



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB4547**

Introduced 2/1/2012, by Rep. Brandon W. Phelps

#### SYNOPSIS AS INTRODUCED:

5 ILCS 315/14

from Ch. 48, par. 1614

30 ILCS 805/8.36 new

Amends the Illinois Public Labor Relations Act. Provides that if a public employer obtains a stay of an arbitration panel's order pending judicial review and the final decision of the court is adverse, then all reasonable costs of the proceedings in the reviewing courts including reasonable attorneys' fees, as determined by the court, shall be paid by the public employer. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB097 16909 JDS 62097 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 14 as follows:

6 (5 ILCS 315/14) (from Ch. 48, par. 1614)

7 Sec. 14. Security Employee, Peace Officer and Fire Fighter  
8 Disputes.

9 (a) In the case of collective bargaining agreements  
10 involving units of security employees of a public employer,  
11 Peace Officer Units, or units of fire fighters or paramedics,  
12 and in the case of disputes under Section 18, unless the  
13 parties mutually agree to some other time limit, mediation  
14 shall commence 30 days prior to the expiration date of such  
15 agreement or at such later time as the mediation services  
16 chosen under subsection (b) of Section 12 can be provided to  
17 the parties. In the case of negotiations for an initial  
18 collective bargaining agreement, mediation shall commence upon  
19 15 days notice from either party or at such later time as the  
20 mediation services chosen pursuant to subsection (b) of Section  
21 12 can be provided to the parties. In mediation under this  
22 Section, if either party requests the use of mediation services  
23 from the Federal Mediation and Conciliation Service, the other

1 party shall either join in such request or bear the additional  
2 cost of mediation services from another source. The mediator  
3 shall have a duty to keep the Board informed on the progress of  
4 the mediation. If any dispute has not been resolved within 15  
5 days after the first meeting of the parties and the mediator,  
6 or within such other time limit as may be mutually agreed upon  
7 by the parties, either the exclusive representative or employer  
8 may request of the other, in writing, arbitration, and shall  
9 submit a copy of the request to the Board.

10 (b) Within 10 days after such a request for arbitration has  
11 been made, the employer shall choose a delegate and the  
12 employees' exclusive representative shall choose a delegate to  
13 a panel of arbitration as provided in this Section. The  
14 employer and employees shall forthwith advise the other and the  
15 Board of their selections.

16 (c) Within 7 days after the request of either party, the  
17 parties shall request a panel of impartial arbitrators from  
18 which they shall select the neutral chairman according to the  
19 procedures provided in this Section. If the parties have agreed  
20 to a contract that contains a grievance resolution procedure as  
21 provided in Section 8, the chairman shall be selected using  
22 their agreed contract procedure unless they mutually agree to  
23 another procedure. If the parties fail to notify the Board of  
24 their selection of neutral chairman within 7 days after receipt  
25 of the list of impartial arbitrators, the Board shall appoint,  
26 at random, a neutral chairman from the list. In the absence of

1 an agreed contract procedure for selecting an impartial  
2 arbitrator, either party may request a panel from the Board.  
3 Within 7 days of the request of either party, the Board shall  
4 select from the Public Employees Labor Mediation Roster 7  
5 persons who are on the labor arbitration panels of either the  
6 American Arbitration Association or the Federal Mediation and  
7 Conciliation Service, or who are members of the National  
8 Academy of Arbitrators, as nominees for impartial arbitrator of  
9 the arbitration panel. The parties may select an individual on  
10 the list provided by the Board or any other individual mutually  
11 agreed upon by the parties. Within 7 days following the receipt  
12 of the list, the parties shall notify the Board of the person  
13 they have selected. Unless the parties agree on an alternate  
14 selection procedure, they shall alternatively strike one name  
15 from the list provided by the Board until only one name  
16 remains. A coin toss shall determine which party shall strike  
17 the first name. If the parties fail to notify the Board in a  
18 timely manner of their selection for neutral chairman, the  
19 Board shall appoint a neutral chairman from the Illinois Public  
20 Employees Mediation/Arbitration Roster.

21 (d) The chairman shall call a hearing to begin within 15  
22 days and give reasonable notice of the time and place of the  
23 hearing. The hearing shall be held at the offices of the Board  
24 or at such other location as the Board deems appropriate. The  
25 chairman shall preside over the hearing and shall take  
26 testimony. Any oral or documentary evidence and other data

1 deemed relevant by the arbitration panel may be received in  
2 evidence. The proceedings shall be informal. Technical rules of  
3 evidence shall not apply and the competency of the evidence  
4 shall not thereby be deemed impaired. A verbatim record of the  
5 proceedings shall be made and the arbitrator shall arrange for  
6 the necessary recording service. Transcripts may be ordered at  
7 the expense of the party ordering them, but the transcripts  
8 shall not be necessary for a decision by the arbitration panel.  
9 The expense of the proceedings, including a fee for the  
10 chairman, established in advance by the Board, shall be borne  
11 equally by each of the parties to the dispute. The delegates,  
12 if public officers or employees, shall continue on the payroll  
13 of the public employer without loss of pay. The hearing  
14 conducted by the arbitration panel may be adjourned from time  
15 to time, but unless otherwise agreed by the parties, shall be  
16 concluded within 30 days of the time of its commencement.  
17 Majority actions and rulings shall constitute the actions and  
18 rulings of the arbitration panel. Arbitration proceedings  
19 under this Section shall not be interrupted or terminated by  
20 reason of any unfair labor practice charge filed by either  
21 party at any time.

22 (e) The arbitration panel may administer oaths, require the  
23 attendance of witnesses, and the production of such books,  
24 papers, contracts, agreements and documents as may be deemed by  
25 it material to a just determination of the issues in dispute,  
26 and for such purpose may issue subpoenas. If any person refuses

1 to obey a subpoena, or refuses to be sworn or to testify, or if  
2 any witness, party or attorney is guilty of any contempt while  
3 in attendance at any hearing, the arbitration panel may, or the  
4 attorney general if requested shall, invoke the aid of any  
5 circuit court within the jurisdiction in which the hearing is  
6 being held, which court shall issue an appropriate order. Any  
7 failure to obey the order may be punished by the court as  
8 contempt.

9 (f) At any time before the rendering of an award, the  
10 chairman of the arbitration panel, if he is of the opinion that  
11 it would be useful or beneficial to do so, may remand the  
12 dispute to the parties for further collective bargaining for a  
13 period not to exceed 2 weeks. If the dispute is remanded for  
14 further collective bargaining the time provisions of this Act  
15 shall be extended for a time period equal to that of the  
16 remand. The chairman of the panel of arbitration shall notify  
17 the Board of the remand.

18 (g) At or before the conclusion of the hearing held  
19 pursuant to subsection (d), the arbitration panel shall  
20 identify the economic issues in dispute, and direct each of the  
21 parties to submit, within such time limit as the panel shall  
22 prescribe, to the arbitration panel and to each other its last  
23 offer of settlement on each economic issue. The determination  
24 of the arbitration panel as to the issues in dispute and as to  
25 which of these issues are economic shall be conclusive. The  
26 arbitration panel, within 30 days after the conclusion of the

1 hearing, or such further additional periods to which the  
2 parties may agree, shall make written findings of fact and  
3 promulgate a written opinion and shall mail or otherwise  
4 deliver a true copy thereof to the parties and their  
5 representatives and to the Board. As to each economic issue,  
6 the arbitration panel shall adopt the last offer of settlement  
7 which, in the opinion of the arbitration panel, more nearly  
8 complies with the applicable factors prescribed in subsection  
9 (h). The findings, opinions and order as to all other issues  
10 shall be based upon the applicable factors prescribed in  
11 subsection (h).

12 (h) Where there is no agreement between the parties, or  
13 where there is an agreement but the parties have begun  
14 negotiations or discussions looking to a new agreement or  
15 amendment of the existing agreement, and wage rates or other  
16 conditions of employment under the proposed new or amended  
17 agreement are in dispute, the arbitration panel shall base its  
18 findings, opinions and order upon the following factors, as  
19 applicable:

20 (1) The lawful authority of the employer.

21 (2) Stipulations of the parties.

22 (3) The interests and welfare of the public and the  
23 financial ability of the unit of government to meet those  
24 costs.

25 (4) Comparison of the wages, hours and conditions of  
26 employment of the employees involved in the arbitration

1 proceeding with the wages, hours and conditions of  
2 employment of other employees performing similar services  
3 and with other employees generally:

4 (A) In public employment in comparable  
5 communities.

6 (B) In private employment in comparable  
7 communities.

8 (5) The average consumer prices for goods and services,  
9 commonly known as the cost of living.

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

15 (7) Changes in any of the foregoing circumstances  
16 during the pendency of the arbitration proceedings.

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

24 (i) In the case of peace officers, the arbitration decision  
25 shall be limited to wages, hours, and conditions of employment  
26 (which may include residency requirements in municipalities



1 with a population under 1,000,000, but those residency  
2 requirements shall not allow residency outside of Illinois) and  
3 shall not include the following: i) residency requirements in  
4 municipalities with a population of at least 1,000,000; ii) the  
5 type of equipment, other than uniforms, issued or used; iii)  
6 manning; iv) the total number of employees employed by the  
7 department; v) mutual aid and assistance agreements to other  
8 units of government; and vi) the criterion pursuant to which  
9 force, including deadly force, can be used; provided, nothing  
10 herein shall preclude an arbitration decision regarding  
11 equipment or manning levels if such decision is based on a  
12 finding that the equipment or manning considerations in a  
13 specific work assignment involve a serious risk to the safety  
14 of a peace officer beyond that which is inherent in the normal  
15 performance of police duties. Limitation of the terms of the  
16 arbitration decision pursuant to this subsection shall not be  
17 construed to limit the factors upon which the decision may be  
18 based, as set forth in subsection (h).

19 In the case of fire fighter, and fire department or fire  
20 district paramedic matters, the arbitration decision shall be  
21 limited to wages, hours, and conditions of employment (which  
22 may include residency requirements in municipalities with a  
23 population under 1,000,000, but those residency requirements  
24 shall not allow residency outside of Illinois) and shall not  
25 include the following matters: i) residency requirements in  
26 municipalities with a population of at least 1,000,000; ii) the

1 type of equipment (other than uniforms and fire fighter turnout  
2 gear) issued or used; iii) the total number of employees  
3 employed by the department; iv) mutual aid and assistance  
4 agreements to other units of government; and v) the criterion  
5 pursuant to which force, including deadly force, can be used;  
6 provided, however, nothing herein shall preclude an  
7 arbitration decision regarding equipment levels if such  
8 decision is based on a finding that the equipment  
9 considerations in a specific work assignment involve a serious  
10 risk to the safety of a fire fighter beyond that which is  
11 inherent in the normal performance of fire fighter duties.  
12 Limitation of the terms of the arbitration decision pursuant to  
13 this subsection shall not be construed to limit the facts upon  
14 which the decision may be based, as set forth in subsection  
15 (h).

16 The changes to this subsection (i) made by Public Act  
17 90-385 (relating to residency requirements) do not apply to  
18 persons who are employed by a combined department that performs  
19 both police and firefighting services; these persons shall be  
20 governed by the provisions of this subsection (i) relating to  
21 peace officers, as they existed before the amendment by Public  
22 Act 90-385.

23 To preserve historical bargaining rights, this subsection  
24 shall not apply to any provision of a fire fighter collective  
25 bargaining agreement in effect and applicable on the effective  
26 date of this Act; provided, however, nothing herein shall

1 preclude arbitration with respect to any such provision.

2 (j) Arbitration procedures shall be deemed to be initiated  
3 by the filing of a letter requesting mediation as required  
4 under subsection (a) of this Section. The commencement of a new  
5 municipal fiscal year after the initiation of arbitration  
6 procedures under this Act, but before the arbitration decision,  
7 or its enforcement, shall not be deemed to render a dispute  
8 moot, or to otherwise impair the jurisdiction or authority of  
9 the arbitration panel or its decision. Increases in rates of  
10 compensation awarded by the arbitration panel may be effective  
11 only at the start of the fiscal year next commencing after the  
12 date of the arbitration award. If a new fiscal year has  
13 commenced either since the initiation of arbitration  
14 procedures under this Act or since any mutually agreed  
15 extension of the statutorily required period of mediation under  
16 this Act by the parties to the labor dispute causing a delay in  
17 the initiation of arbitration, the foregoing limitations shall  
18 be inapplicable, and such awarded increases may be retroactive  
19 to the commencement of the fiscal year, any other statute or  
20 charter provisions to the contrary, notwithstanding. At any  
21 time the parties, by stipulation, may amend or modify an award  
22 of arbitration.

23 (k) Orders of the arbitration panel shall be reviewable,  
24 upon appropriate petition by either the public employer or the  
25 exclusive bargaining representative, by the circuit court for  
26 the county in which the dispute arose or in which a majority of

1 the affected employees reside, but only for reasons that the  
2 arbitration panel was without or exceeded its statutory  
3 authority; the order is arbitrary, or capricious; or the order  
4 was procured by fraud, collusion or other similar and unlawful  
5 means. Such petitions for review must be filed with the  
6 appropriate circuit court within 90 days following the issuance  
7 of the arbitration order. The pendency of such proceeding for  
8 review shall not automatically stay the order of the  
9 arbitration panel. If a public employer obtains a stay of the  
10 arbitration panel's order pending judicial review and the final  
11 decision of the court is adverse, then all reasonable costs of  
12 the proceedings in the reviewing courts including reasonable  
13 attorneys' fees, as determined by the court, shall be paid by  
14 the public employer. ~~The party against whom the final decision~~  
15 ~~of any such court shall be adverse, if such court finds such~~  
16 ~~appeal or petition to be frivolous, shall pay reasonable~~  
17 ~~attorneys' fees and costs to the successful party as determined~~  
18 ~~by said court in its discretion.~~ If said court's decision  
19 affirms the award of money, such award, if retroactive, shall  
20 bear interest at the rate of 12 percent per annum from the  
21 effective retroactive date.

22 (1) During the pendency of proceedings before the  
23 arbitration panel, existing wages, hours, and other conditions  
24 of employment shall not be changed by action of either party  
25 without the consent of the other but a party may so consent  
26 without prejudice to his rights or position under this Act. The

1 proceedings are deemed to be pending before the arbitration  
2 panel upon the initiation of arbitration procedures under this  
3 Act.

4 (m) Security officers of public employers, and Peace  
5 Officers, Fire Fighters and fire department and fire protection  
6 district paramedics, covered by this Section may not withhold  
7 services, nor may public employers lock out or prevent such  
8 employees from performing services at any time.

9 (n) All of the terms decided upon by the arbitration panel  
10 shall be included in an agreement to be submitted to the public  
11 employer's governing body for ratification and adoption by law,  
12 ordinance or the equivalent appropriate means.

13 The governing body shall review each term decided by the  
14 arbitration panel. If the governing body fails to reject one or  
15 more terms of the arbitration panel's decision by a 3/5 vote of  
16 those duly elected and qualified members of the governing body,  
17 within 20 days of issuance, or in the case of firefighters  
18 employed by a state university, at the next regularly scheduled  
19 meeting of the governing body after issuance, such term or  
20 terms shall become a part of the collective bargaining  
21 agreement of the parties. If the governing body affirmatively  
22 rejects one or more terms of the arbitration panel's decision,  
23 it must provide reasons for such rejection with respect to each  
24 term so rejected, within 20 days of such rejection and the  
25 parties shall return to the arbitration panel for further  
26 proceedings and issuance of a supplemental decision with

1 respect to the rejected terms. Any supplemental decision by an  
2 arbitration panel or other decision maker agreed to by the  
3 parties shall be submitted to the governing body for  
4 ratification and adoption in accordance with the procedures and  
5 voting requirements set forth in this Section. The voting  
6 requirements of this subsection shall apply to all disputes  
7 submitted to arbitration pursuant to this Section  
8 notwithstanding any contrary voting requirements contained in  
9 any existing collective bargaining agreement between the  
10 parties.

11 (o) If the governing body of the employer votes to reject  
12 the panel's decision, the parties shall return to the panel  
13 within 30 days from the issuance of the reasons for rejection  
14 for further proceedings and issuance of a supplemental  
15 decision. All reasonable costs of such supplemental proceeding  
16 including the exclusive representative's reasonable attorney's  
17 fees, as established by the Board, shall be paid by the  
18 employer.

19 (p) Notwithstanding the provisions of this Section the  
20 employer and exclusive representative may agree to submit  
21 unresolved disputes concerning wages, hours, terms and  
22 conditions of employment to an alternative form of impasse  
23 resolution.

24 (Source: P.A. 96-813, eff. 10-30-09.)

25 Section 90. The State Mandates Act is amended by adding

1 Section 8.36 as follows:

2 (30 ILCS 805/8.36 new)

3 Sec. 8.36. Exempt mandate. Notwithstanding Sections 6 and 8  
4 of this Act, no reimbursement by the State is required for the  
5 implementation of any mandate created by this amendatory Act of  
6 the 97th General Assembly.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.