



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2695

Introduced 2/22/2005, by Rep. Larry McKeon

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. Effective immediately.

LRB094 10686 JAM 41066 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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.

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

26 (e) "Essential services employees" means those public
27 employees performing functions so essential that the
28 interruption or termination of the function will constitute a
29 clear and present danger to the health and safety of the
30 persons in the affected community.

31 (f) "Exclusive representative", except with respect to
32 non-State fire fighters and paramedics employed by fire

1 departments and fire protection districts, non-State peace
2 officers, and peace officers in the Department of State Police,
3 means the labor organization that has been (i) designated by
4 the Board as the representative of a majority of public
5 employees in an appropriate bargaining unit in accordance with
6 the procedures contained in this Act, (ii) historically
7 recognized by the State of Illinois or any political
8 subdivision of the State before July 1, 1984 (the effective
9 date of this Act) as the exclusive representative of the
10 employees in an appropriate bargaining unit, (iii) after July
11 1, 1984 (the effective date of this Act) recognized by an
12 employer upon evidence, acceptable to the Board, that the labor
13 organization has been designated as the exclusive
14 representative by a majority of the employees in an appropriate
15 bargaining unit; or (iv) recognized as the exclusive
16 representative of personal care attendants or personal
17 assistants under Executive Order 2003-8 prior to the effective
18 date of this amendatory Act of the 93rd General Assembly, and
19 the organization shall be considered to be the exclusive
20 representative of the personal care attendants or personal
21 assistants as defined in this Section.

22 With respect to non-State fire fighters and paramedics
23 employed by fire departments and fire protection districts,
24 non-State peace officers, and peace officers in the Department
25 of State Police, "exclusive representative" means the labor
26 organization that has been (i) designated by the Board as the
27 representative of a majority of peace officers or fire fighters
28 in an appropriate bargaining unit in accordance with the
29 procedures contained in this Act, (ii) historically recognized
30 by the State of Illinois or any political subdivision of the
31 State before January 1, 1986 (the effective date of this
32 amendatory Act of 1985) as the exclusive representative by a
33 majority of the peace officers or fire fighters in an
34 appropriate bargaining unit, or (iii) after January 1, 1986
35 (the effective date of this amendatory Act of 1985) recognized
36 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
27 officials.

28 (g-2) "General Assembly of the State of Illinois" means the
29 legislative branch of the government of the State of Illinois,
30 as provided for under Article IV of the Constitution of the
31 State of Illinois, and includes but is not limited to the House
32 of Representatives, the Senate, the Speaker of the House of
33 Representatives, the Minority Leader of the House of
34 Representatives, the President of the Senate, the Minority
35 Leader of the Senate, the Joint Committee on Legislative
36 Support Services and any legislative support services agency

1 listed in the Legislative Commission Reorganization Act of
2 1984.

3 (h) "Governing body" means, in the case of the State, the
4 State Panel of the Illinois Labor Relations Board, the Director
5 of the Department of Central Management Services, and the
6 Director of the Department of Labor; the county board in the
7 case of a county; the corporate authorities in the case of a
8 municipality; and the appropriate body authorized to provide
9 for expenditures of its funds in the case of any other unit of
10 government.

11 (i) "Labor organization" means any organization in which
12 public employees participate and that exists for the purpose,
13 in whole or in part, of dealing with a public employer
14 concerning wages, hours, and other terms and conditions of
15 employment, including the settlement of grievances.

16 (j) "Managerial employee" means an individual who is
17 engaged predominantly in executive and management functions
18 and is charged with the responsibility of directing the
19 effectuation of management policies and practices. No employee
20 may be considered a "managerial employee" because he or she
21 belongs to a classification of employees to whom executive and
22 management functions may be delegated unless the Board finds on
23 the basis of a record of a fact-finding hearing that the
24 employee has actually been delegated executive and management
25 functions on a regular basis. No employee may be considered a
26 "managerial employee" because he or she performs professional
27 duties. In determining an employee's status as a "managerial
28 employee", the Board shall consider the employee's actual job
29 duties and responsibilities and the extent to which the
30 employee has actual authority concerning the overall
31 operations and governance of the employee's office or
32 workplace.

33 (k) "Peace officer" means, for the purposes of this Act
34 only, any persons who have been or are hereafter appointed to a
35 police force, department, or agency and sworn or commissioned
36 to perform police duties, except that the following persons are

1 not included: part-time police officers, special police
2 officers, auxiliary police as defined by Section 3.1-30-20 of
3 the Illinois Municipal Code, night watchmen, "merchant
4 police", court security officers as defined by Section 3-6012.1
5 of the Counties Code, temporary employees, traffic guards or
6 wardens, civilian parking meter and parking facilities
7 personnel or other individuals specially appointed to aid or
8 direct traffic at or near schools or public functions or to aid
9 in civil defense or disaster, parking enforcement employees who
10 are not commissioned as peace officers and who are not armed
11 and who are not routinely expected to effect arrests, parking
12 lot attendants, clerks and dispatchers or other civilian
13 employees of a police department who are not routinely expected
14 to effect arrests, or elected officials.

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

23 (m) "Professional employee" means any employee engaged in
24 work predominantly intellectual and varied in character rather
25 than routine mental, manual, mechanical or physical work;
26 involving the consistent exercise of discretion and adjustment
27 in its performance; of such a character that the output
28 produced or the result accomplished cannot be standardized in
29 relation to a given period of time; and requiring advanced
30 knowledge in a field of science or learning customarily
31 acquired by a prolonged course of specialized intellectual
32 instruction and study in an institution of higher learning or a
33 hospital, as distinguished from a general academic education or
34 from apprenticeship or from training in the performance of
35 routine mental, manual, or physical processes; or any employee
36 who has completed the courses of specialized intellectual

1 instruction and study prescribed in this subsection (m) and is
2 performing related work under the supervision of a professional
3 person to qualify to become a professional employee as defined
4 in this subsection (m).

5 (n) "Public employee" or "employee", for the purposes of
6 this Act, means any individual employed by a public employer,
7 including interns and residents at public hospitals and, as of
8 the effective date of this amendatory Act of the 93rd General
9 Assembly, but not before, personal care attendants and personal
10 assistants working under the Home Services Program under
11 Section 3 of the Disabled Persons Rehabilitation Act, subject
12 to the limitations set forth in this Act and in the Disabled
13 Persons Rehabilitation Act, but excluding all of the following:
14 employees of the General Assembly of the State of Illinois;
15 elected officials; executive heads of a department; members of
16 boards or commissions; the Executive Inspectors General; any
17 special Executive Inspectors General; employees of each Office
18 of an Executive Inspector General; commissioners and employees
19 of the Executive Ethics Commission; the Auditor General's
20 Inspector General; employees of the Office of the Auditor
21 General's Inspector General; the Legislative Inspector
22 General; any special Legislative Inspectors General; employees
23 of the Office of the Legislative Inspector General;
24 commissioners and employees of the Legislative Ethics
25 Commission; employees of any agency, board or commission
26 created by this Act; employees appointed to State positions of
27 a temporary or emergency nature; all employees of school
28 districts and higher education institutions except
29 firefighters and peace officers employed by a state university;
30 managerial employees; short-term employees; confidential
31 employees; independent contractors; and supervisors except as
32 provided in this Act.

33 Personal care attendants and personal assistants shall not
34 be considered public employees for any purposes not
35 specifically provided for in this amendatory Act of the 93rd
36 General Assembly, including but not limited to, purposes of

1 vicarious liability in tort and purposes of statutory
2 retirement or health insurance benefits. Personal care
3 attendants and personal assistants shall not be covered by the
4 State Employees Group Insurance Act of 1971 (5 ILCS 375/).

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

9 (o) "Public employer" or "employer" means the State of
10 Illinois; any political subdivision of the State, unit of local
11 government or school district; authorities including
12 departments, divisions, bureaus, boards, commissions, or other
13 agencies of the foregoing entities; and any person acting
14 within the scope of his or her authority, express or implied,
15 on behalf of those entities in dealing with its employees. As
16 of the effective date of this amendatory Act of the 93rd
17 General Assembly, but not before, the State of Illinois shall
18 be considered the employer of the personal care attendants and
19 personal assistants working under the Home Services Program
20 under Section 3 of the Disabled Persons Rehabilitation Act,
21 subject to the limitations set forth in this Act and in the
22 Disabled Persons Rehabilitation Act. The State shall not be
23 considered to be the employer of personal care attendants and
24 personal assistants for any purposes not specifically provided
25 for in this amendatory Act of the 93rd General Assembly,
26 including but not limited to, purposes of vicarious liability
27 in tort and purposes of statutory retirement or health
28 insurance benefits. Personal care attendants and personal
29 assistants shall not be covered by the State Employees Group
30 Insurance Act of 1971 (5 ILCS 375/). "Public employer" or
31 "employer" as used in this Act, however, does not mean and
32 shall not include the General Assembly of the State of
33 Illinois, the Executive Ethics Commission, the Offices of the
34 Executive Inspectors General, the Legislative Ethics
35 Commission, the Office of the Legislative Inspector General,
36 the Office of the Auditor General's Inspector General, and

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

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

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

21 (r) "Supervisor" is an employee whose principal work is
22 substantially different from that of his or her subordinates
23 and who has authority, in the interest of the employer, to
24 hire, transfer, suspend, lay off, recall, promote, discharge,
25 direct, reward, or discipline employees, to adjust their
26 grievances, or to effectively recommend any of those actions,
27 if the exercise of that authority is not of a merely routine or
28 clerical nature, but requires the consistent use of independent
29 judgment. Except with respect to police employment, the term
30 "supervisor" includes only those individuals who devote a
31 preponderance of their employment time to exercising that
32 authority, State supervisors notwithstanding. In addition, in
33 determining supervisory status in police employment, rank
34 shall not be determinative. The Board shall consider, as
35 evidence of bargaining unit inclusion or exclusion, the common
36 law enforcement policies and relationships between police

1 officer ranks and certification under applicable civil service
2 law, ordinances, personnel codes, or Division 2.1 of Article 10
3 of the Illinois Municipal Code, but these factors shall not be
4 the sole or predominant factors considered by the Board in
5 determining police supervisory status.

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

19 (s) (1) "Unit" means a class of jobs or positions that are
20 held by employees whose collective interests may suitably
21 be represented by a labor organization for collective
22 bargaining. Except with respect to non-State fire fighters
23 and paramedics employed by fire departments and fire
24 protection districts, non-State peace officers, and peace
25 officers in the Department of State Police, a bargaining
26 unit determined by the Board shall not include both
27 employees and supervisors, or supervisors only, except as
28 provided in paragraph (2) of this subsection (s) and except
29 for bargaining units in existence on July 1, 1984 (the
30 effective date of this Act). With respect to non-State fire
31 fighters and paramedics employed by fire departments and
32 fire protection districts, non-State peace officers, and
33 peace officers in the Department of State Police, a
34 bargaining unit determined by the Board shall not include
35 both supervisors and nonsupervisors, or supervisors only,
36 except as provided in paragraph (2) of this subsection (s)

1 and except for bargaining units in existence on January 1,
2 1986 (the effective date of this amendatory Act of 1985). A
3 bargaining unit determined by the Board to contain peace
4 officers shall contain no employees other than peace
5 officers unless otherwise agreed to by the employer and the
6 labor organization or labor organizations involved.
7 Notwithstanding any other provision of this Act, a
8 bargaining unit, including a historical bargaining unit,
9 containing sworn peace officers of the Department of
10 Natural Resources (formerly designated the Department of
11 Conservation) shall contain no employees other than such
12 sworn peace officers upon the effective date of this
13 amendatory Act of 1990 or upon the expiration date of any
14 collective bargaining agreement in effect upon the
15 effective date of this amendatory Act of 1990 covering both
16 such sworn peace officers and other employees.

17 (2) Notwithstanding the exclusion of supervisors from
18 bargaining units as provided in paragraph (1) of this
19 subsection (s), a public employer may agree to permit its
20 supervisory employees to form bargaining units and may
21 bargain with those units. This Act shall apply if the
22 public employer chooses to bargain under this subsection.

23 (Source: P.A. 93-204, eff. 7-16-03; 93-617, eff. 12-9-03.)

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