nonprofessional
employees, unless a majority of each group votes in favor of inclu-
sion.\(^4\) Here the Acts differ from the *NLRA*, which requires only that a
majority of the professional employees vote in favor of such a unit.\(^4\)
The legislative history sheds no light on the reasons for the decision not

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39. Under both Acts, "craft employees" include: "skilled journeymen, crafts persons, and
42. The *NLRA* merely provides that: "The Board shall not . . . decide that any craft unit is
inappropriate . . . on the ground that a different unit has been established by a prior Board deter-
mination, unless a majority of the employees in a proposed craft unit vote against separate repre-
43. 162 NLRB at 397.
45. As the Board stated in Mallinckrodt: "... the interests of all employees in continuing to
bargain together in order to maintain their collective strength, as well as the public interests of the
employer in maintaining overall plant stability in labor relations and uninterrupted operation of
integrated industrial or commercial facilities, may favor adherence to the established patterns of
bargaining." 162 NLRB at 392.
to follow the *NLRA* in this instance. The *IPLRA* defines a "professional employee" as:

Any employee engaged in work predominantly intellectual and varied in character rather than routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from apprenticeship or from training in the performance of routine mental, manual, or physical processes; or any employee who has completed the courses of specialized intellectual instruction and study prescribed above and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined above.48

The *IELRA* contains two definitions of the term "professional employee."49 One of these definitions is exactly the same as the above-quoted language from the *IPLRA*. This particular definition applies in the case of a public community college, a State agency whose major function is providing educational services, and the Illinois School for the Visually Impaired. On the other hand, in the case of any public school district, a "professional employee" means any employee who has been issued a certificate under Article 21 or Section 34-83 of the School Code.50 This, of course, is logical because: (1) whether or not an employee has been State-certified (under § 34-83 of the School Code) is a simple test to apply; and (2) it would be inconsistent for a particular educational employee to be certified by the State and yet not be deemed a "professional".

Under the *IPLRA*, a bargaining unit determined by the Board cannot include both supervisors and non-supervisors, unless such a unit was already in existence on July 1, 1984 (the effective date of the *IPLRA*).51 Furthermore, the *IPLRA* provides that a unit determined by the Board shall not be comprised solely of supervisors, unless such unit

50. The legislative history indicates that the *IELRA* includes two standards in order to address two different situations: (1) the university-type structure and (2) the elementary and secondary education structure. The legislature clearly intended that with respect to elementary and secondary education, only those persons who are certified under the statutes of the State will be considered "professional employees" under the *IELRA*. See 83rd Gen. Assem., House Committee on Elementary and Secondary Education, Hearings on May 6, 1983.
predated the Act. However, a public employer can agree to allow its supervisory employees to form a unit and can bargain with that unit, in which case the provisions of the IPLRA would still apply.

With respect to determination of an appropriate bargaining unit, the IPLRA further provides that:

In cases involving an historical pattern of recognition, and in cases where the employer has recognized the union as the sole and exclusive bargaining agent for a specified existing unit, the Board shall find the employees in the union then represented by the union pursuant to the recognition to be an appropriate unit.

B. Recognition of an Exclusive Bargaining Representative

Under both the IPLRA and the IELRA, there are two methods for recognition of an exclusive representative: (1) an election of a labor organization as an exclusive representative; or (2) voluntary recognition by the employer. The first method requires that a petition be filed with the Board. The petition can assert one of three claims. First, a public employee or group of employees (or a labor organization acting on their behalf) may demonstrate that 30% of the public employees in an appropriate unit wish to be represented by a labor organization as its exclusive representative. Second, a public employee or group of employees (or a labor organization on their behalf) may demonstrate that 30% of the public employees in an appropriate unit assert that the labor organization which has been acting as the exclusive bargaining representative is no longer the representative of a majority of the public employees in the unit. Third, an employer may assert that one or more labor organizations have presented a claim to be recognized as an exclusive representative of the majority of employees in a unit.

52. ILL. REV. STAT. Ch. 48, ¶ 1602, § 9(r)(1) (1983).  
53. ILL. REV. STAT. Ch. 48, ¶ 1602, § 9(r)(2) (1983). For a more detailed discussion of the legislative history regarding IPLRA §§ 3(r)(1), (2), see supra § 1, at 887.  
54. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(b) (1983).  
55. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9, ¶ 1707, § 7 (1983).  
56. IPLRA § 9(c) and IELRA § 7(a) both include the following provision: Nothing in this Act shall interfere with or negate the current representation rights or patterns and practices of employee organizations which have historically represented employees for the purposes of collective bargaining, including but not limited to the negotiation of wages, hours and working conditions, resolutions of employees' grievances, or resolution of jurisdictional disputes, or the establishment and maintenance of prevailing wage rates, unless a majority of the employees so represented expresses a contrary desire under the procedures set forth in this Act. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(c) (1983), ¶ 1707, § 7(a) (1983). This provision clearly illustrates the legislature's intent to "grandfather" into recognition those relationships existing at the effective dates of the Acts. See 83rd Gen. Assem., House Debate on H.B. 1536, p. 5 (May 18, 1983); 83rd Gen. Assem., Senate Debate on S.B. 536, pp. 110-11 (June 30, 1983).
After the Board has received the petition, it shall conduct an investigation. 57 If, as a result of the investigation, the Board has reasonable cause to suspect that a question of representation exists, it shall conduct a hearing. However, if the parties so desire, they may waive the hearings and conduct a consent election. If a hearing is conducted and the Board determines that there is still a question of representation, it shall direct an election. 58

Under both Acts, the election is by secret ballot and must be conducted in accordance with the rules and regulations established by the respective Boards. 59 The IELRA provides that at least 30 days before the election, the Board must notify the parties of the time and place of the election. 60 In addition, both Acts essentially follow the NLRB's Excelsior rule, 61 requiring the employer to make available to all parties interested in the outcome of the election the names and addresses of all employees eligible to vote. 62 Section 9(e) of the IPLRA specifically provides that the Board shall determine which employees are eligible to participate in the election. 63

The IPLRA and the IELRA both require that an incumbent exclusive representative be automatically placed on the ballot. The ballot must also allow employees to indicate a preference for "no representative". 64 In addition, the IELRA provides that an intervening labor organization may be placed on the ballot if such organization is supported by at least 15% of the employees in the unit. 65

57. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(a)(2) (1983), ¶ 1707, § 7(c) (1983).
58. The IELRA requires that the election be held no later than 90 days after the date the petition was filed. ILL. REV. STAT. Ch. 48, ¶ 1707, § 7(c) (1983).
59. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(a)(2), ¶ 1708, § 8 (1983).
60. ILL. REV. STAT. Ch. 48, ¶ 1708, § 8 (1983).
62. Specifically, the IELRA requires that upon request, the Board must provide the parties (at least 15 days before the election) with a list of the names and addresses of all persons eligible to vote. ILL. REV. STAT. Ch. 48, ¶ 1708, § 8 (1983). The IPLRA, on the other hand, states that within seven days after the Board orders an election (or executes a stipulation for purposes of a consent election), the employer must submit to the labor organization(s) a list of the names and addresses of the employees who are eligible to vote. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(d) (1983).
63. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(e) (1983).
64. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(e), ¶ 1708, § 8 (1983).
65. ILL. REV. STAT. Ch. 48, ¶ 1708, § 8 (1983). The IPLRA does not specify what percentage of employees of a unit must support a labor organization in order for such organization to be placed on the ballot. The legislative history is similarly silent on this issue. Under the IELRA, a labor organization must be supported by 15% of the employees in a unit in order to intervene in a voluntary recognition or to be placed on a ballot. ILL. REV. STAT. Ch. 48, ¶ 1707, §§ 7(b), 9 (1983). In the case of a voluntary recognition under the IPLRA, an intervening organization must be supported by 10% of the employees in a unit. ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(g) (1983). It therefore seems reasonable to assume that the legislature intended that under the IPLRA, an organization must have the support of 10% of the employees in a unit in order to be placed on the ballot.
prohibits balloting by mail, except by individuals who would otherwise be unable to cast a ballot.

According to the terms of both Acts, the labor organization which receives a majority of the votes cast shall be certified by the Board as the exclusive representative of all employees in the unit. The **IELRA** provides that if the choice "no representative" receives a majority, the employer shall not recognize any exclusive bargaining representative for at least 12 months. Section 9(d) of the **IPLRA** provides that in such a case, the Board shall certify that the majority of the employees in the unit have chosen not to be represented by a labor organization. However, **IPLRA** § 9(e) prohibits the Board from conducting an election in any bargaining unit in which a valid election has been held in the preceding 12 months. Under both Acts, if none of the choices on the ballot receives a majority of the votes cast, a runoff must be conducted between the two choices receiving the largest number of votes.

Section 8 of the **IELRA** provides that the results of the election shall be certified by the Board within five working days after the final tally of votes. However, if a charge is filed alleging the occurrence of improper conduct which affected the outcome of the election, the Board must promptly investigate such allegations. If the Board finds probable cause to believe that improper conduct occurred which could have affected the election's outcome, it must set a hearing date. The hearing must take place no later than two weeks after the date on which the charge was filed. If the hearing results in a Board determination that the outcome of the election was indeed affected by improper conduct, the Board must order a new election. It shall also order any corrective action deemed necessary to assure fairness in the new election. If, however, the Board determines (upon investigation or after a hearing) that the outcome of the election was not affected by any type of improper conduct, it shall immediately certify the election results. The **IPLRA** addresses the issue of improper election conduct by providing that the Board shall establish rules governing the conduct of the election or conduct affecting the results of an election.

Section 9(h) of the **IPLRA** and Section 7(c)(2) of the **IELRA** prohibit the respective Boards from directing an election in any bargaining

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66. **ILL. REV. STAT. Ch. 48, ¶ 1609, § 9(e), ¶ 1708, § 8** (1983).
67. **ILL. REV. STAT. Ch. 48, ¶ 1708, § 8** (1983).
68. **This same provision is contained in the **IELRA** ILL. REV. STAT. Ch. 48, ¶ 1708, § 8** (1983).
69. **Id**.
70. **ILL. REV. STAT. Ch. 48, ¶ 1608, § 9(e)** (1983).
unit where there is a valid collective bargaining agreement already in force. Each of these sections, however, includes an exception to this general prohibition. For purposes of the *IPLRA*, the Board may process an election petition that has been filed between 90 and 60 days prior to the expiration date of the bargaining agreement. *IELRA* § 7(c)(2) allows the Board to direct an election after the filing of a petition between January 15 and March 1 of the final year of a bargaining agreement.\(^7\)

The *IPLRA* provides that a collective bargaining agreement that has been in force for over three years cannot bar an election petitioned by persons who were not parties to the agreement.\(^7\) Under the *IELRA*, a collective bargaining agreement of less than three years can be extended to three years by the parties. However, the extension must be agreed to in writing before the filing of a petition for recognition of a labor organization under § 7(a) of the *IELRA*.\(^7\)

The second method of recognition of an exclusive representative is voluntary recognition by an employer. If a particular labor organization represents a majority of the employees in an appropriate unit, the employer may consent to recognize that organization as the exclusive representative of the unit. The *IPLRA* provides that the labor organization which is selected by the majority of the employees in a unit which has no other recognized or certified representative for purposes of collective bargaining may request recognition by the employer in writing. The employer must then post this written request for a period of at least 20 days after the receipt of the request.\(^7\) *IELRA* requires that the employer post for at least 20 school days a notice of its intent to recognize the particular labor organization.\(^7\) Under both Acts, the request and the notice must be posted on bulletin boards or other places used for employee notices.

During the 10-day period, certain other interested employee organizations may petition the Board for recognition as the exclusive representative of the unit. Such organizations must have been designated by a minimum percentage\(^7\) of employees in an appropriate unit which includes all or some of the employees in the unit recognized by the

\(^7\) Thus, the *IELRA* seems to assume that all collective bargaining agreements will be tied to the school year.


\(^76\) The *IPLRA* requires 10% and the *IELRA* requires 15%. Ill. Rev. Stat. Ch. 48, § 1609, § 9(g), § 1707, § 7(b) (1983).
employer. Where a petition is filed by one or more of such organizations, the Board must proceed with the petition(s) in the same manner as described above in the discussion of recognition by Board designation. 77

III. RECOGNITIONAL PICKETING

Section 10(7) of the IPLRA makes it an unfair labor practice for a labor organization or its agents to participate in recognitional picketing. The language of this section is precisely the same as that found in § 8(b)(7) and § 8(c) of the NLRA. 78 The IELRA does not address recognitional picketing. The legislative history indicates that this absence of a specific prohibition of recognitional picketing is attributable to the legislature’s belief that such picketing would never occur in situations to which the IELRA would apply. 79 During one of the debates, a legislator questioned the absence of such a prohibition. Senator Bruce responded by stating that, “I can see no reason why there would ever be a recognition strike, you’d just submit names to the Educational Labor Relations Board and they shall conduct an election. . . .” 80

If recognitional picketing does occur, certainly the issue will be raised as to whether or not such conduct constitutes an unfair labor practice under the IELRA. This issue is not directly addressed by the Act itself, nor by its legislative history. However, throughout the legislative history and the IELRA itself, the legislature has manifested an intent to protect the rights of educational employers, and, in so doing, to prevent the disruption of the school year. When recognitional picketing was discussed during the debates, there was clearly no express statement of an intent that such picketing [not] be deemed an unfair labor practice. The IPLRA is slightly less protective of employer’s rights than the IELRA. Nevertheless, recognitional picketing does constitute an unfair labor practice under the IPLRA. Based upon these factors, it is reasonable to assume that the legislature intended that if recognitional picketing does occur in the educational setting, it will be deemed an unfair labor practice under the IELRA.

77. ILL. REV. STAT. Ch. 48, ¶ 1609, ¶ 9(g), ¶ 1707, ¶ 7(b) (1983).
78. 29 U.S.C. § 158(b)(7), (c) (1982), House Amendment No. 38 added the provision from the NLRA. See 83rd Gen. Assem., Senate Debate on S.B. 536, p. 118 (June 30, 1983).
80. Id.
IV. Management Rights Under the I.P.L.R.A. and the I.E.L.R.A.

Both the IPLRA and IELRA include a management rights section, granting employers statutory bargaining rights. Unlike the NLRA, which contains no similar provisions, the newly enacted Illinois Public Labor Relations Acts affirmatively grant management legally protected rights. Essentially, the management rights clause of both Acts gives management the right to refuse to bargain over matters of inherent managerial policy.

"Inherent managerial policies" include the functions of the employer, standards of services, the employer’s overall budget, the organizational structure, selection of new employees, and the direction of employees. A limitation on management rights arises, however, where a management policy "directly" affects wages, hours, and terms and conditions of employment. If a policy matter does directly affect wages, hours, and terms and conditions of employment, management is required to bargain collectively over the policy and its potential effect.

In addition to setting forth what constitutes an "inherent managerial policy", the management rights clause of each Act contains a "grandfather" clause. Under the "grandfather" clause, management is required to bargain over any matter concerning wages, hours, or conditions of employment which it has bargained for, and agreed to, in a collective bargaining agreement executed prior to the effective date of the new Acts. Thus, both Acts seek to preserve those rights which

81. ILL. REV. STAT. Ch. 48, ¶ 1604, ¶ 4, ¶ 1704, ¶ 4, (1983).
82. Id.
83. Id. These are the "areas of discretion or policy" which management alone possesses the right to control unless such a policy "directly" affects wages, hours or terms and conditions of employment. See Notes 102-04 and accompanying text. The IELRA, unlike the IPLRA, also includes within management’s policy-making authority the right of management to determine "examination techniques".
84. ILL. REV. STAT. Ch. 48, ¶ 1604, ¶ 4, ¶ 1704, ¶ 4, (1983).
85. "Or the impact thereon." Id. The legislature, during the debates on both Acts, failed to discuss the degree of impact required before management is required to collectively bargain over a policy matter. Arguably, almost every policy decision has an impact on employees’ wages, hours, and other terms and conditions of employment. The exact parameters of the language "or the impact thereon" will therefore have to be determined through Board rules and court decisions.
86. ILL. REV. STAT. Ch. 48, ¶ 1604, ¶ 4, ¶ 1704, ¶ 4, (1983).
87. Id. The Acts provide: "To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours, or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act."
88. ILL. REV. STAT. Ch. 48, ¶ 1604, ¶ 4, ¶ 1704, ¶ 4 (1983).
employees have obtained prior to the enactment of the new Public Labor Relations Laws. The "grandfather" clauses reflect the legislative intent that the Acts should aid in resolving the turmoil which often surrounds public sector collective bargaining without infringing on the rights which employees had already obtained.89

The management rights clause of the IELRA was incorporated by Governor Thompson via his amendatory veto.90 The IPLRA, on the other hand, gained its management rights clause through an amendment by Senator Grieman.91 In presenting his amendment, however, Senator Grieman failed to elaborate on the scope of the management rights section.92 Consequently, to ascertain the legislature's intent, it is necessary to focus on the language of other management rights clauses rejected by the legislature and case law from other states interpreting similar management rights clauses.

Representative Davis offered a management rights clause as an amendment to the IPLRA.93 Davis' Amendment read:

Public employers should not be required to bargain over matters of inherent managerial policy, which should include, but shall not be limited to, such areas of discretion or policy as the functions and programs of the employer, the standards of services, the overall budget, the utilization of technology, and the organizational structure, and selection, and direction of personnel.94

Davis' amendment is similar to management rights clauses in Nevada.95

89. This intent was underscored during the House debates on the IELRA. Representative Stuffle, arguing in opposition to an early draft of a management rights clause, stated: "If they've (management) agreed in the past to bargain, and they're bargaining over an issue, they (management) should not be able to assert something is a management right that in the past they bargained for." 83rd Gen. Assem., House Debates on S.B. 536, p. 282 (June 23, 1983). See also the prefatory "policy" sections of the IPLRA (Sec. 2) and the IELRA (Sec. 1), which generally discuss the purpose of the Acts as being the "prevention of labor strife". If the new labor laws enacted by the Illinois legislature negated rights previously obtained by employees through contract negotiations, it is evident that such legislation would not be a step toward preventing future labor strife.

90. Governor Thompson's Amendatory Veto of September 23, 1983, p. 3. The Governor included the management rights section in an effort to equalize the bargaining power of both management and labor. Id., p. 1.

91. Id. Grieman's Amendment basically restructured the entire Act. In addressing the newly included management rights clause he stated: "We put in a management rights provision. I say to you, it limits employees basically to bargain collectively with their employer on wages, on the conditions of working, on the traditional things that people have bargained for collectively. It opens no broad vistas, and if anything, it is a narrowing because it says, 'inherent managerial rights are left to the employer'."

92. Id.


94. Id.

95. Nev. Rev. Stat. Sec. 288.150(2) (1975). Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation: a) to direct its employees; b) hire, promote, classify, transfer, assign, retain, suspend, demote, discharge, or take disciplinary action against any employee; c) to relieve any employee from duty because of lack of
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and Kansas public labor relations statutes. Courts applying these statutes have been faced with conflicts between the rights claimed by employers under management rights clauses, and the rights asserted by employees under other provisions of the statutes. Employees claimed that certain topics fell within the scope of collective bargaining because the topics affected employees' wages, hours and conditions of employment. Employers, on the other hand, disagreed, asserting that the topics were part of management's discretionary authority. To rectify this apparent conflict, courts in Kansas and Nevada adopted a balancing test. Because of a lack of legislative guidance, the courts were free to determine under what circumstances management would be required to bargain with employees over the exercise of a managerial right which affected employees wages, hours, and terms and conditions of employment. Thus, had Representative Davis' amendment been adopted, it is evident that like Nevada and Kansas, the Illinois judiciary would have been free to determine what relationship must exist between a management right and an employee's wages, hours, and terms and conditions of employment before management was obligated to bargain over the issue.

work or for any other legitimate reason; d) to maintain the efficiency of its governmental operation; e) to determine the methods, means and personnel by which the operations are to be conducted; and f) to take whatever actions may be necessary to carry out its responsibilities in situations of emergency.

96. KAN. REV. STAT. 75-4326 (1980). Nothing in this Act is intended to circumscribe or modify the existing right of a public employer to: (a) direct the work of its employees; (b) hire, promote, demote, transfer, assign and retain employees in positions within the public agency; (c) suspend or discharge employees for proper cause; (d) maintain the efficiency of governmental operation; (e) relieve employees from duties because of lack of work or other legitimate reasons; (f) determine the methods, means, and personnel by which operations are to be carried on.

97. The conflict arose when employees claimed that certain matters fell within "wages, hours, and other terms and conditions of employment." See NEV. REV. STAT. Sec. 288.150(1) (1975) (granting Nevada public employees the right to collectively bargain over wages, hours, and terms and conditions of employment) and KAN. REV. STAT. 75-4325 (1980) (granting Kansas public workers a similar right).


99. Id.

100. The Nevada Supreme Court determined that management is required to bargain when the exercise of its rights is "significantly related" to wages, hours, and other terms and conditions of employment. Clark County School District v. Local Government Employee Management Relations Board, 530 P.2d 114, 118 (Nev. 1974). The Kansas Supreme Court, on the other hand, found the test to be: "The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." National Education Association v. Board of Education, 212 Kan. 741, 753, 512 P.2d 426, 435 (1973).

101. Representative Kirkland also offered a management rights clause which was defeated. His clause read: "employers shall have the right to manage the employees of the employer, including but not limited to hiring, promotion, transfer, assignment, or retention of employees in
However, rather than leaving the task of establishing the required relationship to the judiciary, the Illinois legislature\textsuperscript{102} enunciated the guideline which Illinois courts are to employ in resolving conflicts between management rights and the collective bargaining rights of employees. The Illinois Acts direct that management must bargain over a policy matter only when it "directly" affects employees' wages, hours, and terms and conditions of employment.\textsuperscript{103} The requirement of a direct relationship evidences the legislature's desire that the scope of collective bargaining be construed narrowly.\textsuperscript{104} By employing the term "directly," the legislature indicated clearly that management is to retain great discretion in the area of policy making. Indeed, the legislature's intent behind the use of the term "directly" is inescapable; management is to guide the overall direction and policy making with regard to the Illinois public sector work force. Labor can become involved only when a management policy has an immediate causal impact on matters over which employees are entitled by the Acts to collectively bargain.

Thus, by clearly enunciating the circumstances which must exist before management is required to bargain over an issue, the Illinois legislature has set the standards to be applied by the judiciary. Unlike Nevada\textsuperscript{105} and Kansas,\textsuperscript{106} the Illinois legislature has refused to allow the court system to engage in a balancing approach when faced with an apparent conflict between management rights and employee rights. Instead, the legislature has clearly established that a direct relationship must exist between a policy matter and employees' wages, hours, and other conditions of employment before management is obligated to bargain over the issue.

In sum, the management rights clauses of the \textit{IPLRA} and the \textit{IELRA} grant management substantive rights. In addition, the management rights clauses establish the relationship that must exist between an employee right and a policy matter before management is required to bargain over that policy matter. A policy matter must "disposition under its jurisdiction."\textsuperscript{107} 83rd Gen. Assem. House debates on H.B. 1530, p. 49 (May 18, 1983).

102. The management rights clause incorporated into the \textit{IELRA} by Governor Thompson traced the exact language of Section 4 of the \textit{IPLRA}. See, \textit{ILL. REV. STAT.} Ch. 48, ¶ 1704, § 4 (1983).


104. Use of the term "directly" is significant. Websters's Third New International Dictionary, 1971, for example, defines "directly" as "without any intervening agency or instrumentality or determining influence: without an intermediate step." p. 641.

105. See Notes 95-100 \textit{infra}.

106. \textit{Id.}
rectly” affect wages, hours, and other terms and conditions of employment before management must bargain over that issue.107

V. PUBLIC EMPLOYEES’ RIGHTS UNDER THE IPLRA AND IELRA

With the enactment of the IPLRA and IELRA, Illinois’ public employees108 and educational employees109 now possess statutorily protected bargaining rights. Both the IPLRA and the IELRA grant employees essentially the same bargaining rights. Employees have the right to form, join, or assist any labor organization.110 In addition, public employees may engage in lawful concerted activities for the purpose of collective bargaining, and engage in other mutual aid or protection in furtherance of collective bargaining.111 Public employees also have the right to bargain through representatives of their own choosing on questions of wages, hours, and terms and conditions of employment.112 Finally, individual employees have the right to refrain from engaging in employee activities which are geared toward collective bargaining.113

Employees are protected in the exercise of their rights against interference by employers114 and employee organizations.115 An employer or an employee organization which attempts to interfere with an individual employee’s free exercise of these statutory rights, commits an unfair labor practice.116 Thus, both of the Illinois Public Labor Relations Acts grant employees specific rights and specifically proscribe interference with those rights by anyone.117

The language employed in the Illinois Acts reflects the intent of the legislature to grant Illinois public employees essentially the same rights provided to private sector employees by § 7 of the NLRA.118

107. Unless management had agreed to include the issue in a collective bargaining agreement executed before the effective dates of the Acts. See ILL. REV. STAT. Ch. 48 ¶ 1604, ¶ 1704, ¶ 4 (1983).
108. ILL. REV. STAT. Ch. 48, ¶ 1606(a), ¶ 6(a) (1983).
109. ILL. REV. STAT. Ch. 48, ¶ 1703(a), ¶ 3(a) (1983).
110. ILL. REV. STAT. Ch. 48, ¶ 1606(a), ¶ 6(a), ¶ 1703(a), ¶ 3(a) (1983).
111. Id.
112. Id.
113. Id. Employees cannot, however, voluntarily choose to refrain from participating in a collective bargaining agreement’s fair share requirement. See Notes 258-270 and accompanying text.
115. ILL. REV. STAT. Ch. 48, ¶ 1610(b)(1-3, 6) ¶ 10(b)(1-3, 6), ¶ 1714(b)(1-3), ¶ 14(b)(1-3) (1983).
116. See Notes 286-300 and accompanying text.
117. Id.
Employees shall have the right to self-organization, to form, join, or assist labor organi-
This intent is revealed by the colloquy between Senators Keats and Collins during the Senate debates on the IPLRA. Senator Keats posed this question: “Does the bill (the IPLRA) attempt to follow as closely as possible the language found in the NLRA and labor law provisions interpreting that Act?” Senator Collins, a sponsor of the Bill, responded: “Yes, it does. Some provisions are worded almost directly from the National Labor Relations Act. Moreover, during the debates over the IELRA in the House Committee on Elementary and Secondary Education, Charles Rose, an attorney for the Illinois Association of School Boards, stated: “In a related matter, in the employee rights provision, (Sec. 3(a)), which is basically out of the National Labor Relations Act, educational employees, not just unionized employees, are given the right to engage in lawful concerted activities for mutual aid and protection.” These statements, when combined with the obvious similarity in language, clearly indicate that the Illinois legislature intended, as far as possible, to grant Illinois public employees the same rights as those granted to private sector employees § 7 of the NLRA.

In adopting the NLRA’s language, however, the Illinois legislature carefully tailored § 7 to the public sector employee. Specifically, Sec. 6(a) of the IPLRA states that employees may collectively bargain over wages, hours, and conditions of employment “not excluded by Section 4” (management rights). Although the IELRA does not contain a parallel provision, it does contain a management rights clause which similarly limits employees’ rights. If a right asserted by private sector employees conflicts with the management rights clause, the Illinois public sector employee does not possess that right.

Thus, the Illinois legislature molded § 7 of the NLRA to meet public sector requirements by including within the IPLRA and IELRA an express management rights provision. Aside from the addition of a
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management rights clause, and granting employees the right to strike, the language of § 7 of the NLRA was incorporated in its entirety. Therefore, it is evident that an Illinois public employee possesses the same rights as an employee in the private sector unless the exercise of a particular right conflicts with the management rights clause. As a result, the Board, as well as the courts, can look to Federal court interpretations of § 7 of the NLRA for guidance on how to apply the employee rights section of the IPLRA and the IELRA.

In sum, the language of the Employee Rights Section of the IPLRA and IELRA is basically the same as that contained in § 7 of the NLRA. However, the Illinois legislature tailored § 7 to the public sector by including a specific management rights' provision in both Acts. Consequently, Illinois public employees possess the same rights as employees in the private sector to the extent that those rights do not conflict with the rights granted to management.

VI. EMPLOYEES RIGHT TO STRIKE UNDER IELRA AND THE IPLRA

The right to engage in a strike is the greatest economic weapon possessed by an employee. With the enactment of the IELRA and IPLRA, Illinois public employees and educational employees now have a statutory right to strike. The Illinois Acts protect employees in the exercise of their right to strike by dictating that it is an unfair labor practice for employers to wrongfully interfere with the rights granted by the Acts. However, under both Acts, the right to strike is not unconditional. Instead, employees must satisfy two prerequisites before they can engage in a legal work stoppage.

The first prerequisite limits the right to strike to those employees whose services are unrelated to public health and safety. Both Acts prohibit strikes by those employees whose absence from work would pose a "clear and present danger to health and safety of the public". To effectuate the legislature's intent, both Acts grant employers the right to seek an injunction against any strike where the employees' con-

125. The Illinois Acts and their legislative histories fail to define what constitutes a strike. The NLRB takes this view: "A strike exists when a group of employees ceases work in order to secure compliance with a demand for higher wages, shorter hours, or other conditions of employment, the refusal of which by the employer has given rise to a labor dispute." American Mfg. Concern 7 NLRB 753, 759, 2 LRRM 336 (1938).
127. ILL. REV. STAT. Ch. 48, ¶ 1617, § 17 (1983).
128. ILL. REV. STAT. Ch. 48, ¶ 1713, § 13 (1983).
130. ILL. REV. STAT. Ch. 48, ¶ 1713, § 13, ¶ 1618(a), ¶ 18(a) (1983).
duct has created, or will create, a threat to the safety of society.\textsuperscript{131}

However, the procedure to obtain an injunction is different under each Act. Under the \textit{IPLRA}, the employer must first petition the Board and allow the Board itself to make an investigation and conduct a hearing.\textsuperscript{132} The Board then has 72 hours to decide on whether a strike by a particular employee group poses a danger to the public.\textsuperscript{133} If the Board determines that a strike by certain employees would endanger the public, the Board then authorizes the employer to petition the circuit court for an order enjoining the strike.\textsuperscript{134} This mechanism enables the Board to screen each injunction request before it reaches the litigation level. The circuit court, of course, is not bound by the Board’s determination and must exercise its own independent judgment as to whether a strike would pose a danger to society.

The \textit{IELRA}, on the other hand, authorizes employers seeking to enjoin a strike to petition the circuit court directly.\textsuperscript{135} Unlike the \textit{IPLRA}, the \textit{IELRA} does not require Board approval of an employer’s request for an injunction. Therefore, it is the circuit court which makes the initial, as well as final, determination as to whether a strike by educational employees endangers the health and safety of the public.

Although the intent of both Acts is that strikes should occur only when the health and safety of the public is not endangered, the existence of a threat to the public will depend largely on the nature of the service provided by the striking employees. For example, it is difficult to imagine a situation where a strike by educational employees could present a clear and present danger to the health and safety of the public. While it is obvious that school strikes may endanger the welfare of students,\textsuperscript{136} it is doubtful that a teacher strike could ever endanger the public’s safety. It is significant to note, on this point, that Representative Davis attempted to amend the language of §18 of the \textit{IPLRA} from “health and safety” to read “health, safety, and welfare”.\textsuperscript{137} Arguing in

\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{ILL. REV. STAT. Ch. 48, § 1618(a), § 18(a) (1983).}
\textsuperscript{133} The \textit{IELRA} fails to define what type of employee group provides services which effect the health and safety of society. The \textit{IPLRA}, on the other hand, defines such employees as “essential”. Essential employees are “those employees who perform functions so essential that the interruption of such functions constitutes a clear and present danger to the health and safety of the persons in the affected community”. \textit{ILL. REV. STAT. Ch. 48, § 1603(e), § 3(e) (1983).}
\textsuperscript{134} \textit{ILL. REV. STAT. Ch. 48, § 1618(a), § 18(a) (1983).}
\textsuperscript{135} \textit{ILL. REV. STAT. Ch. 48, § 1713, § 13 (1983).}
\textsuperscript{136} A lengthy teacher’s strike could, for example, jeopardize students’ ability to receive college scholarship assistance as well as interfere with the students’ college admissions procedure.
\textsuperscript{137} 83rd Gen. Assem. House debates on S.B. 536, p. 298. (June 24, 1983). Although slated as an amendment to the \textit{IPLRA}, the \textit{IELRA} includes a similar prohibition against strikes by employees providing essential services. Consequently, because the \textit{IPLRA} supercedes the \textit{IELRA} (see
support of the amendment, Davis stated that the term “welfare” would specifically include the well-being of school children.\textsuperscript{138} Although Davis’ amendment was defeated in the House, Davis’ attempt to include the term “welfare” in the IPLRA indicates that he was aware that a strike by educational employees would rarely, if ever, endanger the public’s “health and safety”. Thus, the first prerequisite to public sector work stoppages probably will not impede teacher’s strikes.

Strikes by general public employees, on the other hand, stand on a different footing. Because the IPLRA covers employees providing such a broad spectrum of services, it is clear that a strike by certain classes of employees could pose a risk to public safety. Physicians, nurses, garbage collectors and even sewer workers all provide services which, under the proper set of circumstances, could be found to be essential to the safety of society. However, because circumstances may differ, it is evident that under the IPLRA, the appropriateness of an injunction will have to be determined on a case by case basis.

Of significant impact, however, is the legislature’s intent that a court-ordered injunction not be overbroad. The circuit court must ensure that only those employees whose services are essential to the health and safety of the public are enjoined. The injunction may not interfere with the right of non-essential employees to strike. During the House Debates on the IPLRA, Senator Grieman explained exactly how the legislature intended the circuit court to exercise its discretion.\textsuperscript{139} Grieman presented an example of a possible strike at Cook County Hospital. If a strike at Cook County Hospital should occur, (assuming all of the hospital personnel were members of the same union), dining room personnel would be allowed to strike, whereas emergency room physicians would be enjoined. The absence of the dining room personnel would not pose a danger to public health and safety. A work stoppage by emergency room physicians, on the other hand, would clearly place the public’s health at risk. Hence, under such circumstances, the appropriate injunction would include only those employees whose services were vital to the safety of society (e.g., the emergency room physicians); any others would be permitted to strike (e.g., the dining room personnel).

\textsuperscript{83rd Gen. Assem. Senate debates on S.B. 536, p. 101 (June 30, 1983)), expanding the IPLRA’s limitation on strikes would have had a corresponding effect on the ability of educational employees to strike.}

\textsuperscript{138. Id. Davis exclaimed: “Health and welfare refers to a lot of things, and yes, indeed, welfare refers to kids too.”}

\textsuperscript{139. 83rd Gen. Assem. House Debates on S.B. 536, p. 299. (June 23, 1983).}
In sum, the first prerequisite which employees must satisfy prior to engaging in a strike is that the service provided by the employees be one that is not closely related to the health and safety of the public. If the employees do provide such a service, an injunction could restrict their right to strike. Conversely, if the employees provide a service not related to the safety of society, then the employees have surpassed the first hurdle in their attempt to engage in a legal strike.

The second prerequisite that employees must satisfy before striking is the fulfillment of five pre-strike conditions. The five preconditions essentially provide alternative methods of settling the dispute other than an official work stoppage. Thus, the Acts attempt to avoid strikes by requiring that employees exhaust several administrative remedies before they can legally engage in a walk-out.

The first pre-strike condition dictates that the employees must select an exclusive bargaining representative. In other words, a strike is prohibited when there is no union in place. In addition, it is the legislature's intent that a strike occur only with the approval of the exclusive bargaining representative. If a strike occurs without the sanction of the exclusive bargaining representative, the representative can obtain a court order enjoining the employees' work stoppage. Thus, before a legal strike can begin, a union must represent the employees and must sanction the walk-out.

The second pre-strike condition prohibits a work stoppage prior to the expiration of any existing collective bargaining agreement between the employer and employees. However, the two Acts differ regarding this condition in several important respects. The IPLR states that a strike which occurs while a collective bargaining agreement is in effect is legal, provided the terms of the collective bargaining agreement itself do not prohibit a strike. The IPLRA, therefore, provides the parties with the ability to determine for themselves whether their agreement should include a no-strike provision or not. In addition, the IPLRA allows the parties to mutually agree to binding grievance arbitration. However, if a grievance arbitration procedure is included in

142. Senator Collins stated that an exclusive bargaining representative "can take them (the striking employees) right into court." This statement was in response to Senator Barkhausen's question of whether a strike must be sanctioned by the exclusive bargaining representative. 83rd Gen. Assem. Senate debates on S.B. 536, p. 314-315. (May 27, 1983).
the contract, the "Uniform Arbitration Act" bars a strike during the term of the collective bargaining agreement.

The *IELRA*, on the other hand, prohibits *per se* a strike which occurs during the pendency of a collective bargaining agreement. The *IELRA* further mandates that every collective bargaining agreement in the education sector shall include a grievance arbitration procedure and shall expressly prohibit strikes during the term of the contract. Thus, it is evident that the legislature intended contracts in the educational sector to be final and binding upon the parties throughout the term of the agreement.

The third condition that employees must satisfy before engaging in a strike concerns the utilization of mediation procedures. Although the language within the two Acts differs, the basic thrust of this third pre-strike condition in each Act is that mediation procedures must have failed before a walk-out will be statutorily sanctioned.

The fourth pre-strike condition prohibits a strike where the parties have previously agreed to submit disputed issues to binding arbitration. This requirement simply acknowledges that once the parties have chosen a forum to settle their dispute, they should thereafter be estopped from reversing their decision. If binding arbitration is mutually agreed upon as the method of dispute resolution, employees should not be permitted to exhibit dissatisfaction with either the progress of the arbitration proceedings, or with the outcome, by choosing to engage in a strike. Accordingly, both the *IPLRA* and *IELRA* dictate that if parties agree to resolve their dispute through arbitration, the parties are thereafter bound by their agreement.

The final precondition to a legal strike addresses notice. Under the *IPLRA*, employees must provide management with a five day notice before striking. The *IELRA*, on the other hand, requires that the employees provide management, the Regional Superintendent, and the Board with a five day notice prior to striking.

The notice provision serves several important functions. First,
under both Acts, the five day notice is, in effect, a "last chance warning" to an employer that the employees intend to strike if employee demands are not met. Second, under both Acts, employers have five days before a strike occurs to petition the Board for a determination of whether a strike by the employees will constitute a "clear and present danger to the public" thereby justifying an injunction. \(^{154}\) Third, under the \(IELRA\), providing notice to the Regional Superintendent and the Board enables them to take actions to minimize the impact of the strike on the school year. \(^{155}\)

If employees strike without first satisfying the five preconditions, the strike is illegal. While the legislative history of the Acts is ambiguous, it appears that an employer may pursue three alternative remedies in the event of a failure of employees to satisfy all the pre-strike conditions. First, the employer is authorized to take disciplinary action against the illegally striking employees. \(^{156}\) Second, the employer can file an unfair labor practice charge with the Board against the striking employees. \(^{157}\) Third, the employer can obtain a court order enjoining the illegal strike. \(^{158}\) The remedy pursued by the employer will depend, of course, on the facts and circumstances of each individual case.

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154. See Notes 132-34 and accompanying text.
156. The \(IPLRA\) grants this authority expressly in Sec. 17(b). The \(IELRA\) and its legislative history fails to indicate whether educational employers also possess the right to discipline illegally striking employees. However, it seems logical that educational employers also possess the right to discipline illegally striking employees. If educational employers, when faced with an illegal strike, were limited to only injunctory and unfair labor practice relief, employees would lose nothing by illegally striking. On the other hand, if educational employers possessed the ability to discipline illegally striking employees, employees covered by the \(IELRA\) would be placed on notice that only by following the proper procedures can a legal strike be carried out.
157. Senator Collins pointed this out in response to a question about the five day notice requirement. "It would be an unfair labor practice under this law for any group to choose to go out on a strike in any form, wildcat, or any form, work stoppage, unless they notify the Board through their exclusive bargaining representative that a strike is going to occur at least five days prior to the strike." 83rd Gen. Assem. Senate debates on S.B. 536, p. 112. (June 30, 1983). Although Collins' response specifically addressed only the five day notice requirement, nonetheless, it is reasonable to infer that Collins intended that a refusal to comply with any of the five prestrike conditions constituted an unfair labor practice. The notice requirement is simply one of the five preconditions that must be fulfilled by employees before they can engage in a legal strike. Therefore, there is no reason to believe that the legislature meant to single out the notice provision as the only instance where a failure to comply with one of the prestrike conditions results in an unfair labor practice.
158. Representative Grieman identified this specifically when he summarized the highlights of the \(IPLRA\). "In this Bill, there is the right of an employer to enjoin an illegal strike so that if those people go out on strike, they will be held accountable because that will be an illegal strike." 83rd Gen. Assem. House debates on S.B. 536, p. 295. (June 23, 1983). Although not specifically addressed in the legislative debates of the \(IELRA\), it is evident that because both Acts treat strikes similarly, an educational employer has the right to obtain an injunction against illegally striking teachers. One issue not addressed by the legislature was the effect that the Anti-Injunction Act, 28 U.S.C. Sec. 2283 (1982) has on the ability of an employer to obtain an injunction.
Thus, both Acts contain specific procedures which must be com-
plied with before employees can engage in a legal strike. However, in
enacting the procedural steps to be followed with regard to strikes, the
Illinois legislature failed to clarify whether unreasonably dangerous
conditions can justify an otherwise illegal strike. Under both of the
Acts, an employee who stops working without fulfilling the five pre-
strike conditions is subject to employer discipline.159 The Acts do not
contain an exception for a situation where the employee is being forced
to work under unreasonably dangerous conditions. Although the
NLRA does not specifically deal with the issue, the NLRB has held that
an employer may not discipline an employee for participating in a
work stoppage precipitated by unreasonably dangerous conditions.160
Although not specifically authorized by the legislature to do so, it
seems only reasonable that the Illinois Labor Relations Board would
read the IPLRA similarly. Public employees, like their private sector
counterparts, should not fear disciplinary action simply because they
refuse to work under unreasonably dangerous conditions.

VII. Impasse Procedures Under the IELRA

In enacting the IELRA, the Illinois legislature was concerned
about teacher strikes which postpone the beginning of the new school
year. Accordingly, the legislature included within the IELRA, a proce-
dure geared toward reconciling a bargaining impasse prior to the com-
mencement of the school year.161 Section 12 of the IELRA dictates
that employers and employee representatives must accept mediation if
an impasse is reached over collective bargaining matters.162 Section 12
establishes a mediation timetable geared to the beginning of the up-
coming school year. Refusal to submit a dispute to a mediator as re-
quired by Section 12, is an unfair labor practice.163

The impasse procedures under Sec. 12 are triggered 90 days before

159. See note 156 infra.
161. The Illinois Acts fail to define when an impasse occurs. However, the NLRB has found:
"Whether a bargaining impasse exists is a matter of judgment. The bargaining history,
the good faith of the parties in negotiations, the length of negotiations, the importance of
the issue or issues as to which there is disagreement, the contemporaneous understanding
of the parties as to the state of negotiations are all relevant factors to be considered in
deciding whether an impasse in bargaining exists." Taft Broadcasting Company, 163
NLRB 475, 64 LRRM 1386 (1967).
162. ILL. REV. STAT. Ch. 48, § 1712, § 12 (1983).
163. Sec. 14(a)(5) of the IELRA states that an employer's refusal to collectively bargain in
good faith with an employee representative constitutes an unfair labor practice. ILL. REV. STAT.
Ch. 48, § 1714(a)(5), § 14(a)(5) (1983). Likewise, § 14(b)(2) identifies an employee representative's
refusal to collectively bargain in good faith with an employer as an unfair labor practice. ILL.
the scheduled start of the school year. At the 90 day point, the parties are required to advise the Board of the status of contract negotiations. If the parties have not reached agreement at that point, they are granted 45 days to continue to bargain under their own guidelines. Failure to reach agreement by the expiration of this 45-day period entitles either party, or the Board itself, to seek mediation. However, if the parties have failed to execute a contract 15 days before the start of the forthcoming school year, the board must order the parties to submit to mediation.

The mediator's goal is, of course, to attempt to bring the parties to agreement. Upon request of the parties, the mediator is empowered by Section 12 to conduct hearings, make written findings of fact, and make recommendations as to the resolution of the dispute. If the parties wish to be bound by a third-party's decision, Section 12 authorizes the parties to submit the dispute to binding arbitration.

The flaw of the Section 12 impasse procedures, however, is that the findings of fact and recommendations of the mediator are only advisory. The inability to enforce the mediator's recommendations, therefore, may reduce the Section 12 mediation requirement to a mere bureaucratic formality. Employee representatives may view the mediation requirement as nothing more than a procedural prerequisite to a strike, rather than as an opportunity to resolve a dispute without a work stoppage. Although submission to mediation will remain a statutory necessity, the efficacy of the procedure will be undermined if employee representatives do not treat it as a viable alternative to a strike.

Thus, although a mediator's job is to bring the parties close together, the effectiveness of a mediator depends primarily on whether the parties make a good faith effort at trying to reach an agreement. Although under Sec. 12, the mediator's recommendations and findings of fact are not binding, nevertheless, a good faith effort by both sides,

Rev. Stat. Ch. 48, § 1714(b)(2), § 14(b)(2) (1983). Failing to submit the dispute to a mediator, as required by § 12, clearly amounts to a refusal to bargain in good faith.

165. Id.
166. Id.
167. Id.
168. Id.
169. Id.
170. Id.
171. Id.
when combined with the assistance of an impartial third-party, can lead to the resolution of a contract dispute before the students’ education is interrupted.

VIII. Arbitration

Arbitration can appear in a variety of forms and be implemented in a variety of ways throughout the collective bargaining process. Both the IPLRA and the IELRA contain provisions utilizing arbitration. The IPLRA provides a form of compulsory interest arbitration over contract terms for security employees,173 state peace officers, state firefighters, and certain “essential services” employees.174 For all other public employees,175 the Act allows for voluntary binding arbitration on contract terms.176

The procedure for compulsory interest arbitration is outlined in Section 14 of the IPLRA.177 Notwithstanding the provisions of this section, the parties may agree to submit disputes to an alternative form of impasse resolution.178 The impasse procedure contained in the Act provides that mediation179 must commence thirty days prior to the expiration of a contract. Arbitration will be requested if the dispute remains unresolved fourteen days prior to the contract’s expiration. Within the next ten days each party chooses a delegate to the arbitration panel and advises the Board of this selection. Within seven days of the request, the Board selects from the Public Employees Labor Mediation Roster seven nominees for the position of impartial arbitrator of the panel. Within the next five days the parties peremptorily strike the names of the nominees until they arrive at one neutral member who

173. “‘Security employee’ means an employee who is responsible for the supervision and control of inmates at correctional facilities, and would also include other non-security employees in bargaining units having the majority of employees being responsible for the supervision and control of inmates at correctional facilities.” ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(o) (1983).

174. “‘Essential services employees’ shall mean those public employees performing functions so essential that the interruption or termination of such function will constitute a clear and present danger to the health and safety of the persons in the affected community.” ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(m) (1983).

175. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(m) (1983). See § I supra at 883.

176. The Act also allows binding arbitration for grievance resolution. This will be discussed separately in § IX at p. 920.

177. ILL. REV. STAT. Ch. 48, ¶ 1614, § 14 (1983).

178. ILL. REV. STAT. Ch. 48, ¶ 1614, § 14(o) (1983).

179. Section 12 of the IPLRA provides for the establishment of a Public Employee Mediation Roster, the services of which are available on request of the parties for the mediation of grievances or contract disputes. The Act indicates that the function of a mediator is “to communicate with the employer and exclusive representative . . . and to endeavor to bring about an amicable and voluntary settlement.”
will act as chairperson of the arbitration panel.  

At that point the chairperson calls for a hearing to begin within fifteen days. The chairperson presides over the hearing, which should conclude within thirty days unless the parties agree otherwise. The chairperson has discretionary authority at any time prior to an award to remand the dispute to the parties for further collective bargaining for a period of up to two weeks, thereby extending the overall time frame. Furthermore, the proceedings may not be interrupted by the filing of an unfair labor practices charge. Panel decisions are made by majority rule.

The panel has the power to administer oaths and issue subpoenas for the attendance of witnesses and the production of any documents it may deem material to the resolution of the dispute. If anyone refuses to comply, or is guilty of contempt at the hearing, the panel may elicit the aid of the appropriate circuit court and obtain an appropriate order. A failure to comply with that order may constitute contempt of court.

The arbitration panel uses two separate procedures for the determination of awards. First, the panel determines which of the disputed issues are economic in nature. The panel then directs each of the parties to submit its “last offer” of settlement on each economic issue. In determining which of these last offers to accept, the panel must consider several factors set forth in the Act. The panel must

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180. Ill. Rev. Stat. Ch. 48, ¶ 1614, § 14(c) (1983). The language of this provision appears somewhat inconsistent in that it states that the parties are allowed to strike the name of one of the nominees. This process ultimately would result in an arbitration panel of seven members, a result repugnant to the remaining provisions of the section. The confusion stems from the expansion of the number of nominees the parties have to select from. The bill as presented to the Governor provided for only three nominees. In his amendatory veto message, the Governor enlarged the number of nominees to seven yet left the remaining provisions intact. It is reasonable to assume that a tripartite panel was still contemplated and that the increased number of nominees merely enlarged the parties' selection base.

181. Section 14(d) of the IPLRA provides that technical rules of evidence will not apply during the hearing and that any oral or documentary evidence that the panel deems relevant may be admitted. However, a verbatim record of the proceedings shall be made.

182. The appropriate court shall be the circuit court within the jurisdiction in which the hearing is being held. Ill. Rev. Stat. Ch. 48, ¶ 1614, § 14(e) (1983).

183. These initial determinations by the panel are conclusive.

184. The panel must so direct the parties at or prior to the conclusion of the hearing. The parties must return with their offers within the period specified by the panel.


... the arbitration panel shall base its findings, opinions and order upon the following factors:

(1) The lawful authority of the employer;
(2) Stipulations of the parties;
(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
accept the offer which best accommodates these considerations. As to all other issues, the panel makes its own determination based on the same factors.

Within thirty days of the conclusion of the hearing, unless extended by agreement of the parties, the panel makes written findings of fact and renders an opinion. A copy of that opinion is then given to each of the parties and the Board.\footnote{186}

The Act provides for circuit court review of the panel's award on petition of either party.\footnote{187} The court review is limited to a determination of whether the panel was without or exceeded its authority, or the order was arbitrary or capricious, or was procured by fraud, collusion or other similarly unlawful means.\footnote{188}

An award may be rejected in whole or in part by the public employer, but not by the employees or their exclusive representative.\footnote{189} All terms decided upon by the panel must be incorporated into an agreement and ratified by the public employer's governing body.\footnote{190}

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities,
(B) In private employment in comparable communities,

(5) The average consumer prices for goods and services commonly known as the cost of living;

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.


186. ILL. REV. STAT. Ch. 48, ¶ 1614, § 14(g) (1983).
187. Appeal of the arbitration panel's decision may be taken to the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside.
188. ILL. REV. STAT. Ch. 48, ¶ 1614, § 14(j) (1983). The Act provides that such petitions must be filed within ninety days of the arbitration order and that an appeal does not automatically stay the order. Frivolous appeals will result in the petitioning party paying the attorney's fees and costs of the successful party.
189. ILL. REV. STAT. Ch. 48, ¶ 1614, § 14(m) (1983).
190. ILL. REV. STAT. Ch. 48, ¶ 1603, § 3(h) (1983). "'Governing body' means in the case of the State, the State Labor Relations Board, the Director of the Department of Central Management Services, and the Director of the Department of Labor; the county board in the case of the county; the corporate authorities in the case of a municipality; and the appropriate body authorized to provide for expenditures of its funds in the case of any other unit of government."
The governing body reviews each term decided on by the panel. If it fails to affirmatively accept or reject a term within twenty days, the term becomes part of the collective bargaining agreement. If the governing body rejects a term, it must provide reasons for such rejection. The parties then return to the arbitration panel for further proceedings and issuance of a supplemental decision as to each of the rejected terms. That decision is then submitted to the governing body for ratification.

The ability of an employer to reject the arbitration panel’s decision must be recognized as a significant change. The bill as passed by the Senate provided for final and binding arbitration. Those opposed to final and binding arbitration at that time expressed two major concerns. The first of these concerns was fiscal. Some legislators were disturbed by the possibility that an arbitrator could grant an award so large that taxing bodies would have to raise taxes to cover the award. If the governing body rejects a term, it must provide reasons for such rejection. The parties then return to the arbitration panel for further proceedings and issuance of a supplemental decision as to each of the rejected terms. That decision is then submitted to the governing body for ratification.

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The arbitration clause was vigorously debated in the House Committee on Labor and Commerce. Both sides offered statistics from surveys of other states that employed a form of compulsory arbitration. Opponents felt binding arbitration would spell financial disaster. The bill was amended during the second reading to allow the

191. 83d Gen. Assem., Senate Debate on S.B. 536, pp. 312-13 (May 27, 1983). Senator Grothberg inquired as to whether an arbitration award could force local officials to increase taxes. Senator Collins replied that it could not.


193. 83d Gen. Assem., House Committee on Labor and Commerce, (June 8, 1983). Mr. Ryan, Village President of Arlington Heights, quoting Mayor Coleman Young of Detroit, "... compulsory interest arbitration destroys collective bargaining ... and destroys sensible fiscal management." Mayor Nick Blaise, Niles, "... collective bargaining with a binding arbitration clause has dramatic consequences. ... ” Steve Rosebaum, Assistant Manager of the Labor Relations Department for the Illinois State Chamber of Commerce, “It's disaster. ...”


195. The legislature was also concerned with the costs of administering mandatory collective bargaining throughout the state. Consequently a heated debate, continued throughout the proceedings of both Acts, over the applicability of the States Mandates Act, ILL. REV. STAT. Ch. 85, ¶ 2201 et seq. (1983). Section 21 of the IELRA and section 23 of the IPLRA provide that each Act respectively, is exempted from the States Mandate Act. During Senate debates on S.B. 536, Senator DeAngelis presented a letter from the States Mandates Office indicating that they had reviewed S.B. 536 and considered the General Assembly’s finding that the bill was excluded from the Mandates Act in error. On several occasions amendments to the bills were proposed in an effort to bring the Acts under the Mandates Act, each meeting with defeat. It remains to be seen whether these provisions will survive judicial review.
employer's governing body to reject an award.\textsuperscript{196} Thereafter, opposition to arbitration focused on the fact that arbitration vested final decisionmaking authority in an unaccountable third party. Proposed amendments included referendum approval of arbitration agreements,\textsuperscript{197} residency requirements for arbitrators,\textsuperscript{198} and a requirement that the arbitrator provide financial suggestions to the employer as to a method to meet the costs of the order.\textsuperscript{199} All failed to pass.

The Act provides no limitations on the number of times a governing body may reject a term. However, where the initial costs of arbitration are borne equally by the parties,\textsuperscript{200} the employer alone bears the cost of supplemental arbitration, including the employee representative's attorney's fees.\textsuperscript{201} As the legislative history reveals, this imposes a subtle pressure on the employer to compare costs.\textsuperscript{202} There is no express language under the act, or discussion during the legislative history, that states that the employer is not free to reject any term it chooses to regardless of its reasoning. Clearly this would appease the concerns of those who opposed third party decision-making. However, it can reasonably be argued that an employer's arbitrary and repeated rejections of terms may breach the duty to bargain in "good faith",\textsuperscript{203} which constitutes an unfair labor practice under section 11. A major reason behind creating the Act was to mandate bargaining between public employers and their employees. To allow an employer to arbitrarily reject any term would defeat that purpose entirely.

The treatment of "essential service employees" is an intriguing area of the Act. As first manifested in the Senate,\textsuperscript{204} and approved by

\begin{itemize}
\item \textsuperscript{196} 83rd Gen. Assem., House Debate on S.B. 536, p. 295 (June 23, 1983), Amendment 6.
\item \textsuperscript{197} 83rd Gen. Assem., House Debate on S.B. 536, p. 253 (June 24, 1983), Proposed Amendment 21.
\item \textsuperscript{198} 83rd Gen. Assem., House Debate on S.B. 536, p. 257 (June 24, 1983), Proposed Amendment 23.
\item \textsuperscript{199} 83rd Gen. Assem., House Debate on S.B. 536, pp. 269-70 (June 24, 1983), Proposed Amendment 31.
\item \textsuperscript{200} ILL. REV. STAT. Ch. 48, § 1614, § 14(d) (1983).
\item \textsuperscript{201} ILL. REV. STAT. Ch. 48, § 1614, § 14(n) (1983).
\item \textsuperscript{202} 83rd Gen. Assem., House Debates on S.B. 536, p. 251 (June 24, 1983). Representative Greiman, in response to proposed House amendment 20 which sought to split the costs of arbitration.
\item \textsuperscript{203} ILL. REV. STAT. Ch. 48, § 1607, § 7 (1983).
\item \textsuperscript{204} 83rd Gen. Assem., House Debate on S.B. 536, p. 311 (May 27, 1983).
\end{itemize}
the House, employees or units who were deemed "essential" were to be covered by the arbitration impasse procedure. In fact, this section of the bill, as originally presented to the Governor, was captioned "Security Employees and Essential Service Employee Disputes". The Governor deleted "Essential Service Employee" and replaced it with "State Peace Officer and State Fire Fighter".

However, essential service employees still come under the arbitration impasse provision by virtue of section 18(a). Section 18 provides that if a strike is about to occur, an employer may petition the Board to determine if the strike would constitute a clear and present danger to the health and safety of the public. If the Board finds that the strike would present such a danger, the employer may petition the circuit court to enjoin the strike or to impose conditions on the strike. The court then designates which of the employees within the unit perform services essential to the health and safety of the public. Those employees will then be ordered to return to work for a limited duration. The period will be extended only upon demonstrating that the extension is necessary to protect the public health and safety from a clear and present danger. If the court orders employees back to work, it will also require that the employer and exclusive representative participate in the impasse procedure of section 14. The court determines which employees will be subject to the procedure.

Several issues are presented by this section. One area of uncertainty is the extent to which a court may rearrange employees of the same occupation within a single unit, and, order skeletal crews to work while others strike. Such an order would reflect an interpretation of "essential employees" based on numbers as well as occupational category. Although the definition of "essential service employee" contained in the Act is somewhat ambiguous, the legislative discussion of the term evinces an intent that determinations of employee status with regard to this classification be based solely on the nature of the occupation. This approach would bar strikes by all members of an occupational category deemed "essential." The alternative interpreta-

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208. See § VI supra at 904 for a discussion of the strike provision and of the meaning of clear and present danger.  
209. ILL. REV. STAT. Ch. 48, ¶ 1618, § 18(a) (1983).  
210. See supra note 2.  
tion would require that the number of essential service employees necessary to safeguard public health and safety remain on the job, while allowing the remaining employees in the essential service group to strike. This would allow some occupational groups to simultaneously strike and enjoy the benefits of arbitration, a result clearly inequitable to the employer.

However, this may very well be the result in cases where the employees of a particular unit perform different "tasks." To use the example of Representative Greiman, if the strike involved a unit consisting of "doctors," arguably an essential service, the doctors who handle the intensive care unit or the emergency room may be required to work. Other doctors, such as dermatologists, may not be required to work, as their absence would not present the same kind of threat. Under Section 18, the court decides which employees will be covered by the arbitration procedure of section 14. The implication is that arbitration will resolve the dispute only as to those employees enjoined from striking. This encourages a form of judicial unit splitting. The alternative is to submit the entire dispute to section 14 arbitration which, as previously discussed, is somewhat inequitable to the employer. Unfortunately, the legislative history does not address this problem.

Finally, there is the issue of whether a judicial designation of a group of employees as "essential" locks the group into that category for purposes of future disputes. Clearly, an affirmative answer here would support the position of judicial unit splitting. However, in explaining the treatment of essential services under the Act, Representative Greiman indicated that the determination should be made on a case by case basis, because "[i]n one moment in time, in one community, one kind of occupation will be an essential service. At another time, [it] will not be. . . ." In light of the legislature's reasoning and the fact that section 18 requires repeated demonstration of a clear and present danger to require the employees to work, it would appear that the employer must obtain a judicial determination each time the situation presents itself. However, it is conceivable that a court could relegate a

213. A similar issue is presented by the possibility of bargaining units containing both police or firefighters and other employees—a situation which may exist as a result of "grandfathering" in bargaining units of smaller communities. The legislature failed to address this issue apparently anticipating that it would not arise. However, should such a situation develop, this type of unit may be analogized to situations where "security" and "non-security" employees are in the same unit. Under section 3(o), where the majority are security employees, the non-security employees are treated as security employees. Therefore the entire unit would be subject to section 14 guidelines.
particular occupational category permanently to "essential" status. For example, a court may reasonably conclude that emergency room doctors or sanitation workers are and forever will be essential service employees, and from that point forward should be covered by the arbitration procedure and precluded from striking. This would then place the burden on the exclusive representatives to show that the employees are no longer essential and should be allowed to strike. Finally, it should be noted that under Section 14, security officers,\textsuperscript{215} state peace officers and state fire fighters are also prohibited from striking.

The form of arbitration, governing all other public employees is not expressly set forth in a particular section, but may be drawn from several sections. Section 7\textsuperscript{216} describes the duty to bargain collectively. The fourth paragraph of that section provides that the parties may, by mutual agreement, include arbitration procedures in the collective bargaining agreement for impasses resulting from their inability to agree on wages, hours, terms and conditions of employment. Such arbitration provisions will be subject to the Illinois "Uniform Arbitration Act" unless the parties agree otherwise. Consequently, the parties themselves determine the method of arbitration for their disputes. Section 12\textsuperscript{217} creates the Public Employee Mediation Roster, the services of which are available to the parties upon request. However, the parties are always free to choose other mediators.\textsuperscript{218} The parties may also, by mutual agreement, request a mediator to perform fact-finding as set forth in Section 13. Under this provision, the Board must submit a panel of seven people from the Mediation Roster to the parties within three days of the parties request. The parties then choose one of the seven to serve as fact-finder. The fact-finder acts independently of the Board and may be the same person who initially conducted the mediation. The fact-finder sets up the timetable for hearings and determines which issues are in dispute. Within forty-five days of the appointment, the fact-finder sends the parties written findings of fact and recommendations for resolution of the dispute and publishes these findings and conclusions in a newspaper. The findings are only advisory and are not binding on the parties. Should the parties reject the recommendations they can resume negotiations.\textsuperscript{219} As the legislative history points out, however, if the parties agree to binding arbitration, both the employer

\textsuperscript{215} ILL. REV. STAT. Ch. 48, ¶ 1614, § 14(1) (1983).
\textsuperscript{216} ILL. REV. STAT. Ch. 48, ¶ 1607, § 7 (1983).
\textsuperscript{217} ILL. REV. STAT. Ch. 48, ¶ 1612, § 12 (1983).
\textsuperscript{218} ILL. REV. STAT. Ch. 48, ¶ 1612, § 12(c) (1983).
\textsuperscript{219} ILL. REV. STAT. Ch. 48, ¶ 1613, § 13 (1983).
and the employees would have to abide by an award.\textsuperscript{220}

Similarly, the \textit{IELRA} allows parties to submit unresolved issues concerning the terms of a new collective bargaining agreement to final and binding arbitration if the parties mutually agree to such arbitration.\textsuperscript{221} The \textit{IELRA} also provides an impasse procedure which requires mediation when the parties have failed to reach an agreement within fifteen days of the start of the school year.\textsuperscript{222} However, the legislative history makes it abundantly clear, binding arbitration on contract terms may be imposed only if the parties agreed to such arbitration.\textsuperscript{223} Despite the voluntary nature of the provision, opponents of the \textit{IELRA} voiced concerns similar to those expressed with regard to the \textit{IPLRA}, specifically, that arbitration places the decision making process in the hands of a third party,\textsuperscript{224} and that it raises the possibility of forced tax increases.\textsuperscript{225} However, the legislature determined that the need for a vehicle for the efficient and orderly resolution of labor disputes in the field of education outweighed these concerns.

\textbf{IX. GRIEVANCE PROCEDURES}

It has been said that grievance arbitration procedures are the very heart of the collective bargaining process.\textsuperscript{226} Both the \textit{IPLRA} and the \textit{IELRA} reflect this philosophy by requiring that collective bargaining agreements contain grievance resolution procedures. Under Section \textsuperscript{227} of the \textit{IPLRA}, any collective bargaining agreement negotiated between an employer and the exclusive representative must contain a grievance mechanism for the resolution of disputes concerning the administration or interpretation of the agreement. Unless the parties agree otherwise, the collective bargaining agreement shall provide for final and binding arbitration of such disputes and must contain a no-strike provision. Grievance procedures of any collective bargaining

\textsuperscript{221} \textit{ILL. REV. STAT.} Ch. 48, \textsection\textsection 1712, \textsection 12 (1983).
\textsuperscript{222} See \textsection VII supra at 910 for a discussion of the impasse procedure.
\textsuperscript{224} 83rd Gen. Assem., House Committee on Elementary and Secondary Education, Hearings on H.B. 1530, (May 6, 1983). Charles Rose, Attorney for Illinois Association of School Boards. "...[W]e are opposed to any kind of permissive language in a bill which would allow for interest arbitration. What you are doing with that is taking the decisionmaking process away from the parties involved in the contract and putting it into the hands of a third party."
\textsuperscript{225} 83rd Gen. Assem., Senate Debate on H.B. 1530, p. 35 (June 27, 1983).
\textsuperscript{227} \textit{ILL. REV. STAT.} Ch. 48, \textsection 1608, \textsection 8 (1983).
agreement are subject to the Illinois Uniform Arbitration Act.\textsuperscript{228}

Under the IPLRA the determination of whether grievances will be submitted to final and binding arbitration is made by the parties during the collective bargaining process. However, this was not always the case. The bill, as submitted to the Governor, provided for mandatory binding arbitration of grievances.\textsuperscript{229} The Governor inserted the words "unless mutually agreed otherwise" and he also added the requirement of a no-strike provision, should binding arbitration be chosen.\textsuperscript{230} Presumably, the no-strike provision constitutes the usual \textit{quid pro quo} for the employer’s concession to binding arbitration.

In contrast, the \textit{IELRA} provides that any negotiated agreement between the employees' representatives and the educational employer must contain a grievance procedure requiring binding arbitration of disputes concerning the administration or interpretation of the agreement.\textsuperscript{231} Additionally, the agreement must contain a no-strike clause. Mandatory binding arbitration of contract grievances was provided for in the \textit{IELRA} as originally introduced.\textsuperscript{232} During committee hearings on the bill, opponents pointed out that binding arbitration would remove elected officials from the dispute resolution process and place ultimate authority over disputes in the hands of outside arbitrators. They were opposed to this result even in the case of contract grievances.\textsuperscript{233} Proponents of the bill stressed the necessity of grievance resolution once a contract is in place and the fact that binding arbitration comes into play only at that point.\textsuperscript{234} They emphasized that employees would be precluded from striking over contract grievances.\textsuperscript{235} The fact that grievance arbitration remains mandatory under the \textit{IELRA} may indicate legislative recognition of the inherent differences between educational employees and other public workers. It also reflects a strong

\textsuperscript{228} \textit{ILL. REV. STAT.} Ch. 10, § 101-123 (1983).
\textsuperscript{229} S.B. 536 as Enrolled § 8, p. 15.
\textsuperscript{230} Governor's Amendatory Veto Message on S.B. 536, p. 4 (September 23, 1983).
\textsuperscript{231} \textit{ILL. REV. STAT.} Ch. 48, ¶ 1710, § 10(c) (1983).
\textsuperscript{232} H.B. 1530 as introduced § 11(b), April 14, 1983.
\textsuperscript{234} Representative Nelson expressed concern as to who would conduct the binding arbitration. Representative Stuffle replied "It can be a third party that submits it. They can work that out in a grievance procedure. The point is that once you put the contract language in place by mutual consent, you need a grievance procedure over the contract. . . . You've got to decide on those grievances. That's not an unresolved issue in the contract. I think that's what we have to keep in mind. That's grievance over the language that's in place that they both agreed to." 83rd Gen. Assem., House Committee on Elementary and Secondary Education Hearings on H.B. 1530, (May 6, 1983).
\textsuperscript{235} 83rd Gen. Assem., House Committee on Elementary and Secondary Education Hearings on H.B. 1530, (May 6, 1983).
public policy disfavoring labor strife during the term of a contract.\textsuperscript{236}

Another distinction between the grievance procedures of the two Acts is presented by the provisions governing unfair labor practices. Under the IPLRA, as previously noted, arbitration is subject to the Illinois Uniform Arbitration Act. A party seeking review of the arbitrator's decision would follow the procedures outlined under that Act. Failure to abide by an award presumably would amount to a breach of contract. Under section 16 of the IPLRA,\textsuperscript{237} an aggrieved party may bring suit in circuit court for violations of agreements after exhausting any arbitration mandated by the Act.

In contrast, the IELRA makes failure to comply with a binding arbitration award an unfair labor practice.\textsuperscript{238} This provision was contained in the bill from its inception and was not specifically addressed during the legislative proceedings. The effect of the provision is to trigger the unfair labor practice procedures outlined in the Act.\textsuperscript{239} This procedure allows a charging party to apply directly to the Board for relief. At that juncture, the Board would determine if in fact an unfair labor practice had occurred. In a case of failure to comply with an arbitration award, the decision would often be fairly clear cut. However, in making that determination the Board may also engage in contract interpretation and review the equity of award, functions usually left to the courts. While the legislature did not comment on the provision, it is consistent with the general policy objective underlying the IELRA of providing an efficient system for the resolution of conflicts arising during the course of a collective bargaining agreement.\textsuperscript{240}

The Governor added to both the IPLRA and the IELRA provisions\textsuperscript{241} allowing labor boards the discretion to defer to arbitration

\textsuperscript{236} Both the IELRA and the IPLRA provide that the costs of arbitration are to be borne equally between the parties. Furthermore, section 6 of the IELRA and section 12 of the IPLRA provide for the establishment of a Mediation Roster, the services of which are available to the parties for arbitration of grievances.

\textsuperscript{237} ILL. REV. STAT. Ch. 48, ¶ 1616, § 16 (1983).

\textsuperscript{238} ILL. REV. STAT. Ch. 48, ¶ 1714, § 14(a)(8), (b)(6) (1983).

\textsuperscript{239} ILL. REV. STAT. Ch. 48, ¶ 1715, § 15 (1983).

\textsuperscript{240} ILL. REV. STAT. Ch. 48, ¶ 1701, § 1 (1983); Governor's Amendatory Veto of H.B. 1530, general statement of purpose (September 23, 1983).

\textsuperscript{241} The IELRA provides "... that if an alleged unfair labor practice involves interpretation or application of the terms of a collective bargaining agreement and said agreement contains a grievance and arbitration procedure, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement." ILL. REV. STAT. Ch. 48, ¶ 1714, § 14(a)(5) (1983). The IPLRA provision can be found in § 11(i). "If an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement." ILL. REV. STAT. Ch. 48, ¶ 1611, § 11(i) (1983).
when an alleged unfair labor practice involves the interpretation or application of the terms of a collective bargaining agreement. During the proceedings concerning the IPLRA, the legislators indicated that it was their intention that the Board be permitted to defer to arbitration as the NLRB does in the private sector. Furthermore, while discussing the Act in general terms, they indicated that the Board should consider the same factors used by the NLRB in determining whether or not deferral is appropriate.

It should be noted that the NLRB’s position on deferral has fluctuated somewhat over the years, and has changed since the Illinois Statutes were drafted. In one of its most recent rulings on the subject, United Technologies Corporation, the NLRB reinstated the doctrine of pre-arbitral deferral established by Collyer Insulated Wire and its progeny, and the post-arbitral deferral policy set forth in Speilburg Mfg., Co. United Technologies over-ruled an earlier decision which had substantially undercut the vitality of Collyer and which represented the NLRB position on deferral at the time of the Illinois debates. United Technologies indicated that the Collyer doctrine had withstood the tests of judicial scrutiny and practical application. Furthermore, the NLRB noted that the doctrine is a reflection of the federal policy favoring voluntary arbitration and dispute settlement. In light of the legislature’s expressed desire to follow the overall policies of the NLRB and the NLRA, it is unlikely that they intended to follow the long-standing doctrines of Collyer and Speilburg.

An interesting issue, not addressed by the legislature, is whether the Acts impose on unions a duty of fair representation, and if so, whether that duty is breached by a failure to invoke grievance arbitration. In the private sector, the duty of fair representation is rooted in section 9(a) of the NLRA. Although the provision does not expressly

246. 192 NLRB 837 (1971).
247. 112 NLRB 1080 (1955).
248. General American Transportation Corp., 228 NLRB 808 (1977). (The Board found that deferral was not appropriate in cases alleging violations of sections 8(a)(1) and (3) and 8(b)(1)(A) and (2). Furthermore, the Board indicated that deferral should only be allowed where Congress has granted the Board authority to do so.)
249. 29 U.S.C. § 159(a) (1982). “Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining.”
impose such an obligation, the duty of fair representation is derived from the nature of the representative's role as the exclusive representative of all of the employees.250 The IPLRA contains almost the identical language of this provision in sections 6(b) and (c). However, the IPLRA goes one step further. Section 6(d) provides that the exclusive representative is responsible for representing the interests of all public employees in the unit; however, the representative retains the right to refuse to process employee grievances it finds unmeritorious.251 This provision reflects judicial rulings in fair representation cases in the private sector.252 In light of the legislature's overall intent to follow the NLRA as interpreted by the courts, it is reasonable to assume the legislature intended that public employee representatives retain the same discretion private sector representatives enjoy in grievance processing.253

Whether a breach of the duty of fair representation will constitute an unfair labor practice remains to be seen.254 A factor in that determination may be whether the employee has the right to invoke grievance arbitration independently of the exclusive representative.255 If employees are granted independent access to the grievance resolution processes, it is less likely that an unwarranted refusal by a representative to seek redress of an employee's grievance would amount to an unfair labor practice.

The IELRA does not contain a provision akin to section 6(d) of the IPLRA. However section 3(b)256 of the Act tracks the language of

bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment: Provided. That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: Provided further. That the bargaining representative has been given opportunity to be present at such adjustment."

250. Vaca v. Sipes, 386 U.S. 171 (1967). (In the leading case on the duty of fair representation, the Court found that the union has a statutory duty to fairly represent all employees both in collective bargaining with the employer and in its enforcement of the collective bargaining agreement.)

251. ILL. REV. STAT. Ch. 48, p 1606, § 6(d) (1983).

252. Vaca, supra note 52. (A breach of the unions duty occurs only when their handling of the grievance is arbitrary, discriminatory or in bad faith.) Another issue is what the appropriate standard will be for determining when a breach has occurred. See Graf v. Elgin Joliet & Eastern Ry. Co., 697 F.2d 771, 778 (7th Cir. 1983). (Case arose under the Railway Labor Act. The court imposed a very strict standard. A breach occurs only when the representative "deliberately and unjustifiably refuses to represent the worker. Negligence even gross negligence . . . is not enough.")


254. Cf. OHIO REV. CODE ANN. § 4117.11(B)(6) (Page 1983); a failure to fairly represent all public employees in a bargaining unit is expressly included in the list of unfair labor practices.

255. Cf. IOWA ADMIN. CODE § 20.18 (1983): requires approval of both the employee organization and the employee to invoke arbitration in the resolution of grievances.

256. ILL. REV. STAT. Ch. 48, ¶ 1703, § 3(b) (1983).
Although the history of the IELRA does not comment on either the duty of fair representation or the applicability of the NLRA in this area, the legislature's intention to grant educational employees rights similar to those enjoyed by private sector employees would seem to carry with it an intent to impose on educational bargaining representatives duties similar to those borne by their private sector counterparts.

X. Fair Share Requirements

The risk of "free riders" exists in the private sector as well as the public sector. The Illinois public sector collective bargaining acts deal with this problem by allowing public employers and exclusive representatives the right to negotiate for a provision in the collective bargaining agreement requiring "fair share" payments from non-union members.

Under the IPLRA, fair share is defined as an employee's "proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and other conditions of employment, [not exceeding] the amount of dues uniformly required of members. . . ." The IELRA does not expressly provide a method for calculating a fair share. It provides only that non-member employees may be required to pay a fair share fee "for services rendered" not in excess of the amount of union dues. Despite the absence of a specific definition of fair share for purposes of the IELRA, the elements of fair share listed in the IPLRA would seem to be appropriate considerations in determining the fair share of an educational employee. In fact, the IELRA as submitted to the Governor, contained almost the exact language found in the IPLRA. Furthermore, it was the legislature's expressed intention that the fair share provisions in both Acts comport with existing judicial precedent on the subject. It is highly unlikely the Governor disavowed this intention

257. See supra note 249.
258. Free Rider is a term used to describe those employees who derive the benefits of a union's efforts without having to pay for them through membership. Abood v. Detroit Bd. of Educ., 431 U.S. 209, 222 (1974).
259. Id. at 224.
260. ILL. REV. STAT. Ch. 48, § 1711, § 11, § 1606, § 6(e) (1983).
261. ILL. REV. STAT. Ch. 48, § 1603, § 3(g) (1983).
262. ILL. REV. STAT. Ch. 48, § 1711, § 11 (1983).
264. 83rd Gen. Assem., House Committee on Elementary and Secondary Education, Hearings on H.B. 1530, (May 6, 1983); Senate Debate on H.B. 1530, p. 32 (June 27, 1983). Senator Bruce stated "We drew this language right from the Abood case, you cannot make political contribu-
in rewriting the provision, particularly in light of the provisions he added to both Acts.265 These provisions preclude political contributions (amounts used to support union political activities) from constituting any part of the fair share fee unless voluntarily made. This is a reflection of the Supreme Court's holding in Abood v. Detroit Board of Education.266

In addition, both the IPLRA and the IELRA contain a "religious exception" to the fair share requirement which preserves the right of non-association of employees based on bona fide religious reasons.267 This language is similar to that of section 19 of the NLRA.268 Unlike the NLRA, the Illinois Acts do not require that the religious organization in question have historically objected to supporting labor organizations. Furthermore, the Illinois Acts provide that an amount equal to the fair share fee must be paid to a non-religious charitable organization agreed upon by the employees affected and the exclusive representative. If the parties are unable to agree on a charity, each Labor Board may establish a list of charities to which the fee may be paid. The Illinois Acts are more restrictive in this respect than the NLRA, which allows the fair share payment to be made to a non-religious, nonlabor, charitable fund exempt from federal taxation under 26 U.S.C. 501(c)(3), chosen by the employee from three such groups designated in the contract.

Both the IPLRA and the IELRA provide that fair share fees will automatically be deducted by the employer from the employee's earnings and paid to the representative. Opponents of the fair share provision in the IPLRA argued that a fair share payment was actually a forced share since the alternative is not to work.269 Proponents coun-


266. Abood, supra Note 258, (The Court upheld a Michigan statute's "agency shop" provision requiring the payment of a fair share fee as a condition of employment in so far as the fee was used by the union for collective bargaining, contract administration and grievance adjustment purposes. 431 U.S. at 225-26). See also Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, Freighthandlers, Express & Station Employees, — U.S. —, 104 S.Ct. 1883 (1984). (Plaintiffs challenged fair share contributions used for union conventions, social activities, publications, litigation not involving the negotiation of contracts or grievances and organizing efforts. The Court allowed contribution on the first three items, but denied it on the latter two.)


269. 83rd Gen. Assem., House Committee on Labor and Commerce, Hearings on S.B. 536, (June 8, 1983). Representative Mays; Senate Debate on S.B. 536, p. 105 (June 30, 1983); Senator Hudson.
tered, under both Acts, that no one was actually required to join a union and that the respective provisions were in accord with existing case law. Since fair share payments may be made a condition of employment under the IPLRA, the automatic deduction ensures receipt of the payments, while preventing occasion for discharge for failure to pay.

The IPLRA's and the IELRA's authorization of fair share provisions presents two significant issues. First, a jurisdictional question exists as to the appropriate entity to handle challenges to fair share fees. The IPLRA specifically provides that "the making of" fair share agreements by a public employer and the exclusive representative shall not be deemed an unfair labor practice. Another provision allows the exclusive representative to prescribe rules for the acquisition and retention of membership and the determination of fair share payments. While the express wording of these provisions merely sanctions fair share arrangements, they seem to reflect an underlying, albeit unexpressed, desire to preclude Board jurisdiction over problems associated with fair share arrangements.

In contrast, the IELRA's provisions governing unfair labor practices do not mention fair share arrangements. This omission would seem to allow a challenge to the validity of a fair share provision. It would follow from this reasoning that the Board, as opposed to the courts, would have initial jurisdiction over fair share disputes arising under the IELRA. However, the intent of the legislature that the fair share provisions should reflect existing case law would seem to exclude challenges to fair share arrangements from Board jurisdiction.

The resolution of the second fair share issue may well render the first issue moot. The second issue is the determination of the fair share amount. As previously discussed, the amount can only include contributions to cover specific expenditures, and in no case may it exceed union dues. Under both the IPLRA and the IELRA, the actual


271. ILL. REV. STAT. Ch. 48, ¶ 1610, § 10(a)(2) (1983). The IELRA does not expressly state that payment of fair share fees is a "condition of employment"; however it may be implied from the fact that fair share provisions are authorized to be included in the collective bargaining agreement and since automatic deduction seems to be tantamount to "a condition of employment".


273. ILL. REV. STAT. Ch. 48, ¶ 1610, § 10(a)(2) (1983).

274. ILL. REV. STAT. Ch. 48, ¶ 1610, § 10(b)(1) (1983).

amount required is determined by the exclusive representative. An immediate problem surfaces—how can an employee insure that the amount includes only those sums statutorily and constitutionally allowed? This problem did not completely escape the legislature's eye. At one point in the proceedings on the IPLRA, Senator Keats proposed that unions be required to file copies of annual reports, by-laws, and a listing of dues schedules with the Board in order to disclose the disposition of union funds. These requirements are similar to those found in the Labor Management Reporting and Disclosure Act of 1959. The suggestion was rebuffed with the proviso that, should the need arise, the legislature could consider amending the Act.

The Seventh Circuit Court of Appeals may have already resolved the issue to some extent in the recent case of Hudson v. Chicago Teachers Union Local No. 1, et al. The court allowed plaintiffs, non-member teachers, to bring an action against the union and the school board, under 42 U.S.C. 1983, attacking the procedure established in the collective bargaining agreement for determining the amount of the fair share fee. The court found that, even where the money collected is not used for impermissible purposes, neither the State nor its agencies could force non-member dissenters to support a union without due process. The court found that the public employer “must establish a procedure that will make reasonably sure that the wages of non-union employees will not be used to support . . . the union’s political activities not germane to collective bargaining.” The court also found that the defendants owed a “due process” duty to the plaintiffs—“the procedure must make reasonably sure that those employees’ wages will not be used to support any union activities that are not germane to collective bargaining, whether or not the activities are political or ideological.”

Clearly, this places a substantial burden on both the public employer and the exclusive representative to ensure that the fair share fee is a constitutionally accurate amount. Presumably, this in turn will force union disclosure of the uses of funds attributable to fair share

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282. Id.
283. Id.
payments.\textsuperscript{284} The issue then becomes the determination of adequate procedures. Without precluding the possibility of alternative procedures, the court suggested that "the constitutional minimum would be fair notice, a prompt administrative hearing before the Board of Education or some other state or local agency—the hearing to incorporate the usual safeguards for evidentiary hearings before administrative agencies—and a right of judicial review of the agency's decision."\textsuperscript{285} The court also noted that an internal union remedy and an arbitration procedure is unlikely to satisfy the requirements. Unless an alternative procedure can be found which passes constitutional muster, it would appear the court has also answered the question of jurisdiction.

Finally, \textit{IPLRA} section 6(f) permits the exclusive representative and the employer to include a provision in the collective bargaining agreement requiring union dues checkoff upon written authorization from the employee member. The \textit{IELRA} once contained a similar provision, but the Governor deleted it in his amendatory veto without comment. Section 22, however, amends portions of the school code to allow for such deductions.

\section*{XI. Unfair Labor Practices}

Both the \textit{IPLRA} and the \textit{IELRA} enumerate certain unfair labor practices.\textsuperscript{286} The \textit{IPLRA} covers unfair labor practices under section 10.\textsuperscript{287} Since it was the legislature's expressed intention to follow the \textit{NLRA} to the extent possible, a comparison may prove instructive. The provisions governing employer unfair labor practices are taken almost verbatim from the \textit{NLRA}.\textsuperscript{288}

The major differences between the \textit{IPLRA} and the \textit{NLRA} appear in the provisions governing labor organization unfair labor practices. For the most part, the \textit{IPLRA} tracks the language of the \textit{NLRA}, but

\textsuperscript{284} It is conceivable that a union, and an employer, may forego the benefit of fair share provisions in the collective bargaining agreement in order to avoid the administrative difficulties of disclosure or running afoul of the constitutional requirements.

\textsuperscript{285} No. 83-3118, slip op. (7th Cir. Sept. 6, 1984).

\textsuperscript{286} The purpose of this section is merely to compare the provisions devoted to unfair labor practices and to point out the notable differences. Substantive analysis of several of the individual unfair labor practice will be addressed in the appropriate section for that practice, where the legislative history has commented on it.

\textsuperscript{287} \textsc{Ill. Rev. Stat. Ch. 48, ¶ 1610, § 10} (1983).

\textsuperscript{288} \textsc{29 U.S.C. § 158(a)} (1982). There is, however, one notable difference. The \textit{NLRA} allows an employer and an exclusive representative to make an agreement requiring union membership and then proceeds to delineate the circumstances under which this may be effectuated. The \textit{IP-LRA}, allows the parties to enter an agreement requiring fair share payments.
there are some noteworthy omissions. The following matters covered by the NLRA are not addressed by the IELRA: secondary boycotts or strikes,289 hot cargo agreements,290 pre-hire agreements in the construction industry,291 excessive union fees,292 featherbedding,293 health care. Although it is clear that the legislature was not unaware of these provisions,294 it gave no reason for the omissions. The most significant of these omissions may prove to be the absence of provisions relating to secondary boycotts or secondary picketing.295 For example, a union may represent both public and private sector employees. In an effort to put pressure on the private sector employer, they may picket the public employer in order to coerce it into cutting off relations with the private employer. In the alternative, where the union seeks to place pressure on the public employer, (where its ability to do so is more limited) they may threaten to strike the private sector employer. The legislature may simply have failed to consider the possibility of such secondary actions, or it may have anticipated that such activities would be precluded under section 8(b)(4) of the NLRA.296

The IELRA's unfair labor practices297 section is a bare bones version of that of the IPLRA. The absence of many of the provisions here may be partially the result of the same factors discussed with respect to the IPLRA, and partially attributable to the unique setting presented in the area of education.298 In addition to all the omissions of the IPLRA, the IELRA also omits recognitional picketing.299 The IELRA does, however, add failure to comply with a binding arbitration award as an
unfair labor practice by either the employer or the labor organization.300 Both the IELRA and the IPLRA make a violation of any of the rules which the Board may promulgate governing election conduct an unfair labor practice. Furthermore, it is an unfair labor practice under both Acts for an employer to discriminate against an employee for having signed or filed an affidavit, petition or charge or for providing information or testimony. Presumably, the affidavits, petitions, charges, information and testimony referred to are those connected with employment matters. The IELRA further prohibits discrimination against employees who have signed an authorization card in connection with union representation. The IPLRA also makes it a violation for the labor organization to so discriminate.

XII. UNFAIR LABOR PRACTICE PROCEDURES

The procedures to be followed in the event of an unfair labor practice charge are found in section 11 of the IPLRA301 and sections 15 and 16 of the IELRA.302 The procedure used by the IPLRA is very similar to that of the NLRA.303 It differs in three notable respects. First, the IPLRA allows a complaint to issue based on an unfair labor practice that occurred more than six months prior to the filing of the charge with the Board if the aggrieved person did not reasonably have knowledge of the unfair labor practice.304 The language of the NLRA limits its exception to the six month rule to cases where the person was prevented from filing the charge due to military service.305 Secondly, the IPLRA indicates that neither the Board, nor the person conducting the hearing, shall be bound by the rules of evidence applicable to courts, with the exception of rules of privilege recognized by law.306 The NLRA, on the other hand, requires that proceedings comply as nearly as possible with the federal rules of evidence.307 Finally, the NLRA gives priority to certain kinds of unfair labor practices.308 The IPLRA does not accord similar priority to any particular types of unfair labor practices.

A significant procedural omission from the IELRA is the absence

300. See § IX supra at 922.
301. ILL. REV. STAT. Ch. 48, ¶ 1611, § 11 (1983).
304. ILL. REV. STAT. Ch. 48, ¶ 1611, § 11(a) (1983).
305. 29 U.S.C. § 160(b) (1982). The IPLRA also contains this provision.
306. See supra note 304.
307. See supra note 305.
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of a requirement that the Board initiate an investigation of an unfair labor practice charge.309 Because the existence of an unfair labor practice is often determinative of the legality of a strike,310 the speed with which the Board investigates a charge can significantly affect the efficacy of the employees’ right to strike. Undue delay by the Board in resolving this threshold issue would alter the bargaining positions of the parties to the detriment of the employees.

The IELRA procedures are even further scaled-down. There is no statutory exception to the six month time limit on filing charges, nor is there any mention as to the appropriate rules of evidence. Furthermore, while the IPLRA311 and NLRA312 indicate that the appropriate burden of proof is a preponderance of the evidence, the IELRA is silent with respect to that issue. Nor is the Board granted statutory authority to amend its findings or orders prior to the case being filed in court, as it is in the IPLRA313 and the NLRA.314 Presumably, any deficiencies in the procedure outlined in the Act can be supplemented by rules and regulations promulgated by the Board.315

The IELRA’s provision underwent a significant change in the Governor’s hands. As passed by of the General Assembly, the bill provided that the Regional Superintendent would handle unfair labor practice charges, except in the case of State colleges and universities, or State agencies whose major function is providing educational services. A party aggrieved by an order of the Regional Superintendent could then obtain review by the Board.316 This arrangement met with the criticism that regional superintendents lacked the requisite expertise in collective bargaining and labor law to make those kinds of decisions.317 Opponents of the procedure also charged that it would result in inconsistent decisions and wanted the Board to administer unfair labor prac-

309. The Board investigates unfair labor practice charges. If they find that a charge involves a dispositive issue of a law or fact they issue a complaint. The person charged is then served with the complaint and notice of the hearing to be held not less than five days after service of the complaint. Ill. Rev. Stat. Ch. 48, ¶ 1611, § 11(a) (1983).
310. Ill. Rev. Stat. Ch. 48, ¶ 1618, § 18(a) (1983). In light of the immediacy of the situation, it is reasonable to presume that the board will decide the issue within the seventy-two hour time frame, thereby possibly averting a strike.
316. House Bill 1530 as Enrolled pp. 18-19.
 Senator Bruce explained that the reasoning behind the provision was to allow the person who is closest to local issues to make the decision as to what constitutes an unfair labor practice. Subsequently the Governor, without comment, placed the administrative responsibility for unfair labor practices in the hands of the Board.

**CONCLUSION**

With the enactment of the *[IPLRA]* and *[IELRA]* the Illinois Legislature sought to resolve the turmoil that often surrounds public sector collective bargaining. The Acts grant both employers and employees statutorily protected bargaining rights. In addition, the Acts specify when employers can strike, provide for arbitration and grievance procedures, and proscribe certain actions as unfair labor practices.

The Legislature attempted to resolve many of the conflicts that have traditionally arisen in the public sector labor relations. Although the Acts establish extensive guidelines for the resolution of these conflicts, some issues remain open. Therefore, it appears that the courts will play an important role in the continuing development of public sector labor law in Illinois.

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318. 83rd Gen. Assem., Senate Debate on H.B. 1530 pp. 152-153, (June 23, 1983). Senator Kustra proposed to amend the bill by removing the regional superintendent's jurisdiction in the area of unfair labor practices and give the State Board of Education the responsibility. The amendment failed to pass.


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