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A NEW DAY FOR ILLINOIS: EXPECTATIONS ON THE IMPACTS OF THE J.B. PRITZKER ADMINISTRATION

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A NEW DAY FOR ILLINOIS: EXPECTATIONS ON THE IMPACTS OF THE J.B. PRITZKER ADMINISTRATION

By Melissa D. Sobota & Erin K. Walsh

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This past November, the people of Illinois chose J.B. Pritzker to be their 43rd governor.¹ After a long and often negative campaign, voters selected by a 54 to 39 percent margin to elect a man who promised the restoration of public sector unions,² increased funding for early childhood education and K-12 public schools,³ and the protection of State pensions.⁴ Given the current financial state of the State of Illinois, Governor Pritzker will have his hands full. This article will provide readers with a brief overview of what to expect from Governor Pritzker during his first term in areas of critical importance to Illinois: labor and employment law, public education, and the pension crisis.

I. A CHANGE IN LEADERSHIP

It's very important for us to establish on Day 1 that this is a very different kind of administration and we're focused on lifting up working families.⁵ –J.B. Pritzker

There can be no denying that Governor Pritzker will have a very different administration than former governor Bruce Rauner, particularly in the areas affecting labor and employment and education. Where former Governor Rauner was generally viewed as anti-union, Governor Pritzker campaigned on restoring and strengthening labor rights in the State and was endorsed by AFSCME Council 31, an organization with approximately 38,000 members in Illinois.⁶ Similarly, where Governor Rauner was a vocal proponent of school choice and supportive of efforts to expand charter school options in the state, Governor Pritzker has expressed his belief that adequate public-school funding should come first.⁷

With the election of Governor Pritzker comes many new appointments to State agencies and Illinois boards and commissions, which will play a vital role in promoting Pritzker's policies. As it pertains to employment agencies, Governor Pritzker has appointed Jim Bennett, the former Midwest Regional Director of Lambda Legal,⁸ to serve as Director of the Illinois Department of Human Rights ("IDHR"). This appointment may result in a renewed focus by IDHR on LGBTQ rights. Governor Pritzker has also filled two of the seven vacancies to the eleven-member Human Rights Commission: Cheryl Mainor and Michael Bigger. Michael Kleinik⁹ was appointed to serve as Director of the Illinois Department of Labor ("IDOL"). This appointment will likely impact IDOL's focus, priorities, and initiatives, including auditing and enforcement of the new amendments to the Illinois Minimum Wage Law which, as discussed in further detail below, substantially increases the penalties for employers who violate Illinois minimum wage and overtime laws.

On the education side, Governor Pritzker has appointed an almost entirely new State Board of Education, swapping out all but one of the nine members appointed by former Governor Rauner: Christine Benson, Cynthia Latimer, David Lett, Susan Morrison, Cristina Pacione-Zayas, Jane Quinlan, Darren Reisberg, Jacqueline Robbins, and Donna Simpson Leak.¹⁰ Among these appointments are two educators with experience in early childhood education and students with disabilities, which were two areas of focus during Pritzker's campaign. These newly appointed school board members will be pivotal when confronting issues facing Illinois schools,

such as teacher shortages in early education and K-12 schools in rural areas, funding shortfalls, and compliance with the new federal Every Student Succeeds Act.

In the realm of labor law, Governor Pritzker has made five appointments to the State Panel of the Illinois Labor Relations Board: John Cronin, Kendra Cunningham, Jose Gudino, William Lowry, and Tom Willis.¹¹ Notably, William Lowry will serve as the new Chair of the State Panel.¹² Governor Pritzker has not yet made any appointments to the Illinois Labor Relations Board Local Panel or the Education Labor Relations Board as there have not been any term expirations.

Finally, Governor Pritzker has appointed two new members to serve on the thirteen-member Board of Trustees of the Teachers' Retirement System of the State of Illinois:¹³ Devon Bruce¹⁴ and Maureen Mena.¹⁵ Governor Pritzker will have the opportunity to appoint four more members to the TRS Board during his tenure. Governor Pritzker will also have the opportunity to appoint five members to the Board of Trustees of the State Employees Retirement System. These appointments are critical in light of the current financial crisis facing both pension systems, which is discussed in greater detail below.

II. PRITZKER'S IMPACT ON UNIONS

While Bruce Rauner undercuts our workers and attacks their families at every chance, I will restore the respect our public sector workers deserve. I will defend collective bargaining rights for our unions and protect hard earned pensions.¹⁶ – J.B. Pritzker

During his campaign, Governor Pritzker vowed to “restore the respect that public sector workers deserve,” and campaigned on restoring and strengthening labor rights in the State, which secured AFSCME's endorsement.¹⁷ This campaign policy was in large part a response to former Governor Rauner's anti-union efforts. For example, within his first month in office, Rauner signed an executive order to stop the collection of union dues from workers' paychecks.¹⁸ He was also the original plaintiff in the lawsuit that became *Janus v. AFSCME Council 31*,¹⁹ in which the United States Supreme Court held that compelling public employees to pay fair share fees is unconstitutional. Upon the expiration of the State contract with AFSCME Council 31 in 2015, former Governor Rauner's administration stopped paying step increases and subsequently refused to

comply with an order of the court ordering the administration to pay back pay to affected employees.²⁰

Although only a few months into his tenure, Governor Pritzker has already taken action to strengthen the rights of unions. On his first day in office, Governor Pritzker announced his intent to initiate the process of restoring the salary steps to employees whose advances had been frozen since 2015.²¹ Governor Pritzker has since taken steps to follow through on his promise by budgeting \$410 million for AFSCME back pay in the fiscal year 2020 spending plan,²² and negotiating a new collective bargaining agreement with AFSCME, which, in pertinent part, provides for \$2,500-per-worker automatic bonuses for the “hardship” caused by the wage freeze and annual raises to employees’ base pay for four years starting at 1.5% in January, going up to 2.1% in July and then by 3.95% each July thereafter.²³

On his first day in office, Governor Pritzker issued Executive Order 2019-002,²⁴ which among other things, orders all State agencies to comply with the Project Labor Agreements Act.²⁵ The Project Labor Agreements Act requires State agencies to consider on a case-by-case basis whether project labor agreements should be utilized on public works projects. Factors to take into consideration under the Project Labor Agreements Act include but are not limited to cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, and the State’s policy to advance minority-owned and women-owned businesses and minority and female employment.²⁶ Executive Order 2019-002 has the potential to award millions of dollars of public construction projects at the State and local level to the use of union-only public labor agreements.

Governor Pritzker has further shown his support for labor by signing into law the Collective Bargaining Freedom Act,²⁷ which prohibits local governments from establishing so-called right-to-work zones. Right to work laws prohibit union security agreements between private companies and labor unions. Under right-to-work laws, employers in unionized workplaces are prohibited from negotiating contracts, which require all members who benefit from the union contract to contribute to the costs of union representation. Stated differently, right-to-work laws permit private sector workers to obtain union-protected positions without being required to join the union or pay their fair share of union dues.

The bill was prompted after Lincolnshire, a northern suburb with home-rule authority, passed a local right to work law. The ordinance was overturned by the U.S. District Court for the Northern District of Illinois, which ruled that the National Labor Relations Act (“NLRA”) preempted the local ordinance.²⁸ The Seventh Circuit Court of Appeals affirmed, holding that while the NLRA permits individual states to pass right-to-work laws, it does not permit states to pass that responsibility on to local governments.²⁹ In June, the Supreme Court granted the Village of Lincolnshire’s petition for a writ of certiorari, vacated the judgment, and remanded the case to the Seventh Circuit with instructions to direct the District Court to dismiss the case as moot.³⁰ Because Public Act 101-0003 is consistent with judicial precedent and security and dues-checkoffs clauses are mandatory subjects of bargaining under the NLRA, Public Act 101-0003 should have minimal practical effect on the Illinois workforce. Nevertheless, the new law demonstrates Governor Pritzker’s commitment to unions in this State.

Finally, it is likely that Governor Pritzker will sign into law House Bill 0253, which expands the Illinois Educational Labor Relations Act to include graduate students within the definition of an “educational employee” or “employee.”³¹ This will formally extend the right to organize and engage in collective bargaining to thousands of public college and university students across Illinois. Similar to the Collective Bargaining Freedom Act, House Bill 0253 simply codifies existing judicial precedent, which has found graduate students to be “public employees” under the Illinois Educational Labor Relations Act.³² As demonstrated by the approximate 1,500 graduate students at the University of Illinois at Chicago who engaged in a three-week strike followed by a two-week strike by graduate students at the University of Illinois at Urbana-Champaign, we expect there to be a continued uptick in both activism and bargaining demands from this class of individuals.

III. PRITZKER’S IMPACT ON EMPLOYMENT

For hardworking people across Illinois, know that your state government has your back. Whether it’s pay equity for women, prosecuting employers who engage in wage theft, instituting prevailing wage requirements, using project labor agreements, restoring state employees’ steps, or promoting diversity in state contracts, these steps are the first of many to take bold action to support working families. This work is far from done, and I look forward to continuing to work with the General Assembly to advance core priorities so working families across Illinois can thrive.³³ –J.B. Pritzker

Throughout his campaign, Governor Pritzker promised to put state government on the side of working families. Governor Pritzker has demonstrated his intent to fulfill this promise through executive orders and employment legislation.

Executive Order 2019-001, signed on Governor Pritzker's first day in office, orders state agencies, including those handling labor and employment issues, to conduct a comprehensive review of their practices regarding the publication of data and to provide a report of this self-audit to the Office of the Governor in an effort to increase transparency.³⁴ The Governor stated, "[o]ur state's hardworking residents deserve to know how taxpayer money is being spent, and I will ensure that transparency is a core value of my administration. By shining a light on how the state is and isn't living up to its responsibility to our citizens, we can start making real improvements in the lives of families across Illinois."³⁵

Executive Order 2019-002, in addition to addressing project labor agreements,³⁶ authorizes the Illinois Department of Labor to review pending cases under the wage laws, including the Wage Payment and Collection Act, the Minimum Wage Law, and the Day and Temporary Labor Services Act and to refer cases of wage theft and worker exploitation to the Illinois Attorney General for civil prosecution. It further orders the Department of Central Management Services and the Department of Human Rights to review the State's pay plan in an effort to mitigate gender bias by ensuring that prospective female state workers cannot be asked about their salary history.

Finally, Governor Pritzker signed Executive Order 2019-003,³⁷ which requires the Department of Commerce and Economic Opportunity to identify and review industries identified for targeted growth to align workforce resources for communities that have been disenfranchised. During a press conference, Governor Pritzker stated:

My administration is committed to building the workforce of tomorrow and ensuring hardworking Illinoisans are prepared for jobs in growing industries . . . our economy is changing, and it is critical that state resources are being used to meet the demands of the 21st century. This executive order will help ensure our workforce is prepared to fill jobs in industries with the greatest need and will help us attract new businesses to Illinois. We know there is more work to be done and I look forward to working with bipartisan members of the General Assembly to grow our economy and help working families thrive.³⁸

In addition to these executive orders, Governor Pritzker, on his first day of office, signed into law Public Act 100-1177, effective June 1, 2019. Public Act 100-1177 amends the Prevailing Wage Act by establishing locally acceptable prevailing wage rates and developing reports on the diversity of workers employed on public works projects.³⁹ Similar legislation had been vetoed by former Governor Rauner.⁴⁰

Pursuant to the amendment, public bodies are no longer responsible for adopting an annual prevailing wage resolution, publishing notices of such prevailing wage resolution, or hearing objections to the prevailing wage. Rather, IDOL will annually set the prevailing wage rates for each county, publish the rates on or around July 15 of each year, and hear all objections.⁴¹ The rate shall

not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings and successor agreements, provided that said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed.⁴²

IDOL will also take responsibility, by no later than April 1, 2020, for maintaining certified payrolls, eliminating the burden on public bodies to retain pertinent certified payroll records.⁴³ Finally, IDOL is required to prepare reports detailing female and minority participation on public works projects and to create recommendations to increase such participation.⁴⁴

While this legislation does not eliminate the requirement that public bodies pay prevailing wages, it strives to provide uniformity and transparency for workers who receive the prevailing wage rate and eliminates several administrative and record-keeping obligations that were burdensome on public employers.

Shortly thereafter, Governor Pritzker signed into law Senate Bill 1, effective February 19, 2019, which incrementally raises the statewide minimum wage of 8.25 per hour to \$15 per hour by 2025.⁴⁵ Notably, a similar measure had been vetoed by former Governor Rauner in 2017.⁴⁶ Under the new law, the minimum wage will increase from \$8.25 to \$9.25 on January

1, 2020 and to \$10.00 on July 1, 2020, and will increase by \$1.00 per hour each January 1, until it reaches \$15.00 per hour on January 1, 2025.⁴⁷

Significant to employers, the law dramatically increases employers' potential liability for minimum wage and overtime violations. Previously, employees who sued to recover wages and overtime pay under the Illinois Minimum Wage Law could recover a statutory penalty of 2% of the amount of the underpayment, per month that went unpaid. The new law increases that statutory penalty to 5% per month, and creates a new provision allowing employees to recover treble the amount of wages owed.⁴⁸

To put this in dollar terms, under the old law, an employee who was underpaid by \$100 per month over three years could recover \$4,932 (\$3,600 in wages plus \$1,332 in penalties). Under the new law, the same employee could recover \$14,130 (\$10,800, or three times the amount of wages owed, plus \$3,330 in penalties). The consequences of this amendment will likely embolden employees and plaintiffs' lawyers to pursue claims for even modest underpayments, and make it more difficult and likely more expensive for employers to settle minimum wage and overtime claims.

The law further enhances penalties on the employer by adding an additional penalty of \$1,500, beyond the current penalty of 20% of the amount of the underpayment for willful, repeated, or reckless conduct,⁴⁹ as well as a \$100 penalty for each impacted employee attributed to employers who fail to maintain records required by the Minimum Wage Law.⁵⁰ Both penalties are payable to the Department of Labor's "Wage Theft Enforcement Fund." Although the Minimum Wage Law has always required employers to keep a record of "the hours worked in each day and in each work week by each employee," this additional penalty adds new teeth to the law's record keeping provisions.

Most recently, Governor Pritzker signed into law the Cannabis Regulation and Tax Act, which legalizes the recreational use of cannabis.⁵¹ The new law permits employers to maintain a "zero tolerance" policy when it comes to consumption, storage, or use of cannabis in the workplace or while on duty, and allows employers and employees who are subject to federal regulations to continue to comply with federal legal requirements, including drug testing.⁵² However, the Act amends the Illinois Right to Privacy in the Workplace Act, which prohibits employers from taking adverse hiring or

disciplinary actions against employees for using a “lawful product” off the employer’s premises during nonworking hours. The million-dollar question remains how to effectively test for cannabis, since none of the current tests detect whether the employee is *currently* impaired by cannabis use. The significance of this issue is even more apparent given that the new law adds a due process element, requiring employers to afford the employee “a reasonable opportunity to contest the basis of the determination.”⁵³ As such, training managers and supervisors on how to identify signs of impairment and how to document their observations will become a critical component for employers who will now bear the burden of determining whether an employee is impaired by cannabis at work.

Other legislative items of interest, which have passed both the House and Senate, and we predict will be ratified by Governor Pritzker, include but are not limited to the following:

- House Bill 0834 amends the Equal Pay Act of 2003 by prohibiting an employer from requesting wage or salary history, including benefits and other compensation, or seeking such information from a current or former employer of a job applicant. A limited exception exists when the wage or salary history is a matter of public record under FOIA. The bill also further establishes penalties for violations ranging from \$500 for a first offense by an employer with fewer than four employees up to \$5,000 for repeated violations. If signed into law, employers should review their interview practices and be mindful of a potential influx of claims alleging violations of this legislation.⁵⁴
- House Bill 0252 amends the Illinois Human Rights Act to expand the scope of the term “employer” to anyone employing a single employee, rather than fifteen or more employees, within Illinois during 20 or more calendar weeks within a calendar year of or preceding the alleged violation.⁵⁵ Whether Governor Pritzker has adequately budgeted increased funding for this expansion of jurisdiction and probable increase in charges being filed remains to be seen.
- Senate Bill 0075 strengthens protections for employees who are victims of sexual harassment, sexual assault, domestic violence, sexual violence and gender violence, and would require all Illinois employers to provide annual sexual harassment training. The bill also creates a new Workplace Transparency Act,⁵⁶ which subject to limited exceptions, prohibits contracts that either “ha[ve] the purpose or effect of preventing an employee or prospective employee from

making truthful statements or disclosures about alleged unlawful employment practices”;⁵⁷ or “require[] the employee or prospective employee to waive, arbitrate, or otherwise diminish any existing or future claim, right, or benefit related to an unlawful employment practice to which the employee would otherwise be entitled under any provision of state or federal law.”⁵⁸ Senate Bill 0075, if ratified, would also require additional recitals in a separation or termination agreement when the employer seeks to include a confidentiality provision in such agreement and restricts employers from “unilaterally” including a clause that prohibits an individual from “making truthful statements or disclosures regarding unlawful employment practices.” If signed into law, employers should review the provisions in their settlement and/or termination agreements to ensure compliance with this legislation.

IV. PRITZKER’S IMPACT ON EDUCATION

Every child in this state deserves a quality education – regardless of the color of their skin, the zip code they come from, or the income of their parents. . . . If we want to put Springfield back on the side of working families, we must give every student the opportunities they deserve.⁵⁹ –J. B. Pritzker

During his campaign, Governor Pritzker emphasized his hope to improve the education system and make Illinois a national model for education.⁶⁰ Whereas Governor Rauner was a vocal proponent of school choice and supportive of efforts to expand charter school options in the State, Governor Pritzker expressed his belief that adequate public-school funding should come first.⁶¹ For example, in 2017, Governor Rauner supported Illinois’s introduction of Invest in Kids, a new private school scholarship for low- and middle-income students, which was funded by independent tax credits. The program launched in 2018 and gave tax breaks to residents who donated to private schools and offered scholarships to low-income families to enable them to send their children to private schools. Governor Pritzker, however, campaigned on reducing the Invest in Kids scholarship program and supporting a moratorium on charter schools.⁶² Accordingly, we predict that Governor Pritzker will focus his efforts on increasing funding for the existing public-school system rather than seeking to expand the school voucher and charter school programs.

Governor Pritzker also emphasized, during his campaign, the need to promote and develop early childhood education. He has pledged to expand

birth-to-3 programs, pave a path for universal pre-K statewide, and lower the compulsory school age from six to five in an effort to ensure every child is able to benefit from the cognitive, social, and emotional benefits of early childhood education.⁶³ Of these initiatives, Senate Bill 2075 was introduced, which sought to reduce the compulsory school age to five years old.⁶⁴

Governor Pritzker also signaled his support for a minimum salary for full-time teachers in Illinois public schools during his campaign, a legislative effort that was vetoed by former Governor Rauner.⁶⁵ House Bill 2078, which is waiting for Governor Pritzker's signature,⁶⁶ establishes the following incremental minimum rates to reach a salary of \$40,000 by the 2023-2024 school year: (i) \$32,076 for the 2020-2021 school year; (ii) \$34,576 for the 2021-2022 school year; (iii) \$37,076 for the 2022-2023 school year; and (iv) \$40,000 for the 2023-2024 school year.⁶⁷ Thereafter, the bill requires the minimum salary rate to be increased by a percentage equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the previous school year.⁶⁸

In July, Governor Pritzker signed into law Public Act 101-0046, which amends the School Code to require that an educational support service employee who is subject to a reduction-in-force and hired back within one year, will maintain the same "rights" (i.e., salary and benefits) that the individual accrued during his or her previous service with the school district.⁶⁹ This bill was an initiative by the Illinois Federation of Teachers and had passed both chambers during the 2016 legislative session but was ultimately vetoed by former Governor Rauner.⁷⁰

Other legislative items of interest, which have passed both the House and Senate, and we predict will be signed by Governor Pritzker, include:

- House Bill 0247 amends the School Code to require third-party driver's education instructors to be licensed teachers and evaluated annually in accordance with PERA.⁷¹
- House Bill 0423 changes the Illinois Professional Education License by temporarily removing until July 1, 2025 the requirement that teacher candidates pass a "test of basic skills" as required under Section 21B-30 of the Illinois School Code.⁷²

- House Bill 0254 mandates new, annual reporting to the State Board of Education about class sizes and provides that the State Board will post this information on its website.⁷³ This legislation will likely make class size a hot bargaining topic.
- Senate Bill 1213 amends the School Code to require school districts to develop and implement an appeal process for “unsatisfactory” ratings under PERA, which must include an assessment of the original rating by a panel of “qualified evaluators” agreed to by a joint committee composed of equal representatives selected by the district and the exclusive bargaining representative. The qualified evaluators will have the power to revoke the rating if they deem it to be erroneous.⁷⁴

In terms of public policy and initiatives, Governor Pritzker formed and appointed members to a newly created Educational Success Committee, which consists of thirty-five members whose involvement in education ranges from public school administrators to university presidents, college chancellors and current and retired educators. The committee is chaired by State Senator Andy Manar, State Representative Emanuel “Chris” Welch, Chicago Public Schools CEO Dr. Janice Jackson and Illinois Education Association President Kathi Griffin,⁷⁵ and has established the following initiatives and priorities:

- Aligning educational and funding priorities across State agencies’ systems
- Ensuring equitable and adequate funding
- Strengthening the pipeline of teachers and child-serving professionals
- Ensuring education meets the needs of all learners⁷⁶

Although it appears that Governor Pritzker intends to make public education a priority, his biggest challenge will be to get the State’s house issues in order and find alternative ways to increase funding for teachers, students and schools. The State’s \$8 billion K-12 public school system currently serves approximately 2 million students and employs approximately 130,000 teachers.⁷⁷ In 2017, the State adopted a new evidence-based funding (“EBF”) formula, which funnels more state money to school districts with greater financial needs and fewer means to raise revenue locally.⁷⁸ Governor Rauner signed the final changes to the formula in the spring of 2018.⁷⁹ The goal of the funding formula is to have every district meet a 90% adequacy level. To be fully funded, however, the EBF formula requires an additional estimated \$7.2 billion.⁸⁰

Governor Pritzker signaled his desire to prioritize funding for the EBF formula through his appointment of Senator Andy Manar, known as “a driving force behind the successful movement to reform Illinois’ school funding formula,” as co-chair of the Educational Success Committee.⁸¹ On June 5, 2019, Governor Pritzker signed into law a \$40 billion budget package, which raises funding for elementary and high schools by nearly \$379 million, and exceeds last year’s required increase in the EBF by approximately \$29 million.⁸² State funding will continue to be a key component to the success of Governor Pritzker’s initiatives, including fixing the underfunded pension, funding the EBF formula, and determining the financial forecast when negotiating bargaining agreements.

V. PRITZKER’S IMPACT ON PENSIONS

Governor Pritzker remains committed to a financially responsible budget that addresses Illinois’ outstanding obligations, and recommends that these additional revenues can be dedicated to the state’s statutory FY20 pension payment. The certified payments to the retirement systems total \$9.1 billion. With the additional revenues due to the forecast revision, the state will be able to meet the current funding commitment to the retirement systems without extending the ramp this year. The Governor remains committed to finding ways to fund our pension commitments in a sustainable manner.⁸³

Governor Pritzker also inherited a pension crisis that has been growing for decades and must be addressed now. The Illinois pension funds are more than \$130 billion underfunded and that underfunding is expected to grow to more than \$500 billion by the end of 2019.⁸⁴ In February 2019, Pritzker announced the establishment of two task forces, one to consider possible consolidation of some pension funds and the other to consider whether to sell some state-owned assets to pay the funds.⁸⁵ Pritzker named former Chicago Board Options Exchange CEO William Brodsky, Associated Fire Fighters of Illinois President Pat Devaney and former Illinois Senate Republican Leader Christine Radogno to the task force considering consolidation.⁸⁶ He named Jacqueline Avita-Guzman, head of the corporate development of Sears Holdings, and James Star, chairman of Longview Asset Management, to head the asset sale task force.⁸⁷

Pension consolidation has been considered several times over the last few decades but has received pushback from local officials who prefer to control their own pension situations.⁸⁸ Further, asset transfers, such as the sale of the Thompson Center or the Tollway, have been considered several times

but have generally been viewed as controversial in the wake of what many viewed as a bad deal when Chicago sold its parking meters.⁸⁹ It is unclear what specific moves the task forces will consider, but something different must be done soon to address the pension crisis.

In his first budget address Governor Pritzker proposed to cut \$800 million in immediate pension spending and extend the 2045 deadline in which the State must fully fund its pensions by seven years.⁹⁰ In May 2019, Governor Pritzker, citing a tax windfall, announced that he was no longer proposing to cut the pension spending for this year.⁹¹ The Governor's plan to cut spending and extend the 2045 deadline had received criticism from both Republican and Democratic members of the General Assembly.⁹²

In his budget address, Governor Pritzker also pledged an additional \$200 million in revenue for pensions. The fulfillment of that pledge is contingent on amending the Illinois Constitution to allow for a graduated income tax, a process that will take more than two years and require support from three-fifths of the General Assembly and approval by the Illinois taxpayers during the 2020 election.⁹³ On Memorial Day, the General Assembly approved a referendum to approve the Governor's graduated tax plan for the 2020 ballot. It is not yet clear what the graduated rates will be in the event the referendum is approved by the voters,⁹⁴ but the Governor's graduated tax plan has received much criticism from many Republicans and some Democrats.⁹⁵ In the event the amendment for a graduated tax plan is not passed, the Governor will need a backup plan to deal with the pension crisis. Failure to address the State's pension crisis will result in a further downgrading of its bond rating to "junk" status, making it much more difficult if not impossible, for the State to borrow money to operate.

Significant in Governor Pritzker's \$40 billion budget, signed into law on June 5th, is the deletion of the TRS 3 percent excess salary cap and revival of the 6 percent cap.⁹⁶ As a consequence, educational employers will once again be responsible for excess salary payments to TRS only if they provide a TRS member with a year-over-year increase of more than 6 percent in any of the years used to calculate the member's pension.⁹⁷ Because this amendment went into effect immediately, the cap for the 2018–2019 school year is 6 percent, and for all practical purposes, the 3 percent limitation that had gone into effect July 1, 2018, never existed. We predict this change will likely trigger a re-examination of collective bargaining agreements,

employment contracts and policies which are based on the 3 percent limitation.

VI. CONCLUSION

There is no doubt that the Pritzker administration came in with an aggressive agenda and has worked with the General Assembly to pass several of his legislative initiatives, which will have a huge impact on both public and private employers throughout Illinois. Given that both legislative chambers and the governor's office are now led by Democrats, Pritzker's presence will continue to impact and facilitate the legislative process. Looking ahead, we expect Governor Pritzker will continue to push a progressive agenda, but one question continues to loom large: how will the State pay for it? The price tag on many of the governor's initiatives is large and it remains to be seen whether a progressive tax will generate enough to both pay for the progressive initiatives and fix the pension crisis. Despite these questions, without any real obstacles in the General Assembly, we expect Governor Pritzker will continue to forge ahead with his goals and initiatives.

¹See Mike Riopell, Stacy St. Clair, & Jeff Coen, *Democrat J.B. Pritzker Topples First-term Republican Gov. Bruce Rauner in Illinois Governor Race*, CHI. TRIB., Nov. 7, 2018, <https://www.chicagotribune.com/politics/elections/ct-met-illinois-governors-race-bruce-rauner-jb-pritzker-20181106-story.html>.

² *Candidate Profile: J.B. Pritzker*, BELLEVILLE NEWS-DEMOCRAT, Oct. 3, 2018, <https://www.bnd.com/news/politics-government/election/article219437520.htm>.

³ *Id.*

⁴ *Democratic Nominee for Illinois Governor: J.B. Pritzker*, CHI. SUN-TIMES, Sept. 30, 2019, <https://chicago.suntimes.com/2018/9/30/18385084/democratic-nominee-for-illinois-governor-j-b-pritzker>.

⁵ See Tina Sfondeles *Pritzker Restores State Worker Pay Boosts, but Says Little About Cost*, CHI. SUN-TIMES, Jan. 16, 2019, <https://chicago.suntimes.com/2019/1/16/18332938/pritzker-restores-state-worker-pay-boosts-but-says-little-about-cost>.

⁶ *Id.*

⁷ Amanda Vinicky, *Pritzker Wants More Money for Schools, but Funding Challenges Loom*, WTTW NPR, Nov. 28, 2018, <https://news.wttw.com/2018/11/28/pritzker-wants-more-money-schools-funding-challenges-loom>.

⁸ Lambda Legal is the nation's largest legal organization dedicated to securing the full civil rights of the LGBTQ community and people with HIV.

⁹ Kleinik previously served as executive director of the Medical Cannabis Alliance of Illinois, and previously served as IDOL's chief of staff and as manager of the department's Conciliation and Mediation Division

¹⁰ STATE OF ILLINOIS COMMISSION ON GOV'T FORECASTING AND ACCOUNTABILITY, EXPIRATION AND VACANCIES GOVERNOR APRIL 2019 at 89, <http://www.ilga.gov/commission/lru/Gov.pdf>. See also Dusty Rhodes, *All New Leadership at State Board of Education*, NPR ILLINOIS, Feb. 27, 2019, <https://www.nprillinois.org/post/all-new-leadership-state-board-education#stream/0>.

¹¹ Illinois Board, Commission, Task Force and Council List, <https://www2.illinois.gov/sites/bac/SitePages/AppointmentsDetail.aspx?BCID=1023>.

¹² *Id.*

¹³ The Teachers' Retirement System is the 39th largest pension system in the United States and serves 417,000 members.

¹⁴ Devon Bruce is an attorney who has represented victims of accounting malpractice, embezzlement, banking negligence, and other types of personal injury cases, and has previously served as the chairman of the Illinois State Board of Investment; the University of Illinois Board of Trustees; and the Metropolitan Pier and Exposition Authority. See Bernard Schoenburg, *Pritzker Removes Rauner Appointee Shaw from TRS Board*, STATE JOURNAL-REGISTER, Apr. 27, 2019, <https://www.sj-r.com/opinion/20190427/bernard-schoenburg-pritzker-removes-rauner-appointee-shaw-from-trs-board>.

¹⁵ Maureen Mena is a wealth planner with LPL Financial.

¹⁶ April 27, 2018. Rich Miller, *After Remaining Neutral in the Primary AFSCME Endorses Pritzker*, CAPITOL FAX, Apr. 27, 2018, at <https://capitolfax.com/2018/04/27/after-remaining-neutral-in-the-primary-afscme-endorses-pritzker/>.

¹⁷ *Id.*

¹⁸ See Monique Garcia, Kim Geiger, & Ray Long, *Rauner Moves to Exempt Public Employees from Paying Union Fees*, CHI. TRIB., Feb. 10, 2015, <https://www.chicagotribune.com/nation-world/chi-bruce-rauner-tries-to-block-fees-for-state-workers-who-dont-want-to-join-union-20150209-story.html>.

¹⁹ 138 S. Ct. 2448 (2018).

²⁰ See *AFSCME, Council 31 v. ILRB*, 2017 IL App (5th) 160229, 90 N.E.3d 1001, *appeal denied*, 95 N.E.3d 505 (Ill. 2018); Doug Finke, *Union Says Gov. Rauner is Dragging Feet on Step Raises*, STATE JOURNAL-REGISTER, July 31, 2018, available at <https://www.sj-r.com/news/20180731/union-says-gov-rauner-is-dragging-feet-on-step-raises>.

²¹ *Pritzker Places State Employees on Correct Step Pay Plan*, ASSOCIATED PRESS, Jan. 28, 2019, <https://www.apnews.com/9a0b48b99d9e4e4abf8b3acdb53a2250>.

²² See Adam Schuster, *Pritzker's AFSCME Deal Gives 12% Automatic Raises, \$2,500 Bonus to State Workers*, ILL. POL'Y, June 26, 2019, available at <https://www.illinoispolicy.org/pritzkers-afscme-deal-gives-12-automatic-raises-2500-bonus-to-state-workers/>.

²³ *Id.*

²⁴ Ill. Exec. Ord. 2019-02, Strengthening Working Families, https://www2.illinois.gov/Documents/ExecOrders/2019/19609-Executive_Order_2019-02.pdf.

²⁵ 30 ILCS 571/1 to 571/99.

²⁶ 30 ILCS 571/10.

²⁷ Public Act 101-0003 (effective April 12, 2019).

²⁸ *Int'l Union of Operating Engineers, Local 399 v. Vill. of Lincolnshire*, 228 F. Supp. 3d 824 (N.D. Ill. 2017), *aff'd*, 905 F.3d 995 (7th Cir. 2018), *vacated and remanded with instructions to dismiss as moot*, No. 18-107, 2019 WL 653081 (U.S. June 10, 2019).

²⁹ *Int'l Union of Operating Engineers Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995 (7th Cir. 2018), *vacated and remanded with instructions to dismiss as moot*, No. 18-107, 2019 WL 653081 (U.S. June 10, 2019).

³⁰ *Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Engineers Local 399*, No. 18-1070, 2019 WL 653081 (U.S. June 10, 2019).

³¹ The bill was sent to the governor on June 19, 2019. Bill Status of HB 0253, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=253&GAID=15&DocTypeID=HB&LegId=114220&SessionID=108&GA=101>.

³² *Graduate Employees Org. v. IELRB*, 315 Ill. App. 3d 278, 733 N.E.2d 759 (1st Dist. 2000).

³³ Office of the Governor, *Pritzker Strengthens Working Families with Actions for Higher Wages, Protections*, CARBONDALE TIMES, Jan. 16, 2019, <http://www.carbondaletimes.com/news/20190116/pritzker-strengthens-working-families-with-actions-for-higher-wages-protections>.

³⁴ Ill. Exec. Ord. 2019-001, Strengthening the State's Commitment to Effective and Transparent Government in Compliance with the Laws, <https://www2.illinois.gov/Documents/ExecOrders/2019/ExecutiveOrder2019-01.pdf>.

³⁵ Press Release, Gov. Pritzker to Make Government More Transparent with "Back to Basics" First Executive Order (Jan. 15, 2019), <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=19608>.

³⁶ *See supra* notes 23-27 and accompanying text.

³⁷ Ill. Exec. Ord. 2-19-03, Strengthening the State's Commitment to Workforce Development and Job Creation, https://www2.illinois.gov/Documents/ExecOrders/2019/19612-Executive_Order_2019-03.pdf.

³⁸ Krissy Roseberry, *Gov. Pritzker Signs Executive Order Strengthening Workforce Training in Growing Industries*, Illinois Public Health Association e-News Release, Jan. 16, 2019, <https://www.ipha.com/news/post/3540/gov-pritzker-signs-executive-order-strengthening-workforce-training-in-growing-industries>

³⁹ Ill. Pub. Act. 100-1177, enrolled bill SB 203, <http://www.ilga.gov/legislation/publicacts/100/PDF/100-1177.pdf>.

⁴⁰ See 99th Ill. Gen. Assembly, Bill Status of SB 2964, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=2964&GAID=13&GA=99&DocTypeID=SB&LegID=96291&SessionID=88>.

⁴¹ 80 ILCS 130/9.

⁴² 80 ILCS 130/4.

⁴³ 80 ILCS 130/5.1.

⁴⁴ 80 ILCS 130/3.2.

⁴⁵ Ill. Pub. Act. 101-0001, SB 0001 Enrolled, <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0001.pdf>.

⁴⁶ See 100th Ill. Gen. Assemb., Bill Status of SB 0081, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=81&GAID=14&DocTypeID=SB&SessionID=91&GA=100>.

⁴⁷ Ill. Pub. Act 101-0001, § 15 (amending 820 ILCS 105/4).

⁴⁸ *Id.* (amending 820 ILCS 105/12).

⁴⁹ *Id.*

⁵⁰ *Id.* (amending 820 ILCS 105/11).

⁵¹ Pub. Act 101-0027, Enrolled HB 1438, <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0027.pdf>.

⁵² *Id.* § 10-50.

⁵³ *Id.* 0-50(d).

⁵⁴ Enrolled HB 0834, <https://legiscan.com/IL/text/HB0834/2019>. The bill passed both houses and was sent to the Governor on June 6, 2019. See Bill Status of HB 0834, 101st Gen. Assemb., <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=834&GAID=15&DocTypeID=HB&LegId=115119&SessionID=108&GA=101>

⁵⁵ HB 0252, 101st Gen. Assemb. was sent to the Governor on June 27, 2019. See *Bill Status of HB 0252*, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=252&GAID=15&GA=101&DocTypeID=HB&LegID=114219&SessionID=108>.

⁵⁶ SB 0075, 101st Gen. Assemb., House Amendment No. 1, <http://www.ilga.gov/legislation/101/SB/PDF/10100SB0075ham001.pdf>. The bill was sent to the Governor on June 6, 2019. Status of SB0075, 101st Gen. Assemb., <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=75&GAID=15&DocTypeID=SB&LegId=115041&SessionID=108&GA=101>.

⁵⁷ SB 0075, § 1-25(a).

⁵⁸ *Id.* § 1-25(b).

⁵⁹ Ryan Voyles, *Manar Named Co-Chair of Gov.-elect Pritzker's Transition Team for Education*, HERALD & REV., Nov. 27, 2018, https://herald-review.com/news/local/govt-and-politics/manar-named-co-chair-of-gov--elect-pritzker-s/article_fabfd1-50b6-570c-8bc7-2137c9de1a2f.html.

⁶⁰ Vinicky, *supra* note 8.

⁶¹ Corina Curry, *Education an Area with Clear Differences between Rauner, Pritzker*, STATE JOURNAL REGISTER, Oct. 14, 2018, <https://www.sj-r.com/news/20181014/education-area-with-clear-differences-between-rauner-pritzker>.

⁶² Vinicky, *supra* note 8.

⁶³ See <https://www.jbpritzker.com/early-childhood-education/>.

⁶⁴ At this time, it does not appear that this bill will be enacted. See Bill Status of SB 2075, 101st Gen. Assemb., <http://www.ilga.gov/legislation/billstatus.asp?DocNum=2075&GAID=15&GA=101&DocTypeID=SB&LegID=120152&SessionID=108>.

⁶⁵ Cassie Walker Burke, *Rauner and Pritzker are at Odds Over Most Education Issues – but Agree on This One Point*, CHALKBEAT, Oct. 2, 2018, <https://chalkbeat.org/posts/chicago/2018/10/02/how-rauner-pritzker-differ-on-solving-illinois-public-education-issues/>.

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⁶⁷ Cassie Buchman, *\$40K Minimum Teachers' Salary Approved by Legislature*, STATE JOURNAL REGISTER, June 1, 2019, <https://www.sj-r.com/news/20190601/40k-minimum-teachers-salary-approved-by-legislature>

⁶⁸ HB 2078, 101st Gen. Assemb. (2019),

⁶⁹ H.B. 0921, 101st Gen. Assemb. (2019), <http://www.ilga.gov/legislation/101/HB/PDF/10100HB0921lv.pdf>. The bill was sent to the Governor on June 14, 2019. Bill Status for HB 0921, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=921&GAID=15&DocTypeID=HB&LegID=115273&SessionID=108&GA=101>.

⁷⁰ H.B. 6299, 99th Gen. Assemb. (2016) <http://www.ilga.gov/legislation/billstatus.asp?DocNum=6299&GAID=13&GA=99&DocTypeID=HB&LegID=95850&SessionID=88>

⁷¹ H.B. 0247, 101st Gen. Assemb. (2019), <http://www.ilga.gov/legislation/101/HB/PDF/10100HB0247lv.pdf> The bill was sent to the Governor on June 27, 2019. Bill Status of HB 0247, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=247&GAID=15&DocTypeID=HB&LegID=114185&SessionID=108&GA=101>.

⁷² H.B. 0423, 101st Gen. Assemb. (2019), <http://www.ilga.gov/legislation/101/HB/PDF/10100HB0423lv.pdf>. The bill was sent to the Governor on June 14, 2019. Bill Stats of HB 0423, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=423&GAID=15&DocTypeID=HB&LegID=114649&SessionID=108&GA=101>

⁷³ H.B. 0254, 101st Gen. Assemb. (2019), <http://www.ilga.gov/legislation/101/HB/PDF/10100HB0254lv.pdf>. The bill was sent to the governor on June 27, 2019. Bill Status of HB 0254, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=254&GAID=15&GA=101&DocTypeID=HB&LegID=114221&SessionID=108>.

⁷⁴ S.B. 1213, 101st Gen. Assemb. (2019), <http://ilga.gov/legislation/101/SB/PDF/10100SB1213lv.pdf>. The bill was sent to the Governor on June 28, 2019. Bill Status for SB 1213, <http://ilga.gov/legislation/billstatus.asp?DocNum=1213&GAID=15&GA=101&DocTypeID=SB&LegID=117699&SessionID=108>.

⁷⁵ Education Success Committee, <https://www2.illinois.gov/sites/gov/Documents/Transition/Members/Educational%20Success%20Committee.pdf>

⁷⁶ Educational Success Committee, https://www2.illinois.gov/sites/gov/Documents/Transition/Reports/Transition_Education.pdf

⁷⁷ Illinois Report Card 2017-2018, <https://www.illinoisreportcard.com/state.aspx>.

⁷⁸ *Evidence-Based Funding Distribution Calculation*, ILL. STATE BOARD OF EDUCATION, <https://www.isbe.net/Pages/ebfdistribution.aspx>.

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⁸³ *April Revenue Stunner: \$1.5 Billion High Than Expected – FY19 Hole Filled – Pritzker Cancels Planned Pension Holiday*, CAPITOL FAX, (May 7, 2019) (reprinting letter from David Harris, Director of the Department of Revenue and Alexis Sturm, Director of the Governor's Office of Management and Budget), <https://capitolfax.com/2019/05/07/april-revenue-stunner-15-billion-higher-than-expected-fy19-hole-filled-pritzker-cancels-planned-pension-holiday/>.

⁸⁴ Karen Pierog, *Illinois' Unfunded Pension Liability Climbs to \$133.5 Billion*, REUTERS (Dec. 7, 2018), <https://www.reuters.com/article/us-illinois-pensions/illinois-unfunded-pension-liability-climbs-to-1335-billion-idUSKBN1062KC>

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⁸⁷ *Id.*

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⁹⁰ See THE INSTITUTE FOR ILLINOIS FISCAL SUSTAINABILITY AT THE CIVIC FEDERATION, STATE OF ILLINOIS FY2020 RECOMMENDED OPERATING AND CAPITAL BUDGET: ANALYSIS AND RECOMMENDATIONS, (May 16, 2019), https://www.civicfed.org/sites/default/files/il_fy2020_proposed_budget_analysis.pdf.

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⁹⁴ Tina Sfondeles, *Graduated Income Tax Question Heads to Ballot Box as House OKs Constitutional Amendment*, CHI. SUN-TIMES (May 27, 2019), <https://chicago.suntimes.com/2019/5/27/18641670/graduated-income-tax-illinois-house-constitutional-amendment-2020-ballot>.

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RECENT DEVELOPMENTS

By Student Editorial Board:

Patrick J. Foote, Mayra Gomez, Michael P. Halpin, Matt Soaper

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

I. IELRA DEVELOPMENTS

A. *Arbitration*

In *Cook County College Teachers Union, Local 1600, IFT-AFT and City Colleges of Chicago, District 508, Case No. 2015-CA-0101-C* (IELRB June 20, 2019), the IELRB held that an arbitration award against the City Colleges of Chicago was not binding. Consequently, unfair labor practice charges alleging that the City Colleges failed to comply with a binding arbitration award were dismissed.

In 2013, the union filed a grievance against City Colleges alleging that they misclassified several workers as FLSA Exempt. The matter proceeded to arbitration. During the union counsel's opening statement, the arbitrator asked what remedy the union was seeking and counsel replied a cease and desist order. Subsequently, the attorney for City Colleges during cross examination of a witness asked whether it was true that the union was not seeking back pay and the arbitrator interjected that the union's counsel had said the union was seeking a cease and desist order and there was no question of back pay. However, the arbitrator's decision sustaining the grievance awarded a cease and desist order and back pay for the affected employees.

The IELRB reasoned that in determining whether an arbitration award is binding, it "considers such factors as 'whether the award was rendered in accordance with the applicable grievance procedure, whether the procedures were fair and impartial, whether the award conflicts with other statutes, whether the award is patently repugnant to the purposes and

policies of the Act, and any other basic challenge to the legitimacy of the award,” (quoting *Central Community Unit Sch. Dist. No. 4 v. IELRB*, 388 Ill.App.3d 1060,1066-67, 904 N.E.2d 640, 645 (4th Dist. 2009). The IELRB held that it was unfair to City Colleges for the arbitrator to award backpay because City Colleges relied on the arbitrator’s response that the union was not seeking back pay and did not present evidence and arguments against back pay. The IELRB noted that arbitrators have broad discretion in their decisions, but in this case, the IELRB was not looking at the merits of the back pay decision, but only at whether each party had a fair trial.

II. IPLRA DEVELOPMENTS

A. Discrimination

In *Illinois Fraternal Order of Police and County of Cook and Sheriff of Cook County*, Case No. L-CA-18-041 (ILRB Local Panel May 8, 2019), the ILRB Local Panel reversed the Executive Director’s dismissal of an unfair labor practice charge against Cook County and the Sheriff of Cook County. The charge alleged that the respondents violated Sections 10(a)(1) and (2) when they suspended union steward David Sheppard without pay pending investigation after he allegedly accessed and made copies of documents outside of the Sheriff’s established procedures. The Sheriff subsequently filed a complaint against Mr. Sheppard at the Cook County Sheriff’s Merit Board seeking his discharge

The Executive Director dismissed the charge for two reasons: 1) “the available evidence failed to indicate the Sheriff took action against Sheppard because he engaged in protected activity” and 2) “the Illinois Fraternal Order of Police failed to present some evidence of a causal connection between Sheppard’s alleged protected activity and the Sheriff’s decision to suspend him and seek his discharge.”

The union filed a timely appeal, asserting, among other things, that the Executive Director erred by basing “her determination on the Merit Board’s conclusion that Sheppard violated the Sheriff’s rules” and treating it as dispositive of the issues before the Board. The union also claimed that the Executive Director “erred in determining the record lacked evidence of a causal connection between the alleged protected activity . . . and the Sheriff’s actions.” In support of this assertion, the union cited

circumstantial and direct evidence that the Sheriff acted against Sheppard expressly “because he obtained information for use in pending grievances, i.e., for engaging in protected activity.”

Because Section 10(a)(1) analysis considers the “motivation of a public employer . . . where a charging party alleges the employee at issue suffered an adverse employment action,” the Local Panel applied the analytical framework used to determine unlawful motive in 10(a)(2) claims. Under that framework, a charging party must show that (1) the employee at issue was engaged in union or protected, concerted activity; (2) the employer knew of his or her conduct; and (3) the employer took the adverse action against him or her in whole or in part because of union animus or that it was motivated by the protected activity. Once the elements of the prima facie case are met, “the burden shifts to the employer to advance a legitimate reason for the adverse employment action.”

With regard to the first element, the Local Panel determined that Sheppard could have been engaged in both union and protected, concerted activity. The copying of materials from a superior’s binder could be considered protected because Sheppard “arguably [copied it] with the aim to improve working conditions” and “Sheppard’s activity can be considered concerted because he acted on behalf of other unit members, and not solely for his own benefit.” The ILRB also cited Sheppard’s years as a union steward and admission that he made the copies to help the Union process a pending grievance as evidence that he could have been engaged in union activity.

With regard to the second element, the employer’s knowledge of the employee’s protected, concerted activity, the Sheriff expressly acknowledged Sheppard’s “status as a long-serving union steward” in the complaint filed with the Merit Board.

Finally, with regard to the third element, “a charging party may establish a causal nexus through direct or circumstantial evidence.” While the Executive Director relied on the Merit Board’s finding that Sheppard violated the Sheriff’s rules when he copied the documents, the Local Panel reasoned that it is entitled to make its own findings. It found merit in the union’s claim that the Executive Director overlooked direct evidence, writing that “[i]n cases where an employer asserts it took disciplinary action against an employee for rule violations, the Board has found a causal

nexus between that action and the employee's protected activity where the employer based its charges against the employee on the very same conduct which constitutes the protected activity."

The Board reversed and remanded the decision to Executive Director with direction to issue a Complaint for Hearing consistent with its Decision and Order.

B. ILRB Jurisdiction

In *Grant v. Dimas*, 2019 IL App (1st) 180799, the First District Appellate Court held that a claim by several home-healthcare workers for a \$0.48 per hour wage increase could be pursued in court. Plaintiffs sued the Illinois Department of Human Services ("DHS") and the Illinois Department of Central Management Services ("CMS") for not abiding by Public Act 100-0023. The Act, mandated "[w]ithin 30 days after the effective date of this amendatory Act of the 100th General Assembly, the hourly wage paid to personal assistants and individual maintenance home health workers shall be increased by \$0.48 per hour." Plaintiffs sought a writ of mandamus compelling DHS and CMS pay the increase.

Defendants argued against that the IPLRA and the collective bargaining agreement ("CBA") trumped Public Act 100-0023; that the ILRB had exclusive jurisdiction over the case; and that even if the trial court had jurisdiction, it should have deferred it to the ILRB because of the Board's expertise. The trial ultimately found in favor of the plaintiffs. Although the court acknowledged the CBA governed wages, the court reasoned that the "shall increase" language of the Public Act 100-0023 mandated DHS to increase the wage of home-healthcare workers by \$0.48. Defendants appealed and the Fourth District affirmed.

The Appellate Court found that plaintiffs' claim arose out of Public Act 100-0023 and not the IPLRA; consequently, the ILRB did not have exclusive jurisdiction over the claim. The court analogized to *AFSMCE Local 1894 v. Holsapple*, 201 Ill. App. 3d 1040, 559 N.E.2d 577 (4th Dist. 1990) which upheld circuit court jurisdiction over a claim that a county sheriff used auxiliary officers to perform deputy sheriff duties in violation of a statute prohibiting such use; and *Semmens v. Bd. of Educ. of Pontiac Community Consol. Sch. Dist. No. 429, Livingston County*, 190 Ill. App. 3d 174, 546

N.E.2d 746 (4th Dist. 1989), which upheld circuit court jurisdiction over a claim for violation of a School Code provision requiring lunch periods.

The court also found that the \$0.48 wage increase acted as a minimum wage law. It did not preempt the duty to bargain but acted as a floor with the parties free to bargain for wage rates above it. Nevertheless, the statutory minimum was enforceable in court.

Finally, the court granted plaintiff's writ of mandamus. To successfully file for a writ of mandamus a plaintiff must show: (1) they have an affirmative right to relief, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the writ.

Based on the passage of Public Act 100-0021, which contained a \$12 million appropriation to state agencies to pay for Public Act 100-0023, plaintiffs and similarly-situated employees were entitled to the wage increase, and thus retained an affirmative right to relief. Public Act 100-0023 includes the term "shall" in referencing the wage increase and courts in Illinois generally interpret the language as mandatory and not directory in nature. Consequently, DHS and CMS must comply with the Act. Lastly, because the General Assembly appropriated funds to pay for the increase, the defendants had authority to comply with the Act. The court affirmed the circuit court's grant of the writ of mandamus.

III. EEO Developments

A. Title VII

In *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843 (2019), the Supreme Court, in a unanimous opinion written by Justice Ginsburg, held that Title VII's charge-filing requirement was not jurisdictional and a plaintiff's failure to file a charge with the EEOC before bringing suit could be waived by the defendant.

The plaintiff, Lois Davis, filed a charge with the EEOC in March 2011 alleging that she was sexually harassed by her supervisor at her job at Fort Bend County. While her charge was pending, Davis was asked to come into work on a Sunday. She did not come in for religious reasons, and her employer fired her. Following the termination, Davis, on her EEOC intake questionnaire, handwrote "religion," checked the boxes for "discharge" and

“reasonable accommodation.” She did not, however, make any changes to her formal EEOC charge.

In January of 2012, Davis filed suit in the United States District Court for the Southern District of Texas. Davis alleged religious discrimination and sexual harassment retaliation. After a district court decision, an appeal to the Court of Appeals for the Fifth Circuit, and a Supreme Court denial of certiorari, the case returned to the district court, where Fort Bend County moved to dismiss, claiming that the court lacked jurisdiction because the religion claim was not on Davis’s EEOC charge. The district court granted the motion agreeing that filing a charge was a jurisdictional requirement that is not forfeitable. The Fifth Circuit reversed holding that the charge-filing requirement is a prudential prerequisite and was forfeited because the defendant did not raise it until after “an entire round of appeals.”

The Supreme Court agreed with the Fifth Circuit. The Supreme Court stated that jurisdictional prerequisites are determined by Congress. When Congress does not expressly state that a requirement is jurisdictional, the court treats it as a non-jurisdictional provision. The specific section that requires charge filing with the EEOC does not expressly state the federal court's jurisdiction depends on a timely charge being filed. Therefore, the charge filing requirement is a processing rule. Justice Ginsburg’s opinion concluded that “a rule may be mandatory without being jurisdictional, and Title VII’s charge-filing requirement fits that bill.”