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James M. Gecker
Partner, Ross & Hardies, Chicago, IL

Cathryn E. Albrecht

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Labor Law

*James M. Gecker**
*and Cathryn E. Albrecht***

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I. INTRODUCTION

This article highlights the significant developments in Illinois labor and employment law during the *Survey* year.[1] During this period, the Illinois Supreme Court expanded the scope of retaliatory discharge,[2] declared unconstitutional a statute permitting employees to inspect their personnel files,[3] defined the scope of public employment statutes,[4] and interpreted a time limitation provision in

* Partner, Ross & Hardies, Chicago, Illinois; A.B., 1971, University of California at Berkeley; J.D., 1974, University of Wisconsin; M.S., 1984, Loyola University of Chicago.
** B.A., 1981, University of Wisconsin; J.D. candidate, 1990, Loyola University of Chicago.

1. The *Survey* year covers developments in the law between July 1, 1987, and July 1, 1988.
2. *See infra* notes 7-34 and accompanying text.
3. *See infra* notes 116-39 and accompanying text.
4. *See infra* notes 140-259 and accompanying text.

an unemployment compensation statute.[5] Additionally, the United States Supreme Court ruled that a union employee's retaliatory discharge claim, brought under Illinois common law, is not preempted by section 301 of the Labor Management Relations Act.[6]

II. REBUTTING THE PRESUMPTION OF AT-WILL EMPLOYMENT

A. Tort Claims

1. Retaliatory Discharge

The Illinois Supreme Court recognizes the tort of retaliatory discharge when an employee claims that he was discharged in retaliation for his activities and in violation of a clearly mandated public policy.[7] In *Hinthorn v. Roland's of Bloomington, Inc.*,[8] the Illinois Supreme Court expanded the tort of retaliatory discharge in the context of claims involving employee rights under the Illinois Workers' Compensation Act (the "Act").[9] The court previously held that an employee has a cause of action for retaliatory discharge when he is discharged in retaliation for filing a workers' compensation claim against his employer.[10] In *Hinthorn*, the court held that retaliatory discharge may occur when an employee is discharged for orally requesting medical attention even though the employee has not yet filed a workers' compensation claim.[11]

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5. *See infra* notes 260-80 and accompanying text.

6. *See infra* notes 35-71 and accompanying text.

7. Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 529, 478 N.E.2d 1354, 1358 (1985); Palmateer v. International Harvester Co., 85 Ill. 2d 124, 129-30, 421 N.E.2d 876, 878 (1981); Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 181-86, 384 N.E.2d 353, 357-59 (1978). Retaliatory discharge is a narrow exception to the at-will doctrine. *Barr*, 106 Ill. 2d at 525, 478 N.E.2d at 1356. The at-will doctrine provides that an employee hired for an indefinite period is an at-will employee and may be discharged for any reason or no reason at all. *Id.* The *Barr* court held that in order to state a claim for retaliatory discharge, an employee must allege: 1) that he was discharged; 2) that the discharge was in retaliation for his activities; and 3) that the discharge violated a clearly mandated public policy. *Id.* at 529, 478 N.E.2d at 1358.

8. 119 Ill. 2d 526, 519 N.E.2d 909 (1988).

9. *Id. See* ILL. REV. STAT. ch. 48, paras. 138.1-138.30 (1987).

10. *Kelsay*, 74 Ill. 2d at 178-81, 384 N.E.2d at 355-57. In *Kelsay*, the case in which the Illinois Supreme Court first recognized the tort of retaliatory discharge, an at-will employee claimed that she was discharged in retaliation for filing a workers' compensation claim. *Id.* at 178, 384 N.E.2d at 355. The court held that the employer's conduct frustrated the purpose behind the Illinois Workers' Compensation Act, which is to provide employees with immediate, limited compensation for work-related injuries. *Id.* at 181-85, 384 N.E.2d at 357-58. *See* ILL. REV. STAT. ch. 48, paras. 138.1-138.30 (1987).

11. *Hinthorn*, 119 Ill. 2d at 534-35, 519 N.E.2d at 913-14. Prior to *Hinthorn*, the Illinois Supreme Court had not directly addressed whether an employee may raise a retaliatory discharge claim when he had not yet filed a claim for workers' compensation under

The employee in *Hinthorn* had filed workers' compensation claims twice before.[12] The employee alleged that after she reported a third injury and requested medical attention, her employer advised her to seek other employment and directed her to sign a resignation form.[13] The employee claimed that she involuntarily signed the form without understanding its meaning because she thought that she would lose her job if she refused.[14] The employer contended that the employee was not discharged, but that she had voluntarily resigned when she signed the form.[15] The employer also maintained that the discharge did not violate the public policy embodied in the Act because the Act protects a worker's right to compensation but not to medical attention itself.[16]

In deciding that the employee sufficiently alleged the elements of retaliatory discharge,[17] the *Hinthorn* court emphasized that it did not decide the issue on a constructive discharge theory.[18] This was

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the Act. The court, however, had not ruled out the possibility of extending the reach of retaliatory discharge based on policies underlying the Act. The court previously held that an employee stated a cause of action for retaliatory discharge when he claimed that he was discharged for filing a workers' compensation claim against a prior employer. Darnell v. Impact Indus., 105 Ill. 2d 158, 159-62, 473 N.E.2d 935, 936-37 (1985). In Beckman v. Freeman United Coal Mining Co., 123 Ill. 2d 281, 527 N.E.2d 303 (1988), the court rejected an employee's retaliatory discharge claim based on the employee's intention to pursue a claim for his injury because the employer had no knowledge of that intention. *Id.* at 287-90, 527 N.E.2d at 305-07.

Two Illinois appellate courts held that employees need not actually file workers' compensation claims to state a cause of action for discharge in retaliation for exercising their rights under the Act. *See* Richardson v. Illinois Bell Tel. Co., 156 Ill. App. 3d 1006, 1010, 510 N.E.2d 134, 136-37 (2d Dist. 1987); Wolcowicz v. Intercraft Indus. Corp., 133 Ill. App. 3d 157, 161, 478 N.E.2d 1039, 1042 (1st Dist. 1985). See also Horton v. Miller Chem. Co., 776 F.2d 1351, 1355-56 (7th Cir. 1985), *cert. denied*, 475 U.S. 1122 (1986), and Burgess v. Chicago Sun Times, 132 Ill. App. 3d 181, 185, 476 N.E.2d 1284, 1287 (1st Dist. 1985), wherein the courts held that there is no requirement in Illinois that employees must file workers' compensation claims before they can claim retaliatory discharge. Moreover, in Fuentes v. Lear Siegler, Inc., No. 2-87-1201 (Ill. App. 2d Dist. Sept. 27, 1988) (LEXIS, States library, Ill. file), the court held that an employee must show that the employer was aware of the employee's intention to file a workers' compensation claim.

12. *Hinthorn*, 119 Ill. 2d at 528, 519 N.E.2d at 910.

13. *Id.* at 528-29, 519 N.E.2d at 910-11. The employee also was told that she had been "getting hurt too much — costing the company too much money." *Id.* at 528, 519 N.E.2d at 911.

14. *Id.* at 529-30, 519 N.E.2d at 911.

15. *Id.* at 529, 519 N.E.2d at 911. The employer conceded that it had directed the employee to sign the form to protect itself. *Id.* at 531, 519 N.E.2d at 912. The court interpreted this to mean protection from claims of improper discharge. *Id.* at 531-32, 519 N.E.2d at 912.

16. *Id.* at 533, 519 N.E.2d at 913.

17. For the elements of a retaliatory discharge claim, see *supra* note 7.

18. *Hinthorn*, 119 Ill. 2d at 530-31, 519 N.E.2d at 911-12. An employee is constructively discharged if his employer deliberately compels the employee's involuntary resigna-

unnecessary, according to the court, because the employee alleged actual discharge by claiming that the employer told her to seek other employment.[19] Moreover, the employee's submission of a voluntary resignation form did not preclude a showing of discharge.[20] The resignation form did not preclude actual discharge because the employee alleged that she was directed to sign the form, she did not understand the meaning of her action, and it was clear from the alleged circumstances that if she had refused to sign the form, she would have been fired anyway.[21] Hence, the court held that the employee sufficiently alleged a discharge, notwithstanding her signature on the resignation form.[22]

After establishing that the employee adequately alleged actual discharge, the court addressed whether the employee had properly alleged that the discharge was in retaliation for the employee's activities.[23] The court noted that the employee's complaint was conclusory because it labelled the employer's action as retaliatory without specifying the conduct for which she was discharged.[24] Nonetheless, the court concluded that the complaint contained adequate facts to inform the employer that the employee claimed that she was discharged in retaliation for requesting medical atten-

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tion by causing or allowing the employee's working conditions to become intolerable. Beye v. Bureau of Nat'l Affairs, 59 Md. App. 642, 653, 477 A.2d 1197, 1203 (Md. Ct. Spec. App. 1984). In a previous decision, the Illinois Appellate Court for the Fourth District declined to extend the tort of retaliatory discharge to a claim grounded in a constructive discharge. Scheller v. Health Care Serv. Corp., 138 Ill. App. 3d 219, 225, 485 N.E.2d 26, 30 (4th Dist. 1985), *leave to appeal denied*, 111 Ill. 2d 595 (1986). In *Scheller*, the complaining employee voluntarily resigned after repeated harassment by her employer. *Id.* at 221, 485 N.E.2d at 27. The *Scheller* court rejected the employee's argument that she was constructively discharged because her employer forced her to resign. *Id.* at 222-24, 485 N.E.2d at 28-29. The court held that in order to state a cause of action for retaliatory discharge, an employee must actually have been fired. *Id.* at 223-25, 485 N.E.2d at 29-30. The appellate court in *Hinthorn* distinguished *Scheller* by emphasizing that, unlike the employee in *Scheller*, the *Hinthorn* employee resigned involuntarily. Hinthorn v. Roland's of Bloomington, Inc., 151 Ill. App. 3d 1006, 1008, 503 N.E.2d 1128, 1129-30 (4th Dist. 1987). The Illinois Supreme Court in *Hinthorn* declined to decide whether a retaliatory discharge claim may be predicated upon a constructive discharge, stating that it had "no need to rule upon the viability of the constructive discharge theory at this time, because the plaintiff alleges that she was actually and not constructively discharged." *Hinthorn*, 119 Ill. 2d at 531, 519 N.E.2d at 912.

19. *Hinthorn*, 119 Ill. 2d at 531, 519 N.E.2d at 912.

20. *Id.* at 531-32, 519 N.E.2d at 912.

21. *Id.* The court stated that it would be "bitter irony" to permit employers "to circumvent liability for retaliatory discharge by using their employees as unwitting tools to escape responsibility for their tortious acts." *Id.* at 532, 519 N.E.2d at 912.

22. *Id.* at 531-32, 519 N.E.2d at 912.

23. *Id.* at 532, 519 N.E.2d 912.

24. *Id.*

tion.[25] Therefore, the complaint sufficiently alleged retaliation.[26]

The court then concluded that the employee also had adequately alleged a violation of a clearly mandated public policy.[27] In reaching this conclusion, the court reasoned that the Act protects injured employees by ensuring that they receive medical attention as well as compensation.[28] The court noted that the employer's dual responsibility under the Act is to "provide and pay for" necessary medical attention.[29] Therefore, requesting and seeking medical attention is the "crucial first step" in exercising workers' compensation rights.[30] Accordingly, the court concluded that a retaliatory discharge action based on retaliation for requesting medical attention connected with a work-related injury is functionally equivalent to a retaliatory discharge action based on discharge for filing a workers' compensation claim.[31] The court reasoned that in both instances an employee is being fired for asserting legal rights to medical attention as provided for under the Workers' Compensation Act.[32] Thus, the complaint adequately alleged a violation of a clearly mandated public policy.[33]

The *Hinthorn* decision extends the tort of retaliatory discharge to include claims by employees who have not filed workers' compensation claims but have nonetheless asserted their rights under the Act. Thus far, the scope of the *Hinthorn* decision beyond the workers' compensation setting is unclear.[34]

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25. *Id.* The court noted that the employee's complaint emphasized that the events that triggered her discharge were her disclosure of the injury and her request for medical attention. *Id.*

26. *Id.*

27. *Id.* at 533, 519 N.E.2d at 913.

28. *Id.* at 533-34, 519 N.E.2d at 913. The court rejected the employer's argument that the Act protects an employee's right to compensation but not to medical attention itself. *Id.* at 533, 519 N.E.2d at 912.

29. *Id.* at 534, 519 N.E.2d at 913 (citing ILL. REV. STAT. ch. 48, para. 138.8 (1987)).

30. *Id.*

31. *Id.* The court also noted that it would be anomalous to allow an employee who has filed a workers' compensation claim to bring a retaliatory discharge action while denying the same opportunity to an employee who was injured and fired before he had a chance to file a claim. *Id.*

32. *Id.*

33. *Id.* at 533-34, 519 N.E.2d at 912-13.

34. The Illinois Appellate Court for the First District has indicated that *Hinthorn* may be limited to retaliatory discharge claims brought by employees who orally invoke specifically guaranteed statutory rights. Abrams v. Echlin Corp., 174 Ill. App. 3d 434, 441-42, 528 N.E.2d 429, 434-35 (1st Dist. 1988). In *Abrams*, an employee claimed that he was discharged in retaliation for threatening legal action against his employer under the Illinois Wage Payment and Collection Act ("Wage Act"), ILL. REV. STAT. ch. 48, paras. 39m-1 to 39m-15 (1987). *Abrams*, 174 Ill. App. 3d at 436-37, 528 N.E.2d at 431. The employee claimed that his employer refused to pay him sales commissions allegedly

2. Preemption

Section 301 of the Labor Management Relations Act ("LMRA")[35] allows an employee who is covered by a collective bargaining agreement to bring an action in federal district court for breach of the labor agreement.[36] In Illinois, a union employee who is discharged in retaliation for asserting his rights under the Illinois Workers' Compensation Act has a cause of action against his employer for the tort of retaliatory discharge.[37] The Illinois Supreme Court and the Seventh Circuit have reached conflicting decisions as to whether section 301 prevents an employee from bringing a retaliatory discharge claim in state court when the employee is covered by a collective bargaining agreement that provides that he may not be discharged except for just cause.[38] In *Lingle v. Norge*

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due under a written agreement between the two parties. *Id.* at 435, 528 N.E.2d at 430. The court did not decide whether the employee had alleged a violation of a clearly mandated public policy under the Wage Act because the dispute centered on the proper interpretation of the written agreement and not a violation of the Wage Act itself. *Id.* at 442, 528 N.E.2d at 435. However, the court intimated that *Hinthorn* would not apply in that case because neither the employee's complaint nor his argument on appeal alleged that he was exercising any specific right guaranteed by the Wage Act. *Id.* at 441-42, 528 N.E.2d at 434-35.

35. 29 U.S.C. § 185 (1982).

36. *Id.* Section 301(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Id.

37. Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 150, 473 N.E.2d 1280, 1283-84 (1984), *cert. denied*, 474 U.S. 909 (1985). For a discussion of retaliatory discharge in Illinois, see *supra* notes 7-34 and accompanying text.

38. *See* Gonzalez v. Prestress Eng'g Corp., 115 Ill. 2d 1, 503 N.E.2d 308 (1986); Lingle v. Norge Div. of Magic Chef, 823 F.2d 1031 (7th Cir. 1987), *rev'd*, 108 S. Ct. 1877 (1988). In *Gonzalez*, the Illinois Supreme Court held that section 301 does not preempt state retaliatory discharge claims. *Gonzalez*, 115 Ill. 2d at 9, 503 N.E.2d at 311-12. The union employees in *Gonzalez* brought retaliatory discharge claims against their employer, claiming that the employer discharged them in retaliation for filing workers' compensation claims. *Id.* at 5, 503 N.E.2d at 310. The employer argued that section 301 preempted the retaliatory discharge claims because the employees were covered by a union contract that contained a just cause provision. *Id.* at 6, 10, 503 N.E.2d at 310, 312. According to the employer, the employees' retaliatory discharge claims depended upon an interpretation of the terms of the just cause provision. *Id.* at 10, 503 N.E.2d at 312. The Illinois Supreme Court reasoned that a retaliatory discharge claim is based on public policy considerations, not interpretations of just cause provisions. *Id.* at 10-12, 503 N.E.2d at 312-13. Hence, the court held that retaliatory discharge is an independent claim that is not preempted by section 301. *Id.* at 11-12, 503 N.E.2d at 313.

In contrast, the Seventh Circuit in *Lingle* held that section 301 preempts the retaliatory discharge claims of union workers who have a contractual remedy for discharge without

Division of Magic Chef,[39] the United States Supreme Court held that a union employee's retaliatory discharge claim is not preempted by section 301 unless the resolution of that claim requires the interpretation of a just cause provision in the collective bargaining agreement.[40]

The employee in *Lingle* was discharged after suffering a work-related injury and requesting compensation pursuant to the Illinois Workers' Compensation Act.[41] The employer maintained that it discharged the employee for filing a false workers' compensation claim.[42] The employee's union filed a grievance on the employee's behalf, contending that her discharge violated the just cause provision of the employee's union contract.[43] While the arbitration was proceeding, the employee filed suit in an Illinois circuit court, alleging that she was discharged in retaliation for exercising her rights under the Workers' Compensation Act.[44] The employer removed the case to the Federal District Court for the Southern District of Illinois on the basis of diversity of citizenship, and then it filed a motion to dismiss.[45] The district court dismissed the action, ruling that the state tort claim was preempted because it was "inextricably intertwined" with the union contract's just cause provision.[46]

The employee then appealed the decision of the district court.[47] She argued that the tort action was independent of the collective bargaining agreement provisions because the tort claim could be

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just cause. *Lingle*, 823 F.2d at 1046. In reaching this holding, the *Lingle* court concluded that retaliation cases necessarily involve interpretation of collective bargaining agreement just cause provisions. *Id.* According to the Seventh Circuit, allowing state tort claims would frustrate public policy favoring the development of uniform federal law in this area and public policy favoring employment dispute resolution by arbitration. *Id.* Therefore, the court held that the state retaliation claims were preempted. *Id.*

39. 108 S. Ct. 1877 (1988).

40. *Id.* at 1885.

41. *Id.* at 1879. *See* ILL. REV. STAT. ch. 48, paras. 138.1-138.30 (1987).

42. *Lingle*, 108 S. Ct. at 1879.

43. *Id.* Pursuant to the collective bargaining agreement, the grievance was submitted to arbitration and the arbitrator ruled in favor of the employee. *Id.* The arbitrator ordered the employer to reinstate the employee with full back pay. *Id.*

44. *Id.* The employee filed suit in the Illinois Circuit Court for Williamson County. *Id.*

45. *Id.*

46. Lingle v. Norge Div. of Magic Chef, Inc., 618 F. Supp. 1448, 1449 (S.D. Ill. 1985). The court reasoned that allowing a union employee to bring a state retaliatory discharge claim would undermine the terms of the labor contract, which provided for arbitration of employee grievances. *Id.*

47. *See* Lingle v. Norge Div. of Magic Chef, 823 F.2d 1031, 1046 (7th Cir. 1987).

resolved without interpreting the agreement.[48] The United States Court of Appeals for the Seventh Circuit, in an *en banc* opinion, rejected this argument and affirmed the dismissal of the complaint.[49] The court reasoned that the retaliatory discharge claim involved an analysis of the same facts that would be considered in deciding whether an employee had been discharged without just cause.[50] Hence, the court held that section 301 preempted the state retaliatory discharge claim.[51] This holding placed the Seventh Circuit in conflict with other federal circuits that have held that section 301 does not preempt state retaliatory discharge claims.[52]

The Supreme Court granted certiorari to resolve the conflict among the circuits on the preemption issue.[53] The Court began its analysis by tracing its prior decisions in this area.[54] The *Lingle* Court noted that in *Textile Workers v. Lincoln Mills*,[55] it previously held that section 301 not only provides federal jurisdiction over union contract disputes, but also authorizes federal courts to develop a body of federal common law for enforcing union contracts.[56] The *Lingle* Court further noted that in *Teamsters Local v. Lucas Flour Co.*,[57] it rejected applying state rules of contract interpretation when interpreting a collective bargaining agreement.[58] The *Lucas Flour* Court ruled that section 301 required resort to federal law to ensure uniform interpretation of union contracts and to provide consistent resolution of labor disputes.[59] Finally, the

48. *Id.*

49. *Id.* at 1033.

50. *Id.* at 1046.

51. *Id.* The court reasoned that Congress intended to make grievance and arbitration procedures the exclusive remedy for alleged violations of union contract provisions. *Id.* (citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-11 (1985)).

52. *See* Baldracchi v. Pratt & Whitney Aircraft Div., 814 F.2d 102, 107 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 2819 (1988); Herring v. Prince Macaroni, Inc., 799 F.2d 120, 124 n.2 (3d Cir. 1986). *See also* Peabody Gallion v. Dollar, 666 F.2d 1309, 1316-19 (10th Cir. 1981) (retaliatory discharge claim not preempted by National Labor Relations Act). *But see* Johnson v. Hussman Corp., 805 F.2d 795, 797 (8th Cir. 1986) (retaliatory discharge claim preempted by section 301). The appellate court holding in *Lingle* also resulted in a conflict between the Seventh Circuit and the Illinois Supreme Court on this issue. *See supra* note 38 and accompanying text.

53. *Lingle*, 108 S. Ct. at 1879-80.

54. *Id.* at 1880-81.

55. 353 U.S. 448 (1957).

56. *Lingle*, 108 S. Ct at 1880 (citing *Lincoln Mills*, 353 U.S. at 451). In *Lincoln Mills*, the Supreme Court held that a district court had the authority under section 301 to compel grievance arbitration between a union and an employer. *Lincoln Mills*, 353 U.S. at 449-56.

57. 369 U.S. 95 (1962).

58. *Lingle*, 108 S. Ct. at 1880 (citing *Lucas Flour*, 369 U.S. at 102-04).

59. *Id.* (citing *Lucas Flour*, 369 U.S. at 103-04). In *Lucas Flour*, the Supreme Court

Lingle Court noted that in *Allis-Chalmers Corp. v. Lueck*,[60] it ruled that section 301 preempted a state tort action for bad faith handling of an insurance claim because the labor contract specified the method by which benefit claims would be handled.[61] In reaching this conclusion, the *Lueck* Court reasoned that the state claim necessarily depended on the meaning of the terms of the collective bargaining agreement.[62] The *Lueck* Court emphasized that when the resolution of a state claim requires the interpretation of a collective bargaining agreement, the state claim is preempted and federal labor law principles must be applied.[63]

Applying these preemption principles, the *Lingle* Court rejected the Seventh Circuit analysis that preemption occurs whenever a state claim implicates the same factual analysis as an inquiry under the just cause provision of a collective bargaining agreement.[64] The Court stated that the purpose behind section 301 preemption is to ensure that federal law will be applied in disputes that involve the interpretation of labor agreements.[65] Thus, even when the state law claim and the grievance under the labor contract involve the same set of facts, there is no preemption as long as the state law claim can be resolved without interpreting the contract itself.[66] The Court noted that the elements required to prove the Illinois retaliatory discharge claim involved purely factual questions that did not require an interpretation of collective bargaining agreement terms.[67] Therefore, the *Lingle* Court held that the state retaliatory discharge claim was not preempted by section 301.[68]

The Supreme Court in *Lingle* reaffirmed that substantive state

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held that state courts must apply federal common law in interpreting whether a collective bargaining agreement implicitly prohibited a union strike. *Lucas Flour*, 369 U.S. at 103. The *Lucas Flour* Court stated that federal law should apply to avoid the disruptive effect of divergent state and federal rules on contract interpretation. *Id.* at 104. The Court also emphasized that allowing the development of divergent federal and state law would frustrate the federal policy of promoting industrial peace. *Id.*

60. 471 U.S. 202 (1985).

61. *Lingle*, 108 S. Ct. at 1881 (citing *Lueck*, 471 U.S. at 218).

62. *Id.* (citing *Lueck*, 471 U.S. at 218-19).

63. *Id.* (citing *Lueck*, 471 U.S. at 218-19).

64. *Id.* at 1883.

65. *Id.*

66. *Id.*

67. *Id.* at 1882. For a list of the elements of a retaliatory discharge claim, see *supra* note 7 and accompanying text.

68. *Lingle*, 108 S. Ct. at 1882. The Court noted that a retaliatory discharge claim ordinarily will not be preempted. *Id.* at 1885. The Court acknowledged that union contract terms may be useful to determine separate issues, such as the amount of damages, and that, with respect to these separate issues, federal law may apply in interpreting the contract. *Id.* at 1885 n.12.

law rights in the labor relations context can co-exist with federal labor policy. At a time when many state courts, including those in Illinois, are creating new rights and causes of action for workers,[69] the *Lingle* decision ensures that employees covered by union contracts will share the benefits of these judicially-created rights. In many instances, the *Lingle* decision may provide unionized workers with multiple forums in which to challenge terminations.[70] As the Supreme Court noted, however, such alternative remedies already exist for union employees who claim unlawful discrimination.[71] The *Lingle* decision makes clear that as long as an employee can assert a state claim that is independent of the terms of the collective bargaining agreement, the state claim will not be preempted by federal labor law.

B. Contract Claims

In 1987, the Illinois Supreme Court in *Duldulao v. St. Mary of Nazareth Hospital*[72] held that an employee handbook or other policy statement of job security may rebut the presumption of at-will employment.[73] In effect, the *Duldulao* court found that a handbook or other policy statement may create a binding contract between employer and employee when it clearly communicates a promise.[74] During the *Survey* year, three Illinois appellate court

69. *See, e.g.*, Hinthorn v. Roland's of Bloomington, Inc., 119 Ill. 2d 526, 519 N.E.2d 909 (1988). The *Hinthorn* decision expanded the scope of retaliatory discharge in Illinois to include claims by employees who allege that they were fired for orally requesting medical attention for work-related injuries, even though they had not yet filed workers' compensation claims. *Id.* at 534-35, 519 N.E.2d at 913-14. For a discussion of the *Hinthorn* decision, see *supra* notes 7-34 and accompanying text.

70. In addition to having a choice of forums for a suit involving wrongful termination, a union employee who arbitrates a grievance and loses is not collaterally estopped from bringing a subsequent retaliatory discharge claim against his employer. Ryherd v. General Cable Co., 124 Ill. 2d 418, 434, 530 N.E.2d 431, 438 (1988). The *Ryherd* court reasoned that a retaliatory discharge claim involves an inquiry into state public policy, which a privately-appointed arbitrator is neither competent nor authorized to perform. *Id.* at 431, 530 N.E.2d at 437. Hence, the court concluded that section 301 grievances and retaliatory discharge claims are "different and fundamentally unrelated." *Id.* at 432, 530 N.E.2d at 438.

71. *Lingle*, 108 S. Ct. at 1885.

72. 115 Ill. 2d 482, 505 N.E.2d 314 (1987).

73. *Id.* at 489, 505 N.E.2d at 318. Generally, "an employment relationship without a fixed duration is terminable at the will of either party." *Id.* at 489, 505 N.E.2d at 317. However, the fact that an employment relationship is without a fixed duration creates only the presumption of at-will employment. *Id.* at 489, 505 N.E.2d at 318. A litigant may overcome the at-will presumption by showing that the employer and employee contracted otherwise. *Id.*

74. *Id.* In *Duldulao*, the court considered whether an employee hired for an indefinite term was nonetheless a party to an employment contract comprised of terms set forth

decisions[75] construed *Duldulao* narrowly,[76] while two federal court courts gave the case a broader application.[77]

The Illinois Appellate Courts' reluctance to extend *Duldulao* is evident in the three decisions rendered in this *Survey* year.[78] In all of these cases, the court refused to allow employee handbooks or policy statements to create or modify employment contracts.

In two of the appellate court decisions, the courts declined to find employment contracts because the alleged promises were insufficient to create binding agreements. In *Crenshaw v. DeVry, Inc.*,[79] the Illinois Appellate Court for the First District held that a company's policy statement, which provided that an employee who failed to meet certain productivity standards could be placed on

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in an employee handbook. *Id.* at 484, 505 N.E.2d at 315. The employee claimed that the employer had breached an implied contract when it discharged the employee without following termination procedures set forth in its employee handbook. *Id.* at 485, 505 N.E.2d at 315. The *Duldulao* court held that under certain circumstances, an employee handbook or an employer's policy statement may create a binding employment contract. *Id.* at 487-90, 505 N.E.2d at 317-18.

The court stated that when traditional elements of contract formation are present, provisions contained in an employee handbook or policy statement may constitute an enforceable employment contract. *Id.* at 490, 505 N.E.2d at 318. In order to constitute an employment contract, the language contained in a policy manual or handbook must clearly communicate a promise, the employee must be aware of the promise and reasonably believe it to be an offer, and the employee must accept the offer by continuing to work. *Id.* The *Duldulao* court then concluded that the employee handbook created a contract, the terms of which were breached when the employee was discharged in violation of termination procedures set forth in the handbook. *Id.* at 490-494, 505 N.E.2d at 318-20.

For a detailed discussion of the *Duldulao* decision, see Alper & Dalenberg, *Labor Law*, 19 LOY. U. CHI. L.J. 591, 592-97 (1987).

75. Crenshaw v. DeVry, Inc., 172 Ill. App. 3d 228, 526 N.E.2d 474 (1st Dist. 1988); Levitt v. Gorris, 167 Ill. App. 3d 88, 520 N.E.2d 1169 (1st Dist. 1988); McWhorter v. Realty World-Star, Inc., 171 Ill. App. 3d 588, 525 N.E.2d 1205 (5th Dist. 1988).

76. Several appellate cases immediately following the *Duldulao* decision applied the doctrine favorably to employees and found employment contracts. *See* Land v. Michael Reese Hosp., 153 Ill. App. 3d 465, 468-69, 505 N.E.2d 1261, 1263 (1st Dist. 1987) (a binding contract existed when employee manual outlined employee grievance procedures); DeFosse v. Cherry Elec. Prod. Corp., 156 Ill. App. 3d 1030, 1035, 510 N.E.2d 141, 145 (2d Dist. 1987) (employee had contractual right to benefits outlined in employee benefits pamphlet). However, another case held that an employer may avoid contractual obligations by placing disclaimers in employee manuals and publications. Moore v. Illinois Bell Tel. Co., 155 Ill. App. 3d 781, 784-85, 508 N.E.2d 519, 521 (2d Dist.), *leave to appeal denied*, 116 Ill. 2d 562, 515 N.E.2d 112 (1987).

77. Kula v. J.K. Schofield & Co., 668 F. Supp. 1126 (N.D. Ill. 1987); Belfatto v. Robert Bosch Corp., No. 86-C-6632 (N.D. Ill. Apr. 15, 1987) (LEXIS, Genfed library, Dist file).

78. Crenshaw v. DeVry, Inc., 172 Ill. App. 3d 228, 526 N.E.2d 474 (1st Dist. 1988); Levitt v. Gorris, 167 Ill. App. 3d 88, 520 N.E.2d 1169 (1st Dist. 1988); McWhorter v. Realty World-Star, Inc., 171 Ill. App. 3d 588, 525 N.E.2d 1205 (5th Dist. 1988).

79. 172 Ill. App. 3d 228, 526 N.E.2d 474 (1st Dist. 1988).

probation, did not create an employment contract.[80] The employee in *Crenshaw* claimed that he was entitled to be placed on probation before he could be terminated.[81] The employee based this argument upon a written policy statement which provided that the failure to meet certain productivity standards was "cause for placement on probation."[82] The employee also presented evidence that other employees were placed on probation when their performance was unsatisfactory.[83] Additionally, the employee relied upon a provision in the company's regional manager guidelines that mandated probation.[84]

The court held that the policy manual provision did not create a contract.[85] The court found that the probation provision contained in the written policy statement was discretionary.[86] In reaching this conclusion, the court noted that the policy manual did not contain any language such as "must" or "will" that would mandate probation.[87] Additionally, the court found that the employer's supervisory guidelines for its regional managers were irrelevant in construing an employment contract between an employer and an employee.[88]

Similarly, in *Levitt v. Gorris*,[89] the Illinois Appellate Court for the First District dismissed a discharged employee's breach of contract claim because the court found that the employer had not made a clear promise of continued employment.[90] The employee in *Levitt* was a discharged probationary police officer.[91] Under the Illinois Municipal Code,[92] police officers are initially hired for a

80. *Id.* at 231, 526 N.E.2d at 476-77.

81. *Id.* at 230, 526 N.E.2d at 476.

82. *Id.* at 229, 526 N.E.2d at 475. The employee had a contract with the employer that incorporated by reference the extrinsic written policy statement on which the employee in this case relied. *Id.* at 231, 526 N.E.2d at 476. The contract also provided that either party could terminate the employment at any time with or without written notice. *Id.* at 229, 526 N.E.2d at 475.

83. *Id.* at 231, 526 N.E.2d at 476.

84. *Id.*

85. *Id.* at 231, 526 N.E.2d at 476-77. The court held, alternatively, that the employee terminated the contract and thereby waived any alleged right to protection. *Id.* at 230-31, 526 N.E.2d at 476.

86. *Id.* at 231, 526 N.E.2d at 476-77.

87. *Id.* at 231, 526 N.E.2d at 477.

88. *Id.*

89. 167 Ill. App. 3d 88, 520 N.E.2d at 1169 (1st Dist. 1988).

90. *Id.* at 92, 520 N.E.2d at 1171.

91. *Id.* at 89, 520 N.E.2d at 1169.

92. ILL. REV. STAT. ch. 24, paras. 1-1-1 to 11-152-4 (1987).

probationary period.[93] During this probationary period, police departments may terminate their officers at will.[94] In *Levitt*, the probationer relied upon a written police department rule which provided that probationary employees would be discharged if their services were unsatisfactory.[95] Citing *Duldulao*, the employee claimed that the rule created an employment contract and that she was terminated in violation of the contract because she rendered satisfactory services.[96] The employee argued that under *Duldulao*, the department rule guaranteed her continued employment, notwithstanding her probationary status under the Municipal Code.[97] The *Levitt* court disagreed and held that the rule did not make any specific promise that would override the Municipal Code provision.[98] The court noted that the legislature required the promulgation of such rules and did not intend to create private contractual rights for public sector employees.[99]

In *McWhorter v. Realty World-Star, Inc.*,[100] the third decision to interpret *Duldulao*, the Illinois Appellate Court for the Fifth District refused to enforce provisions of an employee handbook when an express employment contract contained contrary terms.[101] In *McWhorter*, a discharged real estate sales agent sued to recover unpaid sales commissions for properties that he listed but that were not sold until after his employment terminated.[102] The employee relied upon the parties' "Independent Contractors Agreement," which provided that the employee would earn commissions on any

93. ILL. REV. STAT. ch. 24, para. 10-2.1-17 (1987). Paragraph 10-2.1-17 provides that "original appointments . . . shall be on probation." *Id.*

94. *Levitt*, 167 Ill. App. 3d at 91, 520 N.E.2d at 1170 (citing Kapsalis v. Board of Fire & Police Comm'rs, 143 Ill. App. 3d 465, 468, 493 N.E.2d 56, 58 (1st Dist. 1986)).

95. *Id.* at 90, 520 N.E.2d at 1170.

96. *Id.*

97. *Id.* at 91, 520 N.E.2d at 1170.

98. *Id.* at 92, 520 N.E.2d at 1171.

99. *Id.* The court stated that the legislature required the police department to make rules relating to appointment and removal of its employees. *Id. See* ILL. REV. STAT. ch. 24, para. 10-2.1-5 (1987). Paragraph 10-2.1-5 provides that:

> The board, by its rules, shall provide for promotion in the police and fire departments . . . . [T]he rules governing [promotion] shall be the same as provided for applicants for original appointment, except that original appointments only shall be on probation as provided by the rules.

Id. The court also stated that "[i]t is well settled that legislative acts fixing the terms or tenure of employment of public employees do not create private contractual rights." *Levitt*, 167 Ill. App. 3d at 92, 520 N.E.2d at 1171 (citing Dodge v. Board of Educ., 302 U.S. 74 (1937)).

100. 171 Ill. App. 3d 588, 525 N.E.2d 1205 (5th Dist. 1988).

101. *Id.* at 593-94, 525 N.E.2d at 1208.

102. *Id.* at 590, 525 N.E.2d at 1206.

listings that he obtained.[103] The agreement also provided that termination of the contract would not divest the employee of commissions that accrued to him prior to termination.[104] The employer claimed that an employee policy manual provision was incorporated into the agreement.[105] The policy manual stated that commissions were payable to terminated sales employees only if the employee completed a sale before he was terminated.[106] The court rejected the employer's argument, holding that when policy manual provisions are inconsistent with unambiguous provisions contained in a written employment contract, the policy manual may not override or modify the existing contract.[107]

Thus, the Illinois appellate courts have been reluctant to afford *Duldulao* a broad reading. The courts have emphasized that in order to create an employment contract, policy manual provisions must be nondiscretionary[108] and explicit.[109] The courts have further required that employment contracts comprised of policy manual provisions must comport with traditional contract law

103. *Id.* at 589-90, 525 N.E.2d at 1206.

104. *Id.* at 590, 525 N.E.2d at 1206.

105. *Id.* at 590-91, 525 N.E.2d at 1206-07.

106. *Id.* The court noted that the provisions of the policy manual were incorporated into the written agreement only insofar as they related to "the handling of [the] salesperson's service as a salesperson . . . the means of securing listings, handling prospects, and consummating negotiations." *Id.* at 590, 525 N.E.2d at 1206. The employer also claimed that the language of the sales commissions section of the written contract was ambiguous and that the policy manual must be incorporated as a clarification. *Id.* at 591, 525 N.E.2d at 1207. Alternatively, the employer argued that the entire policy manual was incorporated by reference into the agreement. *Id.* Additionally, the employer argued that under *Duldulao*, the policy manual was part of the employment contract and that, if its terms conflicted with terms contained in the written agreement, then the more specific terms of the manual should control. *Id.*

107. *Id.* at 593-94, 525 N.E.2d at 1208. The court also concluded that the policy manual was not incorporated in its entirety into the independent contractor agreement. *Id.* at 592-93, 525 N.E.2d at 1207.

The *McWhorter* decision is consistent with the basic contract law principle that prior or contemporaneous extrinsic agreements may not modify existing contracts that are clear and unambiguous in their terms. *See* RESTATEMENT (SECOND) OF CONTRACTS § 213 (1979). Hence, the *McWhorter* decision underscores the degree to which the *Duldulao* decision was grounded in contract law principles. The *McWhorter* decision advises employees that if they are covered by an unambiguous written employment contract, then *Duldulao* will not allow an allegedly co-existent contract to modify the existing agreement. The *McWhorter* decision is helpful for employers who may wish to limit contractual liability to their employees by entering into agreements that delineate the specific terms of the employment relationship. In such instances, the *McWhorter* decision suggests that the agreement may not expand the contract to include inconsistent terms of alleged contracts.

108. *See supra* notes 79-88 and accompanying text.

109. *See supra* notes 89-99 and accompanying text.

principles.[110]

Unlike the state appellate courts, the federal courts have construed the *Duldulao* decision broadly.[111] In *Kula v. J.K. Schofield & Co.*,[112] the United States District Court for the Northern District of Illinois construed *Duldulao* as allowing an oral promise to create a permanent employment contract.[113] Additionally, in *Belfatto v. Robert Bosch Corp.*,[114] the Northern District of Illinois limited the applicability of contractual disclaimers to those instances when the disclaimer is prominently displayed in the employee handbook.[115] If the federal courts continue to construe *Duldulao* broadly, then the Illinois Supreme Court may need to reconcile the divergent trends.

III. Disclosure of Personnel Files

Chapter 48, paragraph 2002 of the Illinois Revised Statutes (the "Personnel File Act")[116] provides that an employer must permit its employees to inspect the contents of their personnel files.[117] Prior

110. *See supra* notes 100-07 and accompanying text.

111. *See* Kula v. J.K. Schofield & Co., 668 F. Supp. 1126 (N.D. Ill. 1987); Belfatto v. Robert Bosch Corp., No. 86-C-6632 (N.D. Ill. Apr. 15, 1987) (LEXIS, Genfed library, Dist file).

112. 668 F. Supp. 1126 (N.D. Ill. 1987)

113. *Id.* at 1130-31 The *Kula* court cited two Illinois First District Appellate Court cases for the proposition that oral employment contracts are enforceable in Illinois. *Id.* at 1130 (citing Ladesic v. Servomation Corp., 140 Ill. App. 3d 489, 488 N.E.2d 1355 (1st Dist. 1986) (oral employment contracts enforceable if parties' intent as to duration is clear and if contract supported by adequate consideration); Martin v. Federal Life Ins. Co., 109 Ill. App. 3d 596, 440 N.E.2d 998 (1st Dist. 1982)).

114. No. 86-C-6632 (N.D. Ill. Apr. 15, 1987) (LEXIS, Genfed library, Dist file).

115. *Id.* The court stated that for purposes of withstanding a motion to dismiss an employee's contract claim, a disclaimer, which appeared at the end of an employee handbook and that was not sufficiently likely to capture a reader's attention, did not bar incorporation of the handbook's provisions into an implied employment contract. *Id. Cf.* Morgan v. Harris Trust & Sav. Bank, 44 Fair Empl. Prac. Cas. (BNA) 704, 705 (N.D. Ill. 1987) (three explicit disclaimers in a policy manual were sufficient to negate employee's contract claim that the employer made a promise of continued employment and that the employee was reasonable in believing that a promise was made); Moore v. Illinois Bell Tel. Co., 155 Ill. App. 3d 781, 784-85, 508 N.E.2d 519, 521 (2d Dist.), *leave to appeal denied*, 116 Ill. 2d 562, 515 N.E.2d 112 (1987) (employer may avoid contractual obligations by placing disclaimers in employee manuals and publications).

116. Ill. Rev. Stat. ch. 48, paras. 2001-2012 (1987) (amended 1988). The Personnel File Act is entitled "An Act to permit employees to review personnel records; to provide criteria for their review; to prescribe the information which may be contained in personnel records; and to provide penalties." *Id.*

117. Ill. Rev. Stat. ch. 48, para. 2002 (1987). Section 2 of the statute provides in pertinent part:

> Every employer shall . . . permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that em-

to September 1988, the Personnel File Act also provided that an employer need not disclose documents that are used in management planning.[118] In *Spinelli v. Immanuel Lutheran Evangelical Congregation*,[119] the Illinois Supreme Court struck down the Personnel File Act, holding that the statute was unconstitutionally vague.[120] The Illinois Legislature subsequently amended the Personnel File Act in an attempt to cure the vagueness.[121]

The *Spinelli* decision arose out of two cases that were consolidated on appeal.[122] In one case, a terminated private school teacher sought disclosure of letters that were contained in her personnel file and upon which the school board relied when it decided not to renew her contract.[123] The school refused to allow the teacher to inspect the letters because it had assured the parents and

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ployee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action, except as provided in Section 10.

Id.

118. ILL. REV. STAT. ch. 48, para. 2010 (1987). Section 10 provided in pertinent part:

> The right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to:
> (a) Letters of reference for that employee.
> . . . .
> (c) Materials used by the employer for management planning, including but not limited to judgments, external peer review documents or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.

Id.

119. 118 Ill. 2d 389, 515 N.E.2d 1222 (1987).

120. *Id.* at 403, 515 N.E.2d at 1228.

121. *See* 1988 Ill. Legis. Serv. No. 85-1393 (effective September 2, 1988) (to be codified at ILL. REV. STAT. ch. 48, para. 2010(c)). Public Act 85-1393 amended section 10 of the Personnel File Act, which now provides:

> (c) Materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining the individual employee's qualifications for employment, promotion, transfer, or additional compensation, or in determining the employee's discharge or discipline.

Id.

122. *Spinelli*, 118 Ill. 2d at 395, 515 N.E.2d at 1225. *See* Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 144 Ill. App. 3d 325, 494 N.E.2d 196 (2d Dist. 1986), *aff'd*, 118 Ill. 2d 389, 515 N.E.2d 1222 (1987); Kamrath v. Board of Educ., No. 85-L-275 (Cir. Ct. Oct. 27, 1987), *aff'd in part, rev'd in part*, 118 Ill. 2d 389, 515 N.E.2d 1222 (1987).

123. *Spinelli*, 118 Ill. 2d at 396, 515 N.E.2d at 1225. After her employer failed to renew her employment contract, the private school teacher brought an action to compel disclosure of letters from parents and teachers that were contained in her personnel file

teachers who wrote the letters that it would hold them in strict confidence.[124] The school also claimed that it used the letters for management planning purposes and that, therefore, the letters were exempt from disclosure under the Personnel File Act.[125] Alternatively, the school argued that the Act violated due process because the Act's vague language prevented employers from determining which documents they could withhold from disclosure.[126]

In the other consolidated case, a public school teacher claimed that a local school board violated the Personnel File Act when it denied his request for written statements that the school board considered in the teacher's suspension hearings.[127] The teacher brought an action against the school board, challenging the validity of his suspension.[128] The Attorney General intervened in both cases, arguing that the Personnel File Act was not unconstitutionally vague and, therefore, did not violate due process.[129] The Attorney General argued that the meaning of the statutory exemption for documents used in management planning was generally understood by employers.[130] The constitutional issue in this consoli-

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and upon which her employer based its decision not to rehire her. *Id.* at 395-96, 515 N.E.2d at 1225.

124. *Id.* at 396, 515 N.E.2d at 1225.

125. *Id.*

126. *Id.* The trial court ordered the school to disclose the letters, but the appellate court held that the Personnel File Act violated the due process rights of the employer because it was unconstitutionally vague. *Id.*

127. *Id.* at 394, 515 N.E.2d at 1224. The public school teacher was temporarily suspended for using profanity in the classroom. *Id.* at 397, 515 N.E.2d at 1226. At a suspension hearing, the school administration introduced into evidence written statements made by students that described the teacher's classroom behavior. *Id.* at 397-98, 515 N.E.2d at 1225-26. The teacher sought to invalidate his suspension in circuit court, claiming that under the statute, the school board should have allowed the teacher to obtain copies of the statements prior to his suspension hearing. *Id.* at 394-98, 515 N.E.2d at 1225-26.

The discharged school teacher also claimed that the school board had no authority to suspend him for disciplinary reasons. *Id.* at 403, 515 N.E.2d at 1228-29. Alternatively, the teacher argued that if the school board did have such authority, then the teacher was entitled to a hearing as provided in the School Code for teacher removal and dismissal. *Id.* at 394, 405, 515 N.E.2d at 1224, 1229. For an analysis of this claim, see *infra* notes 180-96 and accompanying text.

128. *Spinelli*, 118 Ill. 2d at 394, 515 N.E.2d at 1224.

129. *Id.* at 394-95, 401, 515 N.E.2d at 1224, 1227.

130. *Id.* at 401, 515 N.E.2d at 1227. The Attorney General also argued that in the case of the public school teacher, the appellate court did not have to rule on the constitutionality of the statute because the letters contained in the teacher's file were letters of reference, which were exempt from coverage by the statute. *Id.* at 399, 515 N.E.2d at 1226. *See supra* note 118. The Illinois Supreme Court did not consider this alternative ground for decision because the Attorney General did not adequately brief the issue. *Spinelli*, 118 Ill. 2d at 401, 515 N.E.2d at 1227.

dated appeal was whether the Personnel File Act violated due process because it was unconstitutionally vague.[131] In resolving this issue, the Illinois Supreme Court noted that two sections of the Personnel File Act were in conflict as to which documents the employer must disclose.[132] Section 2 of the statute grants an employee the right to inspect documents that his employer used in making personnel decisions with respect to that employee, including decisions to promote, transfer, or discipline the employee.[133] Section 10(c) of the statute, however, allowed employers to deny employees access to "management planning" materials, some of which also could be used in determining whether the employee is promoted, transferred, or disciplined.[134] As a result of this conflict, the court concluded that employers could not ascertain with reasonable certainty which documents they must disclose.[135] Therefore, the court held that the statute violated the due process rights of employers and was unconstitutional.[136]

In response to the *Spinelli* decision, the Illinois Legislature amended section 10 of the Personnel File Act[137] to cure the vagueness of the prior statute. The amended section 10 retains the exception for "planning" materials, but limits that exception to "staff planning" documents that relate to "[business] development, expansion, closing or operational goals where the materials relate to or affect more than one employee."[138] Additionally, the amended section provides that the exception does not apply where the planning materials are otherwise subject to inspection under section 2

131. *Id.*

132. *Id.* at 401-03, 515 N.E.2d at 1227-28. *See* ILL. REV. STAT. ch. 48, para. 2002 (1987); ILL. REV. STAT. ch. 48, para. 2010(c) (1987). For the text of these provisions, see *supra* notes 117-18.

133. ILL. REV. STAT. ch. 48, para. 2002 (1987). The court stated that the letters contained in the private school teacher's file were used to determine the teacher's qualifications for continued employment and were, therefore, subject to disclosure under the statute. *Spinelli*, 118 Ill. 2d at 401, 515 N.E.2d at 1227-28.

134. ILL. REV. STAT. ch. 48, para. 2010(c) (1987). The court recognized that an employer might reasonably conclude that the letters were used for management planning, thus rendering the letters exempt from disclosure. *Spinelli*, 118 Ill. 2d at 401-02, 515 N.E.2d at 1228.

135. *Spinelli*, 118 Ill. 2d at 401-03, 515 N.E.2d at 1227-28. The court reasoned that an employer of ordinary intelligence would not be able to determine with reasonable certainty which personnel documents are subject to disclosure. *Id.* at 403, 515 N.E.2d at 1228.

136. *Id.*

137. *See* 1988 Ill. Legis. Serv. No. 85-1393 (effective September 2, 1988) (to be codified at ILL. REV. STAT. ch. 48, para. 2010(c)). For the text of the amended provision, see *supra* note 121.

138. *See* 1988 Ill. Legis. Serv. No. 85-1393 (effective September 2, 1988) (to be codified at ILL. REV. STAT. ch. 48, para. 2010(c)).

of the Personnel File Act.[139] By providing a more limited exception for business planning materials, the amended Personnel File Act enlarges the inspection rights of employees.

IV. THE PUBLIC SECTOR

A. Illinois Public Labor Relations Act

Under the Illinois Public Labor Relations Act ("IPLRA"),[140] unions and public employers must bargain collectively over conditions of employment that are not otherwise regulated or prohibited by law.[141] In *City of Decatur v. American Federation*,[142] the Illinois Supreme Court held that a municipality that adopts the civil service provisions of the Illinois Municipal Code ("Municipal Code")[143] must bargain over a proposal for binding arbitration of disputes involving employee terminations or suspensions.[144]

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139. *Id.*

140. ILL. REV. STAT. ch. 48, paras. 1601-1627 (1987).

141. ILL. REV. STAT. ch. 48, para. 1607 (1987). Section 7 of the IPLRA provides in pertinent part:

> A public employer and the exclusive representative have the authority and duty to bargain collectively [as] set forth in this Section . . . with respect to wages, hours and other conditions of employment. For the purposes of this Act, 'to bargain collectively' [includes negotiation] in good faith with respect to wages, hours and other conditions of employment . . . . The duty 'to bargain collectively' shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law . . . . If any law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty 'to bargain collectively' and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

Id.

142. 122 Ill. 2d 353, 522 N.E.2d 1219 (1988).

143. ILL. REV. STAT. ch. 24, paras. 10-1-1 to 10-1-48 (1987). In Illinois, a city may choose to adopt a civil service system that incorporates the civil service provisions of the Illinois Municipal Code. ILL. REV. STAT. ch. 24, para. 10-1-43 (1987). The Municipal Code provides for investigations and hearings regarding municipal employee terminations and suspensions. ILL. REV. STAT. ch. 24, para. 10-1-18 (1987). Section 10-1-18(a) provides in pertinent part:

> [N]o officer or employee of the classified civil service of any municipality . . . may be removed or discharged, or suspended for a period of more than 30 days, except for cause upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before the civil service commission, or by or before some officer or board appointed by the commission to conduct the investigation.

Id. The Municipal Code further provides that public employees suspended for more than five days, or suspended within six months after a prior suspension, are entitled to a hearing before the civil service commission upon request. *Id.*

144. *City of Decatur*, 122 Ill. 2d at 356-57, 522 N.E.2d at 1220.

In *City of Decatur*, the union representing a group of municipal employees claimed that the city refused to bargain over employment conditions as required by the IPLRA.[145] Specifically, the union sought a provision that would require the city to arbitrate employee grievances, including grievances related to disciplinary terminations and suspensions.[146] The city's civil service system incorporated the termination and suspension provisions of the Municipal Code.[147] The Municipal Code empowers city civil service commissions to conduct investigations and hearings regarding municipal employee terminations and suspensions.[148] The city argued, therefore, that the IPLRA did not mandate collective bargaining because the Municipal Code provisions constituted matters that were provided for in other laws.[149]

The Illinois Supreme Court rejected the city's argument and held that the city must bargain collectively over the arbitration issue.[150] The court noted that the legislature did not intend that statutes and local ordinances that merely relate to matters of public employment should constrain the broad duty to bargain under the IPLRA.[151] The court noted that the IPLRA distinguishes between

145. *Id.* As a result of the city's refusal to bargain over employment conditions, the union filed a charge with the Illinois State Labor Relations Board ("Board"). *Id.* The charge alleged that the city had committed an unfair labor practice. *Id.* The Board ordered the city to bargain over the union's proposal. *Id.* at 357, 522 N.E.2d at 1220. The Board stated that a correct reading of section 7 of the IPLRA require that laws that pertain in part to matters affecting conditions of employment could not limit the duty to bargain collectively. *Id.* at 360, 522 N.E.2d at 1221-22. The Board reasoned that the civil service provisions affect conditions of employment. *Id.* Hence, the Board concluded that the civil service provisions could not limit the duty to bargain. *Id.*

146. *Id.* at 363, 522 N.E.2d at 1223.

147. *Id.* at 357, 522 N.E.2d at 1220. The civil service system is optional and a city adopting the system may unilaterally alter the terms of the adopted Municipal Code provisions. *Id.* at 365, 522 N.E.2d at 1224.

148. ILL. REV. STAT. ch. 24, para. 10-1-18 (1987). For the text of this provision, see *supra* note 143.

149. *City of Decatur*, 122 Ill. 2d at 359, 522 N.E.2d at 1221. The appellate court agreed with the city. *See* Decatur v. Illinois State Labor Relations Bd., 149 Ill. App. 3d 319, 325-26, 500 N.E.2d 573, 577-78 (4th Dist. 1986). In reversing the Board's decision, the appellate court held that the provisions of the Municipal Code adopted by the city were matters provided for in other laws, thereby relieving the city of a duty to bargain. *Id.*

150. *City of Decatur*, 122 Ill. 2d at 366, 522 N.E.2d at 1225.

151. *Id.* at 364, 522 N.E.2d at 1224. The court pointed to the policy of the IPLRA to promote collective bargaining between public employees and their employers. *Id.* The court noted that the Board's decision suggested that no law pertaining to conditions of employment could ever limit the duty to bargain. *Id.* at 361, 522 N.E.2d at 1222. For a discussion of the Board's reasoning, see *supra* note 145. The court agreed with the Board that the city has a duty to bargain. *City of Decatur*, 122 Ill. 2d at 362, 522 N.E.2d at 1223. Nevertheless, the court disagreed with the Board's reasoning. *Id.* at 361-62, 522

laws that specifically provide for or prohibit a matter that might otherwise be subjects of mandatory bargaining and laws that pertain only in part to a mandatory bargaining subject.[152] Laws that merely pertain in part to bargaining subjects do not preclude collective bargaining over terms that supplement, implement, or relate to the effect of the other law.[153] The court concluded that because the civil service system is optional and the adopting municipality may alter its terms, the union's proposal should be construed as supplementing, implementing, or relating to the provisions of the Municipal Code.[154] The court also emphasized that arbitration has played a significant role in private sector labor law[155] and that the Illinois Legislature has expressed a similar preference for arbitration in the IPLRA.[156] Therefore, the court held that the city's civil service provision did not relieve the municipality of a duty to bargain over the union arbitration proposal.[157]

The Illinois Supreme Court's broad reading of the IPLRA in *City of Decatur* suggests that the duty to bargain will not be limited by other state and local laws unless such laws conflict with or prohibit the union proposal or unless the laws are clearly intended to preempt the subject matter of the proposal. The court also has followed the lead of the federal courts in favoring the grievance arbitration process as the means for resolving labor disputes. To the extent that public sector unions are able to negotiate success-

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N.E.2d at 1222-23. The Illinois Supreme Court acknowledged that courts normally give deference to administrative agencies' interpretations of the laws that they administer, but the court exercised its right to reject the Board's interpretation of the IPLRA as erroneous. *Id.* at 361, 522 N.E.2d at 1222.

152. *Id.* at 361-62, 522 N.E.2d at 1222-23 (citing ILL. REV. STAT. ch. 48, para. 1607 (1987) (for the text of this provision, see *supra* note 141)).

153. *Id.* at 362, 522 N.E.2d at 1222-23 (citing ILL. REV. STAT. ch. 24, para. 10-1-18 (1987)). As an example of the type of law that would not limit the duty to bargain, the court pointed to a minimum wage statute. *Id.* at 365, 522 N.E.2d at 1224. When a minimum wage statute exists, a union may seek to bargain over a wage higher than the statutory limit. *Id.*

154. *Id.* at 365-66, 522 N.E.2d at 1224.

155. *Id.* at 366, 522 N.E.2d at 1224 (citing United Steelworkers v. American Manuf. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)).

156. *Id.* (citing ILL. REV. STAT. ch. 48, para. 1608 (1987)).

157. *Id.* at 362-66, 522 N.E.2d at 1222-25. In support of its holding, the court noted that other jurisdictions that have faced similar conflicts between public employee bargaining laws and municipal civil service systems have favored mandatory bargaining. *Id.* at 363-64, 522 N.E.2d at 1223 (citing City of Casselberry v. Orange County Police Benevolent Ass'n, 482 So. 2d 336 (Fla. 1986); Local 1383 of the Int'l Ass'n of Fire Fighters v. City of Warren, 411 Mich. 642, 311 N.W.2d 702 (1981); AFSCME Council 75 v. Clackamas County, 69 Or. App. 488, 687 P.2d 1102 (1984)).

fully grievance arbitration procedures in their labor agreements, it can be anticipated that discipline and suspension issues will be contested under the collectively-bargained grievance system rather than through the statutory civil service provisions.

B. Illinois Educational Labor Relations Act

The Illinois Educational Labor Relations Act ("IELRA")[158] mandates collective bargaining between school boards and teachers' unions and requires the resolution of grievance disputes through binding arbitration.[159] Previous Illinois appellate courts disagreed over whether circuit courts have jurisdiction to vacate or enforce IELRA arbitration awards.[160] In *Board of Education v. Compton*,[161] the Illinois Supreme Court resolved this conflict and held that the IELRA divests circuit courts of jurisdiction to vacate or enforce public education arbitration awards.[162]

The employee in *Compton*, a non-tenured teacher, was allegedly terminated in violation of a collective bargaining agreement between the teacher's union and the school board.[163] As required by the agreement, the teacher and his union filed a grievance against the school board and submitted the grievance to arbitration.[164] After the arbitrator ruled against the school board, the school board

158. ILL. REV. STAT. ch. 48, paras. 1701-1721 (1987).

159. ILL. REV. STAT. ch. 48, paras. 1710(a), 1710(c) (1987). Section 10(a) of the IELRA provides that "[a]n educational employer and the [union] have the authority and duty to bargain collectively . . . with respect to wages, hours and other terms and conditions of employment, and to execute a written contract incorporating any agreement reached by such obligation." ILL. REV. STAT. ch. 48, para. 1710(a) (1987). Section 10(c) of the IELRA provides that "[t]he collective bargaining agreement negotiated between [the union] and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement." ILL. REV. STAT. ch. 48, para. 1710(c) (1987).

160. Two appellate courts held that circuit courts have jurisdiction over educational arbitration awards. *See* Board of Educ. v. Rockford Educ. Ass'n, 150 Ill. App. 3d 198, 501 N.E.2d 338 (2d Dist. 1986), *leave to appeal denied*, 114 Ill. 2d. 543, 508 N.E.2d 725 (1988); Board of Trustees v. Cook County College Teachers Union, Local 1600, 139 Ill. App. 3d 617, 487 N.E.2d 956 (1st Dist. 1985). *But see* Chicago Bd. of Educ. v. Chicago Teachers Union, 142 Ill. App. 3d 527, 491 N.E.2d 1259 (1st Dist. 1986) (circuit courts do not have jurisdiction over educational arbitration awards).

161. 123 Ill. 2d 216, 526 N.E.2d 149 (1988).

162. *Id.* at 217, 526 N.E.2d at 150.

163. *Id.* at 218, 526 N.E.2d at 150. The collective bargaining agreement listed procedures for teacher evaluation and termination and provided for resolution of disputes arising out of the agreement by grievance arbitration. *Id.* The teacher claimed that the school board dismissed him without following these procedures. Board of Educ. v. Compton, 157 Ill. App. 3d 439, 441, 510 N.E.2d 508, 509 (4th Dist. 1987).

164. *Compton*, 123 Ill. 2d at 218, 526 N.E.2d at 150.

filed a petition in the circuit court to vacate the arbitrator's award.[165] The circuit court vacated the award,[166] but on appeal the Illinois Appellate Court for the Fourth District reversed, holding that the circuit court lacked jurisdiction to enforce or vacate IELRA arbitration awards.[167] The appellate court held that the Educational Labor Relations Board had exclusive original jurisdiction to review education arbitration awards.[168]

On appeal to the Illinois Supreme Court, the school board argued that although there is no IELRA provision for circuit court review of arbitration decisions, the circuit court has jurisdiction under common law to determine whether a dispute is arbitrable.[169] The school board also argued that if the circuit court did not have jurisdiction, then an employer who believes that a dispute is inarbitrable would be required to pursue a lengthy appeal process before it could obtain judicial review of a dispute's arbitrability.[170] Additionally, the school board contended that an employer would be required to commit an unfair labor practice by refusing to comply with an arbitrator's decision in order to obtain review of the arbitrability question.[171]

In resolving the issue, the court contrasted the IELRA with the Illinois Public Labor Relations Act,[172] which expressly incorporates the provisions of the Uniform Arbitration Act ("UAA").[173]

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165. *Id.* at 218, 526 N.E.2d at 150-51.

166. *Id.* at 218, 526 N.E.2d at 151.

167. Board of Educ. v. Compton, 157 Ill. App. 3d 439, 510 N.E.2d 508 (4th Dist. 1987).

168. *Id.* at 439, 510 N.E.2d at 508. Under the IELRA, refusal to comply with an arbitrator's award constitutes an unfair labor practice. ILL. REV. STAT. ch. 48, paras. 1714(a)(8), (b)(6) (1987). The Board makes the initial determination as to whether an unfair labor practice has been committed. *Compton*, 123 Ill. 2d at 221, 526 N.E.2d at 152. Under the IELRA, the Board's ruling is reviewable by the Illinois appellate courts. ILL. REV. STAT. ch. 48, para. 1716(a) (1987).

169. *Compton*, 123 Ill. 2d at 221, 526 N.E.2d at 152.

170. *Id.* at 224-25, 526 N.E.2d at 153.

171. *Id.* at 225, 526 N.E.2d at 153. The school board argued that in some instances, it may not be possible to refuse to comply with an arbitrator's decision (*e.g.*, when a losing party is only denied a requested benefit). *Id.* at 224-25, 526 N.E.2d at 153-54. The school board also claimed that there was something unseemly about forcing an employer to commit an unfair labor practice in order to get review. *Id.*

172. ILL. REV. STAT. ch. 48, paras. 1601-1627 (1987). The IELRA was adopted in the same legislative session as the Illinois Public Labor Relations Act. *Compton*, 123 Ill. 2d at 221-22, 526 N.E.2d at 152. The court noted that together the statutes were intended to provide a comprehensive regulation of Illinois public sector bargaining. *Id.* at 221, 526 N.E.2d at 152.

173. *Compton*, 123 Ill. 2d at 222, 526 N.E.2d at 152 (citing ILL. REV. STAT. ch. 48 para. 1607 (1987) (incorporating ILL. REV. STAT. ch. 10, paras. 102-123 (1987))). Section 8 of the Illinois Public Labor Relations Act provides that "[t]he grievance and arbi-

The UAA allows circuit courts to review arbitration decisions.[174] The court noted that the legislature failed to incorporate the UAA provisions into the IELRA.[175] Therefore, the court concluded that the legislature intended to divest the circuit courts of jurisdiction to review any IELRA arbitration decision, including whether a dispute was properly subject to arbitration.[176]

Although the court held that the Board had primary jurisdiction to review arbitration awards, it acknowledged that disallowing circuit court review might force a school board to commit an unfair labor practice in order to contest a dispute's arbitrability.[177] The court noted, however, that the school board could file its own claim alleging that the union committed an unfair labor practice by attempting to arbitrate a matter that is not subject to arbitration.[178] Moreover, the court noted that under the National Labor Relations Act, a party seeking review of an arbitrability ruling is likewise required to commit an unfair labor practice.[179]

In *Compton*, the Illinois Supreme Court sought to ensure that the IELRA would be interpreted in a uniform manner. The court was concerned that conflicting circuit court judgments and forum shopping between the Board and the circuit courts would imperil the uniformity that the IELRA sought to achieve. The court's de-

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tration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act.' " ILL. REV. STAT. ch. 48, para. 1608 (1987).

174. *Compton*, 123 Ill. 2d at 222, 526 N.E.2d at 152 (citing ILL. REV. STAT. ch. 10, paras. 102, 112, 114, 116 (1987)). Under the UAA, Illinois courts have jurisdiction over the following proceedings: proceedings to compel or stay arbitration, ILL. REV. STAT. ch. 10, para. 102 (1987); proceedings to vacate an arbitration award, ILL. REV. STAT. ch. 10, para. 112 (1987); and proceedings to modify an arbitration award, ILL. REV. STAT. ch. 10, para. 113 (1987). The UAA defines "court" as "any circuit court of [the] State," ILL. REV. STAT. ch. 10, para. 116 (1987), and provides that the court has authority to enter judgment in conformity with the court's order, ILL. REV. STAT. ch. 10, para. 114 (1987).

175. *Compton*, 123 Ill. 2d at 222, 526 N.E.2d at 152.

176. *Id.* In reaching this decision, the court implicitly rejected the school board's argument that the court had common law jurisdiction to decide a dispute's arbitrability. *Id.*

177. *Id.* at 224-25, 526 N.E.2d at 153.

178. *Id.* at 225, 526 N.E.2d at 154.

179. *Id.* Under the National Labor Relations Act, 29 U.S.C. §§ 141-188 (1982), the only way a party can get review of a bargaining unit decision is by refusing to bargain, thereby committing an unfair labor practice. *Compton*, 123 Ill. 2d at 225-26, 526 N.E.2d at 154 (citing Boire v. Greyhound Corp., 376 U.S. 473 (1964)). The court also acknowledged the school board's argument that some arbitration decisions are not reviewable because it is impossible to commit unfair labor practices based on them. *Id.* at 226, 526 N.E.2d at 154. *See supra* note 171. The court declined to decide that issue because those facts were not presented in the case. *Compton*, 123 Ill. 2d at 226, 526 N.E.2d at 154.

cision, which provides for review only by the Board and the appellate courts, can be expected to further this goal.

C. *School Code*

The School Code provides specific procedures for the permanent removal or dismissal of tenured school teachers, but it does not expressly provide procedures for temporary suspensions.[180] The School Code also grants school boards the authority to make governance rules for their school districts.[181] In *Spinelli v. Immanuel Lutheran Evangelical Congregation*,[182] the Illinois Supreme Court held that a school board's rule-making power authorizes the board to impose temporary suspensions of tenured teachers.[183] The *Spinelli* court further held that in effecting a temporary suspension, the school board is not required to follow the permanent dismissal procedures set forth in the School Code. Rather, it need only satisfy due process requirements.[184]

In *Spinelli*, a tenured public school teacher was accused of using vulgar language in the classroom.[185] After a hearing, the teacher was suspended.[186] The teacher claimed that the school board had no express or implied power to suspend tenured teachers for disciplinary reasons.[187] Alternatively, the teacher contended that if the school board had suspension authority, it should have provided him with a formal hearing in accordance with school code procedures.[188] The school board claimed that it had the authority to

180. ILL. REV. STAT. ch. 122, para. 24-12 (1987). Essentially, section 24-12 of the School Code provides that before a tenured teacher may be discharged for reasons other than a reduction in force, the teacher must receive written notice of the charge and must be provided with an opportunity for a hearing. *Id.*

181. ILL. REV. STAT. ch. 122, para. 10-20.5 (1987). Section 10-20.5 of the School Code provides that a school board has the power "[t]o adopt and enforce all necessary rules for the management and government of the public schools of their district." *Id.*

182. 118 Ill. 2d 389, 515 N.E.2d 1222 (1987).

183. *Id.* at 404-05, 515 N.E.2d at 1229.

184. *Id.* at 403-07, 515 N.E.2d at 1228-30. The court also addressed the constitutionality of "An Act to permit employees to review personnel records." ILL. REV. STAT. ch. 48, paras. 2001-2012 (1987). *Spinelli*, 118 Ill. 2d at 395, 515 N.E.2d at 1224-28. This statute provides for disclosure of personnel files relative to the public school teacher's claim. *Id.* For a discussion of this aspect of the case, see *supra* notes 116-39 and accompanying text.

185. *Spinelli*, 118 Ill. 2d at 397, 515 N.E.2d at 1225-26.

186. *Id.* at 397-98, 515 N.E.2d at 1225-26.

187. *Id.* at 403, 515 N.E.2d at 1228-29.

188. *Id.* at 394, 404, 515 N.E.2d at 1224, 1230. After the school board gave the teacher written notice of the charges against him, the school board itself conducted the teacher's suspension hearing. *Id.* at 397, 515 N.E.2d at 1226. The teacher had requested, but was denied, a hearing before an independent hearing officer. *Id.* At the hearing, the teacher had a lawyer and had the opportunity to cross-examine the school board's wit-

suspend the teacher under the school code provision that grants the school board general rule-making authority for its school district.[189]

In deciding whether the school board could suspend the teacher, the court acknowledged that the School Code did not expressly authorize suspensions of tenured teachers.[190] The court concluded, however, that the school board had an implied power to suspend based on its authority to make rules for the effective management and government of the public schools within its district.[191]

The court then held that to effect a suspension, the board need not follow the School Code hearing procedures governing the removal or dismissal of tenured teachers.[192] The court reasoned that the School Code hearing procedures referred only to the "removal" or "dismissal" of tenured teachers, which suggested a permanent rather than temporary loss of employment.[193] Additionally, the court noted that the legislature used the words "suspend" and "suspension" in the School Code, yet failed to prescribe procedures for suspension hearings.[194] Therefore, the court concluded that the school board's suspension procedures were

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nesses and to present evidence on his own behalf. *Id.* at 398, 407, 515 N.E.2d at 1226, 1230.

189. *Id.* at 403, 515 N.E.2d at 1229.

190. *Id.* at 403, 515 N.E.2d at 1228 (citing Craddock v. Board of Educ., 76 Ill. App. 3d 43, 44, 391 N.E.2d 1059, 1060 (3d Dist. 1979)).

191. *Id.* at 404-05, 515 N.E.2d at 1228-29. The court adopted the reasoning in the dissent in *Craddock*, 76 Ill. App. 3d at 49, 391 N.E.2d at 1064 (Alloy, J., dissenting):

> If the Board is to adequately manage and govern . . . the rules and regulations which it adopts . . . must have some means of enforcement which are effective. There is an implied obligation to make rules and regulations, and to enforce them . . . . Enforcement envisions sanctions of some sort. If that were not the case, the power to make rules would indeed be a hollow one and effective management and government could not be accomplished. Thus, it is from this section of the School Code that the power to make temporary suspensions arises.

Spinelli, 118 Ill. 2d at 405, 515 N.E.2d at 1229 (quoting *Craddock*, 76 Ill. App. 3d at 49, 391 N.E.2d at 1064 (Alloy, J., dissenting)). In *Craddock*, a teacher contested his temporary disciplinary suspension by his school board employer. *Craddock*, 76 Ill. App. 3d at 44, 391 N.E.2d at 1060. The *Craddock* court concluded that temporary dismissals were included within the permanent dismissal provisions of the School Code. *Id.* at 45, 391 N.E.2d at 1061. Therefore, the court held that the school board had not satisfied the dismissal provisions because it failed to follow the procedures set forth in the statute. *Id.* at 46, 391 N.E.2d at 1061.

192. *Spinelli*, 118 Ill. 2d at 405, 515 N.E.2d at 1229-30. *See* ILL. REV. STAT. ch. 122, para. 24-12 (1987).

193. *Spinelli*, 118 Ill. 2d at 405-06, 515 N.E.2d at 1230.

194. *Id.* at 405-06, 515 N.E.2d at 1230 (citing ILL. REV. STAT. ch. 122, para. 24-12 (1987)). Paragraph 24-12 provides that "the board may suspend [a] teacher pending [a removal or dismissal hearing], but if acquitted, the teacher shall not suffer the loss of any salary by reason of the suspension." ILL. REV. STAT. ch. 122, para. 24-12 (1987).

valid so long as they satisfied procedural due process.[195] The court held that due process was satisfied because the teacher was provided with notice and an opportunity for a hearing.[196]

The *Spinelli* court was required to balance two competing interests: school boards have an interest in effective management of their schools without undue administrative burden, and teachers have an interest in avoiding the harm of unfair or erroneous suspensions. The court accommodated both interests by relieving the school board of the more burdensome procedures applicable to discharge cases, yet requiring that suspensions satisfy due process requirements.

D. Illinois Prevailing Wage Act

Under the Illinois Prevailing Wage Act,[197] municipalities must require contractors who receive municipal public works contracts to pay their employees the same wages as those paid by other contractors performing similar public contract work in the county in which the work is performed.[198] Nevertheless, the home rule provision in the Illinois Constitution allows municipalities to regulate local municipal functions.[199] In *People ex rel. Bernardi v. City of*

195. *Spinelli*, 118 Ill. 2d at 406, 515 N.E.2d at 1230.

196. *Id.* at 406-07, 515 N.E.2d at 1230. *See supra* note 188.

197. ILL. REV. STAT. ch. 48, paras. 39s-1 to 39s-12 (1987).

198. ILL. REV. STAT. ch. 48, paras. 39s-1, 39s-3 (1987). Section 3 of the Prevailing Wage Act provides in pertinent part:

> Not less than the general prevailing rate of hourly wages for work of a similar character on public works in the locality in which the work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime work, shall be paid to all laborers, workers and mechanics employed by or on behalf of any public body engaged in the construction of public works.

ILL. REV. STAT. ch. 48, para. 39s-3 (1987). According to section 2 of the Prevailing Wage Act, " '[p]ublic works' means all fixed works constructed for public use by any public body." ILL. REV. STAT. ch. 48, para. 39s-1 (1987). " 'Locality' means the county where the physical work upon public works is performed . . . ." *Id.* "General prevailing rate of hourly wages" means "the hourly cash wages plus fringe benefits . . . paid generally, in the locality in which the work is performed, to employees engaged in work of a similar character on public works." *Id.*

199. ILL. CONST., art. VII, § 6(a). Section 6(a) provides:

> A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Id.

Highland Park,[200] the Illinois Supreme Court held that compliance with the Prevailing Wage Act is a matter of state rather than local concern and, therefore, home rule municipalities must comply with its provisions.[201]

In *Bernardi*, the Illinois Department of Labor sought to enjoin the City of Highland Park from awarding a public works contract without first complying with the Prevailing Wage Act.[202] The city contended that it did not have to comply with the Prevailing Wage Act because it is a home rule municipality.[203] In response, the Department of Labor maintained that the city had no home rule authority in this field because the Prevailing Wage Act pertains to statewide rather than local concerns.[204]

In resolving the issue, the Illinois Supreme Court held that the municipality's departure from prevailing wages tended to depress wages throughout the county.[205] In turn, the court reasoned, this would affect the wages paid to public works employees outside of the municipality.[206] Additionally, the court noted that the Prevailing Wage Act, like other statutes establishing minimum standards in employment, falls within a field traditionally subject to comprehensive state legislation.[207] The court reasoned that if a home rule

200. 121 Ill. 2d 1, 520 N.E.2d 316 (1988).

201. *Id.* at 4-5, 520 N.E.2d at 317.

202. *Id.* at 4, 520 N.E.2d at 317. The Department of Labor claimed that the city violated the Wage Act because it failed to: ascertain the local wage level on public works contracts; specify the prevailing wage level when soliciting bids from contractors; and inform the contractors that the contractors would be required to pay the prevailing wage to its employees. *Id.* at 5, 520 N.E.2d at 318.

203. *Id.* The circuit court agreed with the city, and the appellate and supreme courts affirmed. *Id.* at 4, 520 N.E.2d at 317. The opinion discussed in this *Survey* is a rehearing and reconsideration of the earlier Illinois Supreme Court decision. *Id.* *See* People *ex rel.* Bernardi v. City of Highland Park, 105 Lab. Cas. (CCH) ¶ 55,665 (1986).

204. *Bernardi*, 121 Ill. 2d at 11, 520 N.E.2d at 320. Home rule authority has been limited in areas that are traditionally subject to state regulation. *Id.* at 13-14, 520 N.E.2d at 322 (citing Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 470 N.E.2d 266 (1984)). For example, the *Bernardi* court noted that state regulation of utility rates precluded home rule municipalities from enacting utility rate ordinances. *Id.* at 14, 520 N.E.2d at 322.

205. *Id.* at 13, 520 N.E.2d at 321-22.

206. *Id.* The court noted that because the prevailing wage was determined by wages paid on public works contracts within the county, the low wages paid to the city's laborers would lower the prevailing wage paid in the entire county. *Id.*

207. *Id.* at 13-16, 520 N.E.2d at 321-23. The court pointed to the state's extensive legislation in the area of labor regulation, citing statutes establishing eight-hour workdays, ILL. REV. STAT. ch. 48., para. 1 (1987), providing equal pay for equal work, ILL. REV. STAT. ch. 48, para. 4a (1987), regulating the employment of children, ILL. REV. STAT. ch. 48, para. 31.1-31.12 (1987), restricting wage assignment, ILL. REV. STAT. ch. 48, para. 39.1-39.12 (1987), providing compensation for workers' injuries, ILL. REV. STAT. ch. 48, para. 138.1-138.30 (1987), forbidding employers to require employees to

municipality could refuse to comply with the Prevailing Wage Act, then the uniformity of state labor law would be undermined.[208] According to the *Bernardi* court, these factors indicated that the city's interest in controlling public works wages was not a purely local concern.[209] Consequently, the city was required to comply with the Prevailing Wage Act[210]and could not circumvent the statute on the basis of its home rule authority.[211]

E. Illinois Pension Code

During the *Survey* year, the Illinois Supreme Court decided three cases involving state pension code provisions.[212] One decision involved the constitutionality of an amendment to the Pension Code provisions for state university employees.[213] The other cases dealt with pension code eligibility requirements for firefighter disa-

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pay costs associated with mandatory pre-employment medical examinations, ILL. REV. STAT. ch. 48, para. 172d (1987), setting minimum fair wage standards for women and minors, ILL. REV. STAT. ch. 48, para. 198.1-198.17 (1987), providing unemployment insurance, ILL. REV. STAT. ch. 48, para. 300-820 (1987), and providing a minimum wage, ILL. REV. STAT. ch. 48, para. 1001-1015 (1987). *Bernardi*, 121 Ill. 2d at 14-15, 520 N.E.2d at 322. The court also recognized the interest of the state in promoting collective bargaining in the public sector and of protecting local labor by giving public contract preference to state citizens. *Id.* at 15, 520 N.E.2d at 322.

208. *Bernardi*, 121 Ill. 2d at 15, 520 N.E.2d at 322.

209. *Id.* at 13, 520 N.E.2d at 321.

210. *Id.* at 16, 520 N.E.2d at 323.

211. *Id.* at 13, 520 N.E.2d at 321.

212. During this *Survey* year, the Illinois Supreme Court also decided two cases interpreting the Federal Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461 (1982).

In Kennedy v. Deere & Co., 118 Ill. 2d 69, 514 N.E.2d 171 (1987), *cert. denied*, 108 S. Ct. 1024 (1988), the Illinois Supreme Court held that a health care provider has standing to sue under ERISA when benefits of employees covered by ERISA have been assigned to the health care provider. *Id.* at 76, 514 N.E.2d at 174. The *Kennedy* court held that the health care providers were "beneficiaries" under the Act and that Congress did not intend to restrict the class of beneficiaries entitled to receive such benefits. *Id.* at 74, 514 N.E.2d at 173.

In Arnold v. Babcock & Wilcox Co., 123 Ill. 2d 67, 525 N.E.2d 59 (1988), the court held that subsequent to the transfer of ownership of a company, employees of that company who retained their positions had no ERISA claims for severance benefits against the selling employer. *Id.* at 77, 525 N.E.2d at 65. The court reasoned that although the applicable severance pay plan made no mention of what would happen in the event of a plant sale, the company's characterization of the plan as a private form of unemployment compensation was reasonable. *Id.* The court also rejected the former employees' argument that the company violated certain ERISA reporting requirements, and that, therefore, the employer's interpretation should be afforded little weight. *Id.* at 78-81, 525 N.E.2d at 65-66. *Cf.* Blau v. Del Monte Corp., 748 F.2d 1348 (9th Cir. 1984) (numerous violations of ERISA reporting requirements were probative of objectionable scheme to deny severance benefits).

213. Buddell v. Board of Trustees, 118 Ill. 2d 99, 514 N.E.2d 184 (1987).

bility benefits.[214]

In *Buddell v. Board of Trustees*,[215] the Illinois Supreme Court addressed the constitutionality of a 1974 amendment to the Illinois Pension Code.[216] The Illinois Constitution of 1970 provides that a public employee's pension benefits that are in force at the time he begins working are unimpairable contractual obligations.[217] Prior to 1974, the Pension Code allowed state university employees to purchase pension credit for time they spent in the military.[218] In 1974, the Illinois General Assembly amended the Pension Code to disallow the purchase of military service credit.[219] The *Buddell* court held that the 1974 amendment to the Pension Code was unconstitutional to the extent that it divested the contractual rights of university employees who were employed when the 1970 Illinois Constitution was adopted.[220]

In *Buddell*, a state university employee attempted in 1983 to purchase service credit for the time he spent in the military.[221] The employee worked for Southern Illinois University when the Illinois Constitution of 1970 became effective.[222] At that time, the Pension Code allowed employees to purchase military service credit.[223] Between the time the employee first started working and the time he requested to purchase the credit, the statute was amended to disallow such purchase.[224] Therefore, the employee's request to purchase the credit was denied.[225]

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214. Di Falco v. Board of Trustees, 122 Ill. 2d 22, 521 N.E.2d 923 (1988); Herhold v. Retirement Bd., 118 Ill. 2d 436, 515 N.E.2d 1240 (1987).

215. 118 Ill. 2d 99, 514 N.E.2d 184 (1987).

216. *Id.* at 100, 514 N.E.2d at 185.

217. *Id.* at 102, 514 N.E.2d at 186 (citing ILL. CONST., art. XIII, § 5). The Illinois Constitution provides: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." ILL. CONST., art. XIII, § 5. Prior to 1970, the Illinois Constitution did not contain this provision. *Buddell*, 118 Ill. 2d at 102, 514 N.E.2d at 186. Before 1970, the Illinois courts classified pension rights as either contractual or non-contractual on a case-by-case basis. *Id.* (citing Comment, *Public Employee Pension Rights and the 1970 Illinois Constitution: Does Article XIII, Section 5 Guarantee Increased Protection?*, 9 J. MARSHALL J. PRAC. & PROC. 440, 445-49 (1976)).

218. *Buddell*, 118 Ill. 2d at 101, 514 N.E.2d at 185. *See* ILL. REV. STAT. ch. 108 1/2, para. 15-113(i) (1969).

219. *Buddell*, 118 Ill. 2d at 101, 514 N.E.2d at 185. *See* ILL. REV. STAT. ch. 108 1/2, para. 15-113(i) (1987).

220. *Buddell*, 118 Ill. 2d at 106, 514 N.E.2d at 188.

221. *Id.* at 101, 514 N.E.2d at 185.

222. *Id.* at 103, 514 N.E.2d at 186.

223. *Id.*

224. *Id.*

225. *Id.*

The Illinois Supreme Court held that the denial of military service credit was unconstitutional.[226] The *Buddell* court reasoned that because the Pension Code provisions allowed the employee to purchase military service credit at the time that the Illinois Constitution of 1970 became effective, the right to purchase that credit could not be diminished or impaired.[227] Accordingly, the court held that the employee had a vested right to purchase pension credit for the time he spent in the military.[228] The court further held that the Pension Code amendment is unconstitutional to the extent that it operates to divest the employee of his right to service credit.[229]

The Illinois Supreme Court addressed another pension benefit question in *Di Falco v. Board of Trustees*.[230] The Firemen's Pension Fund section of the Illinois Pension Code[231] provides that firefighters who are injured on the job are entitled to collect duty-related disability pensions.[232] The *Di Falco* court held that a firefighter qualifies for a duty-related disability pension only if he is still employed as a firefighter at the time he applies for the

226. *Id.* at 101-06, 514 N.E.2d at 185-88.

227. *Id.* at 104-05, 514 N.E.2d at 187. The court refused to draw an analogy between the *Buddell* case and Peters v. City of Springfield, 57 Ill. 2d 142, 311 N.E.2d 107 (1974). *Buddell*, 118 Ill. 2d at 103-04, 514 N.E.2d at 186-87. In *Peters*, a municipality adopted a mandatory retirement age provision for firefighters pursuant to the Illinois Municipal Code. *Peters*, 57 Ill. 2d at 143-44, 311 N.E.2d at 108. The mandatory retirement age had an indirect effect on the amount of pension benefits paid to municipal retirees under the Pension Code. *Id.* at 150-51, 311 N.E.2d at 111-12. The Illinois Supreme Court held that the mandatory retirement age provision did not unconstitutionally diminish the contractual pension rights of the municipal employees because the provision only had an indirect effect on pension benefits. *Id.* at 151-52, 311 N.E.2d at 112. The *Buddell* court distinguished *Peters* by noting that *Buddell* involved changes in the Pension Code itself, which had a direct rather than an indirect effect on the employee's pension benefits. *Buddell*, 118 Ill. 2d at 104, 514 N.E.2d at 187.

The Illinois Supreme Court also rejected the argument that because the employee did not attempt to purchase the military service credit before the statutory cut-off date, his benefit had not "vested." *Id.* at 105-06, 514 N.E.2d at 187-88. The court held that it was not the military service credit itself that was guaranteed to the employee, but rather the right to purchase such credit. *Id.*

228. *Buddell*, 118 Ill. 2d at 106, 514 N.E.2d at 188.

229. *Id.*

230. 122 Ill. 2d 22, 521 N.E.2d 923 (1988).

231. ILL. REV. STAT. ch. 108 1/2, paras. 4-101 to 4-144 (1987).

232. ILL. REV. STAT. ch. 108 1/2, para. 4-110 (1987). In this case, the relevant pension code provisions were those in effect when the firefighter began employment. *Di Falco*, 122 Ill. 2d at 26, 521 N.E.2d at 925. *See* ILL. REV. STAT. ch. 108 1/2, paras. 4-101 to 4-143 (1981). Under article XIII, section 5 of the Illinois Constitution of 1970, the rights that the employee had under the pension provisions were determined by those provisions in effect at the time the firefighter was hired. *Di Falco*, 122 Ill. 2d at 26, 521 N.E.2d at 925. *See* ILL. CONST., art. XIII, § 5. For a discussion of this constitutional provision, see *supra* notes 215-29 and accompanying text.

pension.[233]

In *Di Falco*, a former probationary firefighter sought to collect benefits for a duty-related disability one year after his discharge.[234] The Firemen's Pension Fund Board of Trustees claimed that the former firefighter was not entitled to disability benefits because he was no longer a "fireman" under the Pension Code.[235] The firefighter argued that unless former firefighters were allowed to claim disability benefits, pension boards would routinely discharge injured firefighters before they could apply for disability benefits, and thereby avoid having to pay their pensions.[236]

In rejecting the firefighter's claim, the *Di Falco* court noted several pension code provisions which indicate that the legislature intended the duty-related disability provision to provide for firemen who, but for the disability, would still be employed.[237] The court also noted that the purpose of the duty-related pension would not be served if a disability pension were granted to a person who lost his job as a firefighter, not because of a disability, but rather be-

233. *Di Falco*, 122 Ill. 2d at 33, 521 N.E.2d at 928.

234. *Id.* at 25, 521 N.E.2d at 924-25.

235. *Id.* at 25-26, 521 N.E.2d at 924-25.

236. *Id.* at 31, 521 N.E.2d at 927. The appellate court overturned the trial court's holding that the firefighter's application for benefits was untimely. *Id.* at 24, 521 N.E.2d at 924. The appellate court rejected this holding because it determined that nothing in the Pension Code precluded a discharged firefighter from eligibility for disability pensions. *Id.* at 26, 521 N.E.2d at 925. According to the appellate court, the firefighter had a vested right to receive a disability pension. *Id.* The appellate court concluded that disallowing the firefighter's pension application impaired the firefighter's contractual right to pension benefits. *Id.* The Illinois Supreme Court disagreed, noting that the firefighter had merely failed to meet a condition precedent to receiving his vested right to disability pension benefits by failing to make a timely application for those benefits. *Id.* at 30-31, 521 N.E.2d at 927.

237. *Id.* at 26-30, 521 N.E.2d at 925-27. The court noted that the Pension Code provides a duty-related disability pension for a "fireman" injured on the job, ILL. REV. STAT. ch. 108 1/2, para. 4-110 (1987), and that the definition of "fireman" is "any person employed by a city in its fire service . . . ," ILL. REV. STAT. ch. 108 1/2, para. 4-106(c) (1987). *Di Falco*, 122 Ill. 2d at 26-27, 521 N.E.2d at 925. In determining that a fireman must be employed at the time of application for benefits as well as at the time of injury, the court looked to other sections of the Pension Code. *Id.* at 27-30, 521 N.E.2d at 925-27. In part, the court relied on a provision in the Pension Code that mandates reinstatement of an active-duty firefighter after he recovers from his disability. *Id.* at 28, 521 N.E.2d at 926 (citing ILL. REV. STAT. ch. 108 1/2, para. 4-112 (1987)). The court reasoned that it would be impossible to comply with the mandate of the reinstatement provision because a discharged firefighter could not be restored to his position if he was not employed in active duty at the time his disability pension began. *Id.* at 24, 521 N.E.2d at 926. Similarly, the court noted that a firefighter on disability may elect to retire and receive a retirement pension, ILL. REV. STAT. ch. 108 1/2, para. 4-113 (1987), but that a discharged fire fighter may not elect to retire from a position that he no longer fills. *Di Falco*, 122 Ill. 2d at 29-30, 521 N.E.2d at 926.

cause he was discharged.[238] Additionally, the court dismissed the firefighter's argument that pension boards would attempt to discharge injured fire fighters before they could apply for disability benefits.[239] In dismissing this argument, the court noted that there was no evidence of such abuse in this case and that safeguards exist which make the likelihood of such abuses extremely remote.[240] Specifically, the Board of Fire Commissioners, rather than the Pension Board, controls employee discharges.[241] Moreover, the Board of Fire Commissioners may not discharge fire department employees except for cause.[242] In the case of probationary fire fighters, the municipality must act in good faith.[243] Therefore, the court concluded that the remote possibility of departmental abuse did not warrant extending the Pension Code provisions to former employees.[244]

The Illinois Supreme Court decided another firefighter disability pension question in *Herhold v. Retirement Board*.[245] In 1983, the Firemen's Annuity and Benefit Fund section of the Pension Code ("Firemen's Fund")[246] was amended to include paramedics in its definition of "firemen."[247] Among the benefits provided by the Firemen's Fund is a pension for non-duty-related disabilities.[248] The *Herhold* court held that a paramedic who was employed prior to the amendment was entitled to receive disability benefits based on the total length of his period of service as a paramedic.[249]

The *Herhold* employee was a paramedic who contributed to a

238. *Di Falco*, 122 Ill. 2d at 27, 521 N.E.2d at 925.
239. *Id.* at 31-32, 521 N.E.2d at 927.
240. *Id.*
241. *Id.* (citing ILL. REV. STAT. ch. 127 1/2, para. 37.13 (1987)).
242. *Id.* (citing ILL. REV. STAT. ch. 24, paras. 10-2.1-17, 10-1-18 (1987); ILL. REV. STAT. ch. 127 1/2, para. 37.13 (1987)).
243. *Id.* at 31-32, 521 N.E.2d at 927 (citing Kennedy v. City of Joliet, 380 Ill. 15, 41 N.E.2d 957 (1942)).
244. *Id.*
245. 118 Ill. 2d 436, 515 N.E.2d 1240 (1987).
246. *Id.* at 437, 515 N.E.2d at 1241. *See* ILL. REV. STAT. ch. 108 1/2, paras. 6-101 to 6-225 (1987).
247. *Herhold*, 118 Ill. 2d at 437, 515 N.E.2d at 1241. *See* ILL. REV. STAT. ch. 108 1/2, para. 6-106(a) (1987).
248. *Herhold*, 118 Ill. 2d at 437, 515 N.E.2d at 1241. *See* ILL. REV. STAT. ch. 108 1/2, para. 6-152 (1987). Paragraph 6-152 provides in pertinent part:

> Any fireman who is not eligible for a minimum annuity, who becomes disabled after the effective date as the result of any cause other than the performance of an act or acts of duty . . . shall have a right to receive ordinary disability benefits during any period or periods of such disability after the first 30 days of the disability.

Id.
249. *Herhold*, 118 Ill. 2d at 441-43, 515 N.E.2d at 1243-44.

municipal employees' pension fund[250] until the Firemen's Fund was amended to include paramedics in the definition of a "firemen."[251] The paramedic then stopped contributing to the municipal pension fund and began contributing to the Firemen's Fund.[252] After switching pension funds, the employee became ill and applied for a disability pension under the Firemen's Fund.[253] The Firemen's Fund Retirement Board awarded the employee disability benefits based on the amount of time that he had contributed to the Firemen's Fund rather than on the amount of time that he had served as a paramedic.[254]

In rejecting the Retirement Board's action, the court relied upon certain provisions in the Pension Code.[255] The court noted that the Firemen's Fund provided benefits for a "fireman" based on his or total period of service[256] or duty.[257] Accordingly, the court reasoned that everybody included in the statutory definition of "firemen" is entitled to receive Firemen's Fund benefits based on their total period of service.[258] Thus, when the Pension Code was amended to include paramedics in the definition of "firemen," the same provisions became equally applicable to paramedics.[259]

V. UNEMPLOYMENT COMPENSATION

Section 703 of the Illinois Unemployment Insurance Act ("Unemployment Act") allows the Illinois Department of Labor ("De-

250. Municipal Employees', Officers' and Officials' Annuity and Benefit Fund, ILL. REV. STAT. ch. 108 1/2, paras. 8-101 to 8-253 (1987).

251. *Herhold*, 118 Ill. 2d at 437, 515 N.E.2d at 1241.

252. *Id.* When the paramedic left the municipal fund, the contributions he had made to the municipal fund were refunded. *Id.* at 440, 515 N.E.2d at 1242. The transferee fund did not participate in the Retirement Systems Reciprocal Act, ILL. REV. STAT. ch. 108 1/2, paras. 20-101 to 20-133 (1987). Therefore, the Firemen's Fund would not accept a transfer of funds. *Herhold*, 118 Ill. 2d at 440, 515 N.E.2d at 1242.

253. *Herhold*, 118 Ill. 2d at 437, 515 N.E.2d at 1241.

254. *Id.*

255. *Id.* at 438-41, 515 N.E.2d at 1241-43 (citing ILL. REV. STAT. ch. 108 1/2, para. 6-152 (1987); ILL. REV. STAT. ch. 108 1/2, para. 6-209 (1987)).

256. *Id.* at 438-40, 515 N.E.2d at 1241-42 (citing ILL. REV. STAT. ch. 108 1/2, para. 6-152 (1987) (providing that computation of duration of disability payments is based on the "entire service of the fireman")).

257. *Id.* at 438-40, 515 N.E.2d at 1242 (citing ILL. REV. STAT. ch. 108 1/2, para. 6-109 (1987) (providing that computation of length of a fireman's service for purposes of fireman's pension rights is based in part on "periods during which he performed the duties of his position")).

258. *Id.* at 439, 515 N.E.2d at 1242.

259. *Id.* The court also concluded that because the paramedic was not offered the option of transferring his pension contributions to the new fund, he could not be penalized for having received a refund of contributions to the previous fund. *Id.* at 440, 515 N.E.2d at 1242-43. *See supra* note 245 and accompanying text.

partment") one year to reconsider an employee's eligibility for unemployment benefits.[260] Section 900(A)(2) of the Unemployment Act authorizes the Department to recoup improperly obtained benefits within three years of the reconsidered determination.[261] A separate section of the Unemployment Act authorizes the Department to recover benefits in the event an employee receives a back pay award for the period that the employee received the unemployment benefits.[262] In *Weingart v. Department of Labor*,[263] the Illinois Supreme Court held that in order for the Department to recoup benefits paid to employees who later receive back pay awards, the Department must redetermine the employees' benefit eligibility within the one-year statutory time limit.[264]

In *Weingart*, two former employees received back pay awards that covered time periods for which they had received unemployment compensation.[265] The former employer advised the Department's unemployment insurance division of the back pay

260. ILL. REV. STAT. ch. 48, para. 453 (1987). Section 703 of the Unemployment Act provides in pertinent part: "The claims adjudicator . . . may reconsider his determination [of an employee's eligibility for benefits] at any time within one year after the last day of the week for which the determination was made . . . ." *Id.*

After an initial determination of an employee's benefit rate under the Unemployment Act, a determination of eligibility to receive weekly benefits is made on a week-by-week basis. *See* ILL. REV. STAT. ch. 48, paras. 451-452 (1987).

261. ILL. REV. STAT. ch. 48, para. 490(A)(2) (1987). Section 900(A)(2) of the Unemployment Act provides:

> A. Whenever an individual has received any sum as benefits for which he is found to have been ineligible, the amount thereof may be recovered by suit in the name of the People of the State of Illinois, or, from the benefits payable to him may be recouped:
>
> . . . .
>
> 2. Within 3 years from the date . . . he has been found to have been ineligible . . . pursuant to a reconsidered finding or a reconsidered determination, or pursuant to the decision of a Referee (or of the Director or his representative under Section 604) which modifies or sets aside . . . a determination or a reconsidered determination.

Id.

262. ILL. REV. STAT. ch. 48, para. 490(D) (1987). Section 900(D) of the Unemployment Act provides in pertinent part: "Whenever, by reason of a back pay award . . . , an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped or otherwise recovered as herein provided . . . ." *Id.*

263. 122 Ill. 2d 1, 521 N.E.2d 913 (1988).

264. *Id.* at 7-17, 521 N.E.2d at 916-20.

265. *Id.* at 4, 521 N.E.2d at 914. The employer closed its Illinois facility after its employees elected a union to represent them. *Id.* The union filed a complaint with the National Labor Relations Board. *Id.* The union and the employer subsequently settled the dispute. *Id.* As a result of the settlement, the former employees received back pay awards. *Id.*

awards.[266] Several months later, and more than one year after each employee had received a final unemployment check, the Department retroactively declared the former employees ineligible for the benefits they received[267] and sought to recoup the benefits paid.[268]

The former employees contested the Department's redetermination.[269] The circuit court ruled in favor of the employer, holding that section 703 did not apply to back pay awards.[270] The appellate court reversed, holding that section 703 required the Department to make a redetermination of eligibility within one year of the final determination.[271] The appellate court concluded that the Department's actions were time-barred because the last week for which the employees received unemployment compensation was outside of section 703's one-year statute of limitations.[272] The Department argued that the separate recoupment provision for back pay awards rendered the section 703 time limits inapplicable.[273]

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266. *Id.* at 5-6, 521 N.E.2d at 915.

267. *Id.* Both of the former employees in this case were unemployed as of August 1980, when the employer closed its plant. *Id.* at 4, 521 N.E.2d at 914. One employee received unemployment benefits from August 1980 through July 1981. *Id.* The other employee received benefits from August 1980 through May 1981. *Id.* One and one-half years after the plant closing, the employer entered into the settlement agreement that resulted in back pay awards to the former plant employees. *Id.* at 4-5, 521 N.E.2d at 914-15. The back pay award covered the time period from September 1980 through May 1981. *Id.* at 5, 521 N.E.2d at 915. The first employee received her back pay award in two installments; one in January 1982, and the other in February 1982. *Id.* at 4-5, 521 N.E.2d at 914. The second employee received her award in January 1982. *Id.* at 5, 521 N.E.2d at 914-15.

In March 1982, the employer advised the Department of the back pay awards. *Id.* at 5, 521 N.E.2d at 915. In September 1982, the first employee received a notice from the Department that it had reconsidered her determination of eligibility and it was seeking recoupment of the benefits that she had received. *Id.* The second employee received her notice of redetermination and recoupment from the Department in April 1983. *Id.* at 6, 521 N.E.2d at 915.

268. *Id.*

269. *Id.* Each of the two employees first contested the Department's redetermination by appeal to a Department referee, who affirmed the validity of the Department's actions. *Id.* at 5-6, 521 N.E.2d at 915. Likewise, the Department's board of review affirmed the referees' decisions. *Id.* Both employees sought judicial review of the board's decisions in the Circuit Court of Cook County. *Id.*

270. *Id.* at 6, 521 N.E.2d at 915.

271. *Id.* at 6-7, 521 N.E.2d at 915.

272. *Id.*

273. *Id.* at 10-11, 521 N.E.2d at 917-18. The Department also claimed that, in retrospect, the former employees misstated their earnings because they later received back pay awards for the same time period for which the employees received unemployment benefits. *Id.* at 16, 521 N.E.2d at 920. Under the Unemployment Act, if benefit recipients misstate their earnings, then a two-year rather than a one-year time limit applies. *See* ILL. REV. STAT. ch. 48, para. 453 (1987). Therefore, the Department claimed that a two-year limitations period applied in this case. *Weingart*, 122 Ill. 2d at 16, 521 N.E.2d at 920. The Illinois Supreme Court concluded that the former employees did not misstate

The Illinois Supreme Court affirmed the appellate court's ruling that the Department's redetermination and recoupment were time barred.[274] The court reasoned that section 900A(2) of the Unemployment Act clearly conditions recoupment upon a timely redetermination of eligibility.[275] The court found no special exception for recoupment actions undertaken because of subsequent back pay awards.[276] Hence, the court held that the Department could not recoup the benefits because it failed to comply with the section 900(A)(2) recoupment provision.[277] In support of its holding, the court noted that the Unemployment Act reflects a balance between the interests of the employer in recovering improperly obtained benefits and the interest of the claimant in knowing with certainty which benefits he must pay back.[278] The court reasoned that if the legislature's only objective in enacting the recoupment provision was to recover improperly obtained benefits, the legislature would not have placed any time limits on recovery.[279] Therefore, the court held that the Department's attempted recoupment was time barred because it failed to make a timely redetermination of eligibility.[280]

VI. CONCLUSION

During the *Survey* year, the Illinois Supreme Court expanded the scope of retaliatory discharge in the context of an employee's assertion of rights under the Illinois Workers' Compensation Act.

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their earnings at the time the employees applied for benefits. *Id.* at 16-17, 521 N.E.2d at 920.

Additionally, the court considered whether one of the former employees filed a timely complaint for administrative review of the Department's redetermination. *Id.* at 17, 520 N.E.2d at 920-22. The court held that the board's decision was void and could be attacked at any time because the Department lacked the power to make the redetermination in the first place. *Id.*

274. *Weingart*, 122 Ill. 2d at 18, 521 N.E.2d at 921.

275. *Id.* at 9, 521 N.E.2d at 916-17. The court stated that the time limitations set forth in section 703 of the Unemployment Act were incorporated into the recoupment provision by specific reference in section 900(A)(2) to reconsidered determinations. *Id.* *See supra* note 261 and accompanying text.

276. *Weingart*, 122 Ill. 2d at 11, 521 N.E.2d at 917-18.

277. *Id.* at 12, 521 N.E.2d at 918. The court reasoned that the back pay recoupment provision in section 900(D) of the Unemployment Act specifically provides that recoupment of back pay shall be made "as herein provided." *Id.* at 11, 521 N.E.2d at 917. The court concluded that if the "as herein provided" phrase is not read in connection with the remainder of section 900, the statute would not provide a mechanism for determining ineligibility for benefits or for the recoupment of benefits in the case of back pay awards. *Id.* at 11, 521 N.E.2d at 917-18.

278. *Id.* at 14, 521 N.E.2d at 919.

279. *Id.*

280. *Id.* at 17, 521 N.E.2d at 920.

The court also declared unconstitutional a statute that provided employees with the right to inspect their personnel files, leading the Illinois Legislature to amend the statute to provide greater inspection rights to employees. Additionally, the court interpreted public employment laws consistently with a legislative preference for collective bargaining and arbitration. Finally, in a decision affecting the rights of Illinois organized labor, the United States Supreme Court approved retaliatory discharge suits by union employees.