



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB0296

Introduced 01/28/11, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

5 ILCS 315/14

from Ch. 48, par. 1614

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. Effective immediately.

LRB097 05671 RLJ 45734 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 99. Effective date. This Act takes effect upon
26 becoming law.