



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB4126

by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

5 ILCS 315/3

from Ch. 48, par. 1603

Amends the Illinois Public Labor Relations Act. Provides that no employee may be considered a "managerial employee" because he or she belongs to a classification of employees to whom executive and managerial functions may be delegated, unless the labor board in a hearing finds actual delegation on a regular basis. Provides that no employee may be classified a "managerial employee" because he or she performs professional duties. Provides that in determining an employee's status, the labor board shall consider the employee's actual job duties and responsibilities and the extent to which the employee has actual authority concerning the overall operations and governance of the employee's office or workplace. Provides that an employee of the Cook County States Attorney shall not be considered a "managerial employee" if that employee is not directly responsible for wages, fringe benefits, hours, holidays, vacations, sick leave, or other conditions of employment. Effective immediately.

LRB095 12868 AMC 38349 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Labor Relations Act is  
5 amended by changing Section 3 as follows:

6 (5 ILCS 315/3) (from Ch. 48, par. 1603)

7 Sec. 3. Definitions. As used in this Act, unless the  
8 context otherwise requires:

9 (a) "Board" means the Illinois Labor Relations Board or,  
10 with respect to a matter over which the jurisdiction of the  
11 Board is assigned to the State Panel or the Local Panel under  
12 Section 5, the panel having jurisdiction over the matter.

13 (b) "Collective bargaining" means bargaining over terms  
14 and conditions of employment, including hours, wages, and other  
15 conditions of employment, as detailed in Section 7 and which  
16 are not excluded by Section 4.

17 (c) "Confidential employee" means an employee who, in the  
18 regular course of his or her duties, assists and acts in a  
19 confidential capacity to persons who formulate, determine, and  
20 effectuate management policies with regard to labor relations  
21 or who, in the regular course of his or her duties, has  
22 authorized access to information relating to the effectuation  
23 or review of the employer's collective bargaining policies.

1 (d) "Craft employees" means skilled journeymen, crafts  
2 persons, and their apprentices and helpers.

3 (e) "Essential services employees" means those public  
4 employees performing functions so essential that the  
5 interruption or termination of the function will constitute a  
6 clear and present danger to the health and safety of the  
7 persons in the affected community.

8 (f) "Exclusive representative", except with respect to  
9 non-State fire fighters and paramedics employed by fire  
10 departments and fire protection districts, non-State peace  
11 officers, and peace officers in the Department of State Police,  
12 means the labor organization that has been (i) designated by  
13 the Board as the representative of a majority of public  
14 employees in an appropriate bargaining unit in accordance with  
15 the procedures contained in this Act, (ii) historically  
16 recognized by the State of Illinois or any political  
17 subdivision of the State before July 1, 1984 (the effective  
18 date of this Act) as the exclusive representative of the  
19 employees in an appropriate bargaining unit, (iii) after July  
20 1, 1984 (the effective date of this Act) recognized by an  
21 employer upon evidence, acceptable to the Board, that the labor  
22 organization has been designated as the exclusive  
23 representative by a majority of the employees in an appropriate  
24 bargaining unit; (iv) recognized as the exclusive  
25 representative of personal care attendants or personal  
26 assistants under Executive Order 2003-8 prior to the effective

1 date of this amendatory Act of the 93rd General Assembly, and  
2 the organization shall be considered to be the exclusive  
3 representative of the personal care attendants or personal  
4 assistants as defined in this Section; or (v) recognized as the  
5 exclusive representative of child and day care home providers,  
6 including licensed and license exempt providers, pursuant to an  
7 election held under Executive Order 2005-1 prior to the  
8 effective date of this amendatory Act of the 94th General  
9 Assembly, and the organization shall be considered to be the  
10 exclusive representative of the child and day care home  
11 providers as defined in this Section.

12 With respect to non-State fire fighters and paramedics  
13 employed by fire departments and fire protection districts,  
14 non-State peace officers, and peace officers in the Department  
15 of State Police, "exclusive representative" means the labor  
16 organization that has been (i) designated by the Board as the  
17 representative of a majority of peace officers or fire fighters  
18 in an appropriate bargaining unit in accordance with the  
19 procedures contained in this Act, (ii) historically recognized  
20 by the State of Illinois or any political subdivision of the  
21 State before January 1, 1986 (the effective date of this  
22 amendatory Act of 1985) as the exclusive representative by a  
23 majority of the peace officers or fire fighters in an  
24 appropriate bargaining unit, or (iii) after January 1, 1986  
25 (the effective date of this amendatory Act of 1985) recognized  
26 by an employer upon evidence, acceptable to the Board, that the

1 labor organization has been designated as the exclusive  
2 representative by a majority of the peace officers or fire  
3 fighters in an appropriate bargaining unit.

4 (g) "Fair share agreement" means an agreement between the  
5 employer and an employee organization under which all or any of  
6 the employees in a collective bargaining unit are required to  
7 pay their proportionate share of the costs of the collective  
8 bargaining process, contract administration, and pursuing  
9 matters affecting wages, hours, and other conditions of  
10 employment, but not to exceed the amount of dues uniformly  
11 required of members. The amount certified by the exclusive  
12 representative shall not include any fees for contributions  
13 related to the election or support of any candidate for  
14 political office. Nothing in this subsection (g) shall preclude  
15 an employee from making voluntary political contributions in  
16 conjunction with his or her fair share payment.

17 (g-1) "Fire fighter" means, for the purposes of this Act  
18 only, any person who has been or is hereafter appointed to a  
19 fire department or fire protection district or employed by a  
20 state university and sworn or commissioned to perform fire  
21 fighter duties or paramedic duties, except that the following  
22 persons are not included: part-time fire fighters, auxiliary,  
23 reserve or voluntary fire fighters, including paid on-call fire  
24 fighters, clerks and dispatchers or other civilian employees of  
25 a fire department or fire protection district who are not  
26 routinely expected to perform fire fighter duties, or elected

1 officials.

2 (g-2) "General Assembly of the State of Illinois" means the  
3 legislative branch of the government of the State of Illinois,  
4 as provided for under Article IV of the Constitution of the  
5 State of Illinois, and includes but is not limited to the House  
6 of Representatives, the Senate, the Speaker of the House of  
7 Representatives, the Minority Leader of the House of  
8 Representatives, the President of the Senate, the Minority  
9 Leader of the Senate, the Joint Committee on Legislative  
10 Support Services and any legislative support services agency  
11 listed in the Legislative Commission Reorganization Act of  
12 1984.

13 (h) "Governing body" means, in the case of the State, the  
14 State Panel of the Illinois Labor Relations Board, the Director  
15 of the Department of Central Management Services, and the  
16 Director of the Department of Labor; the county board in the  
17 case of a county; the corporate authorities in the case of a  
18 municipality; and the appropriate body authorized to provide  
19 for expenditures of its funds in the case of any other unit of  
20 government.

21 (i) "Labor organization" means any organization in which  
22 public employees participate and that exists for the purpose,  
23 in whole or in part, of dealing with a public employer  
24 concerning wages, hours, and other terms and conditions of  
25 employment, including the settlement of grievances.

26 (j) "Managerial employee" means an individual who is

1 engaged predominantly in executive and management functions  
2 and is charged with the responsibility of directing the  
3 effectuation of management policies and practices. No employee  
4 may be considered a "managerial employee" because he or she  
5 belongs to a classification of employees to whom executive and  
6 management functions may be delegated unless the Board finds on  
7 the basis of a record of a fact-finding hearing that the  
8 employee has actually been delegated executive and management  
9 functions on a regular basis. No employee may be considered a  
10 "managerial employee" because he or she performs professional  
11 duties. In determining an employee's status as a "managerial  
12 employee", the Board shall consider the employee's actual job  
13 duties and responsibilities and the extent to which the  
14 employee has actual authority concerning the overall  
15 operations and governance of the employee's office or  
16 workplace. An employee of the Cook County States Attorney shall  
17 not be considered a "managerial employee" if that employee is  
18 not directly responsible for wages, fringe benefits, hours,  
19 holidays, vacations, sick leave, or other conditions of  
20 employment.

21 (k) "Peace officer" means, for the purposes of this Act  
22 only, any persons who have been or are hereafter appointed to a  
23 police force, department, or agency and sworn or commissioned  
24 to perform police duties, except that the following persons are  
25 not included: part-time police officers, special police  
26 officers, auxiliary police as defined by Section 3.1-30-20 of

1 the Illinois Municipal Code, night watchmen, "merchant  
2 police", court security officers as defined by Section 3-6012.1  
3 of the Counties Code, temporary employees, traffic guards or  
4 wardens, civilian parking meter and parking facilities  
5 personnel or other individuals specially appointed to aid or  
6 direct traffic at or near schools or public functions or to aid  
7 in civil defense or disaster, parking enforcement employees who  
8 are not commissioned as peace officers and who are not armed  
9 and who are not routinely expected to effect arrests, parking  
10 lot attendants, clerks and dispatchers or other civilian  
11 employees of a police department who are not routinely expected  
12 to effect arrests, or elected officials.

13 (l) "Person" includes one or more individuals, labor  
14 organizations, public employees, associations, corporations,  
15 legal representatives, trustees, trustees in bankruptcy,  
16 receivers, or the State of Illinois or any political  
17 subdivision of the State or governing body, but does not  
18 include the General Assembly of the State of Illinois or any  
19 individual employed by the General Assembly of the State of  
20 Illinois.

21 (m) "Professional employee" means any employee engaged in  
22 work predominantly intellectual and varied in character rather  
23 than routine mental, manual, mechanical or physical work;  
24 involving the consistent exercise of discretion and adjustment  
25 in its performance; of such a character that the output  
26 produced or the result accomplished cannot be standardized in



1 relation to a given period of time; and requiring advanced  
2 knowledge in a field of science or learning customarily  
3 acquired by a prolonged course of specialized intellectual  
4 instruction and study in an institution of higher learning or a  
5 hospital, as distinguished from a general academic education or  
6 from apprenticeship or from training in the performance of  
7 routine mental, manual, or physical processes; or any employee  
8 who has completed the courses of specialized intellectual  
9 instruction and study prescribed in this subsection (m) and is  
10 performing related work under the supervision of a professional  
11 person to qualify to become a professional employee as defined  
12 in this subsection (m).

13 (n) "Public employee" or "employee", for the purposes of  
14 this Act, means any individual employed by a public employer,  
15 including (i) interns and residents at public hospitals, (ii)  
16 as of the effective date of this amendatory Act of the 93rd  
17 General Assembly, but not before, personal care attendants and  
18 personal assistants working under the Home Services Program  
19 under Section 3 of the Disabled Persons Rehabilitation Act,  
20 subject to the limitations set forth in this Act and in the  
21 Disabled Persons Rehabilitation Act, and (iii) as of the  
22 effective date of this amendatory Act of the 94th General  
23 Assembly, but not before, child and day care home providers  
24 participating in the child care assistance program under  
25 Section 9A-11 of the Illinois Public Aid Code, subject to the  
26 limitations set forth in this Act and in Section 9A-11 of the

1 Illinois Public Aid Code, but excluding all of the following:  
2 employees of the General Assembly of the State of Illinois;  
3 elected officials; executive heads of a department; members of  
4 boards or commissions; the Executive Inspectors General; any  
5 special Executive Inspectors General; employees of each Office  
6 of an Executive Inspector General; commissioners and employees  
7 of the Executive Ethics Commission; the Auditor General's  
8 Inspector General; employees of the Office of the Auditor  
9 General's Inspector General; the Legislative Inspector  
10 General; any special Legislative Inspectors General; employees  
11 of the Office of the Legislative Inspector General;  
12 commissioners and employees of the Legislative Ethics  
13 Commission; employees of any agency, board or commission  
14 created by this Act; employees appointed to State positions of  
15 a temporary or emergency nature; all employees of school  
16 districts and higher education institutions except  
17 firefighters and peace officers employed by a state university;  
18 managerial employees; short-term employees; confidential  
19 employees; independent contractors; and supervisors except as  
20 provided in this Act.

21 Personal care attendants and personal assistants shall not  
22 be considered public employees for any purposes not  
23 specifically provided for in the amendatory Act of the 93rd  
24 General Assembly, including but not limited to, purposes of  
25 vicarious liability in tort and purposes of statutory  
26 retirement or health insurance benefits. Personal care

1 attendants and personal assistants shall not be covered by the  
2 State Employees Group Insurance Act of 1971 (5 ILCS 375/).

3 Child and day care home providers shall not be considered  
4 public employees for any purposes not specifically provided for  
5 in this amendatory Act of the 94th General Assembly, including  
6 but not limited to, purposes of vicarious liability in tort and  
7 purposes of statutory retirement or health insurance benefits.  
8 Child and day care home providers shall not be covered by the  
9 State Employees Group Insurance Act of 1971.

10 Notwithstanding Section 9, subsection (c), or any other  
11 provisions of this Act, all peace officers above the rank of  
12 captain in municipalities with more than 1,000,000 inhabitants  
13 shall be excluded from this Act.

14 (o) Except as otherwise in subsection (o-5), "public  
15 employer" or "employer" means the State of Illinois; any  
16 political subdivision of the State, unit of local government or  
17 school district; authorities including departments, divisions,  
18 bureaus, boards, commissions, or other agencies of the  
19 foregoing entities; and any person acting within the scope of  
20 his or her authority, express or implied, on behalf of those  
21 entities in dealing with its employees. As of the effective  
22 date of the amendatory Act of the 93rd General Assembly, but  
23 not before, the State of Illinois shall be considered the  
24 employer of the personal care attendants and personal  
25 assistants working under the Home Services Program under  
26 Section 3 of the Disabled Persons Rehabilitation Act, subject

1 to the limitations set forth in this Act and in the Disabled  
2 Persons Rehabilitation Act. The State shall not be considered  
3 to be the employer of personal care attendants and personal  
4 assistants for any purposes not specifically provided for in  
5 this amendatory Act of the 93rd General Assembly, including but  
6 not limited to, purposes of vicarious liability in tort and  
7 purposes of statutory retirement or health insurance benefits.  
8 Personal care attendants and personal assistants shall not be  
9 covered by the State Employees Group Insurance Act of 1971 (5  
10 ILCS 375/). As of the effective date of this amendatory Act of  
11 the 94th General Assembly but not before, the State of Illinois  
12 shall be considered the employer of the day and child care home  
13 providers participating in the child care assistance program  
14 under Section 9A-11 of the Illinois Public Aid Code, subject to  
15 the limitations set forth in this Act and in Section 9A-11 of  
16 the Illinois Public Aid Code. The State shall not be considered  
17 to be the employer of child and day care home providers for any  
18 purposes not specifically provided for in this amendatory Act  
19 of the 94th General Assembly, including but not limited to,  
20 purposes of vicarious liability in tort and purposes of  
21 statutory retirement or health insurance benefits. Child and  
22 day care home providers shall not be covered by the State  
23 Employees Group Insurance Act of 1971.

24 "Public employer" or "employer" as used in this Act,  
25 however, does not mean and shall not include the General  
26 Assembly of the State of Illinois, the Executive Ethics

1 Commission, the Offices of the Executive Inspectors General,  
2 the Legislative Ethics Commission, the Office of the  
3 Legislative Inspector General, the Office of the Auditor  
4 General's Inspector General, and educational employers or  
5 employers as defined in the Illinois Educational Labor  
6 Relations Act, except with respect to a state university in its  
7 employment of firefighters and peace officers. County boards  
8 and county sheriffs shall be designated as joint or  
9 co-employers of county peace officers appointed under the  
10 authority of a county sheriff. Nothing in this subsection (o)  
11 shall be construed to prevent the State Panel or the Local  
12 Panel from determining that employers are joint or  
13 co-employers.

14 (o-5) With respect to wages, fringe benefits, hours,  
15 holidays, vacations, proficiency examinations, sick leave, and  
16 other conditions of employment, the public employer of public  
17 employees who are court reporters, as defined in the Court  
18 Reporters Act, shall be determined as follows:

19 (1) For court reporters employed by the Cook County  
20 Judicial Circuit, the chief judge of the Cook County  
21 Circuit Court is the public employer and employer  
22 representative.

23 (2) For court reporters employed by the 12th, 18th,  
24 19th, and, on and after December 4, 2006, the 22nd judicial  
25 circuits, a group consisting of the chief judges of those  
26 circuits, acting jointly by majority vote, is the public

1 employer and employer representative.

2 (3) For court reporters employed by all other judicial  
3 circuits, a group consisting of the chief judges of those  
4 circuits, acting jointly by majority vote, is the public  
5 employer and employer representative.

6 (p) "Security employee" means an employee who is  
7 responsible for the supervision and control of inmates at  
8 correctional facilities. The term also includes other  
9 non-security employees in bargaining units having the majority  
10 of employees being responsible for the supervision and control  
11 of inmates at correctional facilities.

12 (q) "Short-term employee" means an employee who is employed  
13 for less than 2 consecutive calendar quarters during a calendar  
14 year and who does not have a reasonable assurance that he or  
15 she will be rehired by the same employer for the same service  
16 in a subsequent calendar year.

17 (r) "Supervisor" is an employee whose principal work is  
18 substantially different from that of his or her subordinates  
19 and who has authority, in the interest of the employer, to  
20 hire, transfer, suspend, lay off, recall, promote, discharge,  
21 direct, reward, or discipline employees, to adjust their  
22 grievances, or to effectively recommend any of those actions,  
23 if the exercise of that authority is not of a merely routine or  
24 clerical nature, but requires the consistent use of independent  
25 judgment. Except with respect to police employment, the term  
26 "supervisor" includes only those individuals who devote a

1 preponderance of their employment time to exercising that  
2 authority, State supervisors notwithstanding. In addition, in  
3 determining supervisory status in police employment, rank  
4 shall not be determinative. The Board shall consider, as  
5 evidence of bargaining unit inclusion or exclusion, the common  
6 law enforcement policies and relationships between police  
7 officer ranks and certification under applicable civil service  
8 law, ordinances, personnel codes, or Division 2.1 of Article 10  
9 of the Illinois Municipal Code, but these factors shall not be  
10 the sole or predominant factors considered by the Board in  
11 determining police supervisory status.

12 Notwithstanding the provisions of the preceding paragraph,  
13 in determining supervisory status in fire fighter employment,  
14 no fire fighter shall be excluded as a supervisor who has  
15 established representation rights under Section 9 of this Act.  
16 Further, in new fire fighter units, employees shall consist of  
17 fire fighters of the rank of company officer and below. If a  
18 company officer otherwise qualifies as a supervisor under the  
19 preceding paragraph, however, he or she shall not be included  
20 in the fire fighter unit. If there is no rank between that of  
21 chief and the highest company officer, the employer may  
22 designate a position on each shift as a Shift Commander, and  
23 the persons occupying those positions shall be supervisors. All  
24 other ranks above that of company officer shall be supervisors.

25 (s) (1) "Unit" means a class of jobs or positions that are  
26 held by employees whose collective interests may suitably

1 be represented by a labor organization for collective  
2 bargaining. Except with respect to non-State fire fighters  
3 and paramedics employed by fire departments and fire  
4 protection districts, non-State peace officers, and peace  
5 officers in the Department of State Police, a bargaining  
6 unit determined by the Board shall not include both  
7 employees and supervisors, or supervisors only, except as  
8 provided in paragraph (2) of this subsection (s) and except  
9 for bargaining units in existence on July 1, 1984 (the  
10 effective date of this Act). With respect to non-State fire  
11 fighters and paramedics employed by fire departments and  
12 fire protection districts, non-State peace officers, and  
13 peace officers in the Department of State Police, a  
14 bargaining unit determined by the Board shall not include  
15 both supervisors and nonsupervisors, or supervisors only,  
16 except as provided in paragraph (2) of this subsection (s)  
17 and except for bargaining units in existence on January 1,  
18 1986 (the effective date of this amendatory Act of 1985). A  
19 bargaining unit determined by the Board to contain peace  
20 officers shall contain no employees other than peace  
21 officers unless otherwise agreed to by the employer and the  
22 labor organization or labor organizations involved.  
23 Notwithstanding any other provision of this Act, a  
24 bargaining unit, including a historical bargaining unit,  
25 containing sworn peace officers of the Department of  
26 Natural Resources (formerly designated the Department of



1 Conservation) shall contain no employees other than such  
2 sworn peace officers upon the effective date of this  
3 amendatory Act of 1990 or upon the expiration date of any  
4 collective bargaining agreement in effect upon the  
5 effective date of this amendatory Act of 1990 covering both  
6 such sworn peace officers and other employees.

7 (2) Notwithstanding the exclusion of supervisors from  
8 bargaining units as provided in paragraph (1) of this  
9 subsection (s), a public employer may agree to permit its  
10 supervisory employees to form bargaining units and may  
11 bargain with those units. This Act shall apply if the  
12 public employer chooses to bargain under this subsection.

13 (3) Public employees who are court reporters, as  
14 defined in the Court Reporters Act, shall be divided into 3  
15 units for collective bargaining purposes. One unit shall be  
16 court reporters employed by the Cook County Judicial  
17 Circuit; one unit shall be court reporters employed by the  
18 12th, 18th, 19th, and, on and after December 4, 2006, the  
19 22nd judicial circuits; and one unit shall be court  
20 reporters employed by all other judicial circuits.

21 (Source: P.A. 93-204, eff. 7-16-03; 93-617, eff. 12-9-03;  
22 94-98, eff. 7-1-05; 94-320, eff. 1-1-06; revised 8-19-05.)

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.