

TRENDS IN COLLECTIVE BARGAINING

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28th Annual Seminar on
School Law

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Community Unit School District No. 5 v. IELRB and AFSCME

- Background
- Litigation chronology
- ALJ/IELRB decision and rationale
- Fourth District Appellate Court decision and rationale
- Lessons



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Background

- Large and growing school district
- History of transportation department problems
- Problems increasing
- School Code provision for outsourcing – Section 10-22.34c
- Timing



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School Code § 10-22.34c

Safeguards before a school district can outsource :

- No outsource contract can be entered into before the term of an existing collective bargaining agreement has expired.
- Vendors must offer employment to qualified bargaining unit members.
- Vendors must offer comparable benefits.
- The school district must, utilizing detailed information required of bidders, make public a cost comparison.
- The school district must hold a public hearing on the question of outsourcing.



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School Code § 10-22.34c

- ✓ No outsource contract can be entered into before the term of an existing collective bargaining agreement has expired.
- ✓ Vendors must offer employment to qualified bargaining unit members.
- ✓ Vendors must offer comparable benefits.
- ✓ The school district must, utilizing detailed information required of bidders, make public a cost comparison.
- ✓ The school district must hold a public hearing on the question of outsourcing.

Unit #5 adhered strictly to all statutory requirements



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Timing

- 10/11 - AFSCME certified as exclusive representative for bus drivers and monitors
- 12/11 - Notification sent to AFSCME that Board would explore outsourcing
- 12/14/11 - Board directed administration to explore outsourcing
- 1/31/12 - Board issued bid documents for 1 year agreement
- 3/1/12 - Bid opening scheduled. No bids received.



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- 3/15/12 - Board issued bid documents for 3 year agreement
- 4/2/12 - Two bids opened
- 4/11/12 - Public hearing held
- 5/18/12 - Letter sent to AFSCME soliciting best offer
- 6/3/12 - Letter from AFSCME received stating it will not submit best offer because Board not bargaining in good faith
- 6/5/12 - Board unanimously adopted resolution to outsource transportation services



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Litigation Chronology

- 5/22/12 - charges filed alleging violation of 14(a)(1), 14(a)(3) and 14 (a)(5)
- 6/15/12 - complaint issued by Executive Director
- 6/25/12 - IELRB filed in McLean County Circuit Court for injunctive relief
- 7/18/12 - Circuit Court granted injunction (IELRB's "muscle")
- 11/26/12 - Fourth District Appellate Court affirmed issuance of injunction (not an abuse of discretion)
- 1/13/13 - ALJ issued Recommended Decision and Order
- 4/18/13 - IELRB adopted ALJ's Recommended Decision and Order
- 6/5/14 - Fourth District Appellate Court reversed IELRB



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ALJ/IELRB Decision and Rationale

14(a)(3) violation committed by Board – outsourcing and the lay off of bargaining unit employees arose from an anti-union animus:

- timing
- shifting reasons offered
- treated other employee-groups differently
- adverse action inherently destructive
- legitimate business reasons insufficient to overcome inference of anti-union animus



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ALJ/IELRB Decision and Rationale

14(a)(5) violation committed by Board – failed to bargain in good faith:

- no counteroffer submitted by Board
- unfair not to compromise



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Fourth District Appellate Court Decision and Rationale

“Because we have found the District did not violate sections 14(a)(1), 14(a)(3), and 14(a)(5) of the Act, the IELRB’s decision that the District committed an unfair labor practice when it entered into a subcontract with First Student for student transportation services is clearly erroneous and must be set aside.”



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Fourth District Appellate Court Decision and Rationale

- clearly erroneous standard governs because mixed question of law and fact (Speed)
- timing – not enough standing alone (Lake Zurich)
- shifting reasons offered (allegation unfounded)
- Inherently destructive concept inapplicable (Carmi)
- treated other employee-groups differently (“apples to oranges”)
- legitimate business reasons apparent
- good faith bargaining in subcontracting context – need not compromise on cost savings (SEIU)



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Lessons

- Must strictly adhere to School Code requirements
- Timing is critical: Plan ahead!
- At outset, declare all reasons that might lead to outsourcing
- Make vendor responsible for offering employment to “qualified” employees and for providing “comparable” benefits and wages



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Lessons (cont.)

- To meet good faith bargaining requirement need only:
 - Give notice of consideration of outsourcing
 - Meet with the union to discuss and explain
 - Provide information to the union
 - Give consideration to any “counterproposal”
- IELRB may occasionally over-reach



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Board of Education of the City of Chicago v. IELRB

Board need not arbitrate a grievance based on Board policy of identifying probationary teachers who had been non-renewed twice or given unsatisfactory performance ratings by placing a “do not hire” (DNH) designation in their personnel file.

2014 IL App (1st) 130285, 14 N.E.3d 1092 (1st Dist. 2014)



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Board of Education of the City of Chicago v. IELRB

Despite the grievance arbitrator issuing a subpoena, the Board did not need to turn over to the union student disciplinary records, even if identifying information redacted, without seeking court order pursuant to the Student Records Act.

2013 IL App (1st) 122447, 3 N.E.d 343 (1st Dist. 2013) (appeal denied)



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Niles Township Support Staff, Local 1274,
IFT/AFT, AFL-CIO v. Niles Township High School
District No.219

Employee does not get “two bites” of the apple. Pursuant to provision in CBA, when grieving employee filed with the EEOC, employee waived right to proceed with grievance arbitration.

2014 IL App (1st) 131044-U, 2014 WL 2730703 (Ill.App.1st Dist) (1st Dist. June 13, 2014) (RULE 23 OPINION)



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Board of Education of Peoria School District
No.150 v. Peoria Federation of Support Staff,
Security/Policeman’s Benevolent and Protective
Association Unit No. 114

School Board had a right to bring a declaratory judgment action regarding question of constitutionality and jurisdiction of an administrative agency without first exhausting administrative remedies.

998 N.E. 2d 36 (2013)



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International Union of Operating
Engineers, Local 399 v. IELRB

Western Illinois University not obliged to apply
the terms of employment set forth in the CBA to
newly reclassified bargaining unit members.

2013 WL 587456 (1st Dist. October 30, 2013)



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