



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4464

Introduced 02/03/04, by Larry McKeon

SYNOPSIS AS INTRODUCED:

5 ILCS 315/3

from Ch. 48, par. 1603

Amends the Illinois Public Labor Relations Act. In determining an employee's managerial status, requires that the employee's actual duties and responsibilities be considered.

LRB093 18460 JAM 44172 b

1 AN ACT concerning public labor relations.

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. In
20 determining an employee's status as a "managerial employee",
21 the Board shall consider the employee's actual job duties and
22 responsibilities.

23 (k) "Peace officer" means, for the purposes of this Act
24 only, any persons who have been or are hereafter appointed to a
25 police force, department, or agency and sworn or commissioned
26 to perform police duties, except that the following persons are
27 not included: part-time police officers, special police
28 officers, auxiliary police as defined by Section 3.1-30-20 of
29 the Illinois Municipal Code, night watchmen, "merchant
30 police", court security officers as defined by Section 3-6012.1
31 of the Counties Code, temporary employees, traffic guards or
32 wardens, civilian parking meter and parking facilities
33 personnel or other individuals specially appointed to aid or
34 direct traffic at or near schools or public functions or to aid
35 in civil defense or disaster, parking enforcement employees who
36 are not commissioned as peace officers and who are not armed

1 and who are not routinely expected to effect arrests, parking
2 lot attendants, clerks and dispatchers or other civilian
3 employees of a police department who are not routinely expected
4 to effect arrests, or elected officials.

5 (l) "Person" includes one or more individuals, labor
6 organizations, public employees, associations, corporations,
7 legal representatives, trustees, trustees in bankruptcy,
8 receivers, or the State of Illinois or any political
9 subdivision of the State or governing body, but does not
10 include the General Assembly of the State of Illinois or any
11 individual employed by the General Assembly of the State of
12 Illinois.

13 (m) "Professional employee" means any employee engaged in
14 work predominantly intellectual and varied in character rather
15 than routine mental, manual, mechanical or physical work;
16 involving the consistent exercise of discretion and adjustment
17 in its performance; of such a character that the output
18 produced or the result accomplished cannot be standardized in
19 relation to a given period of time; and requiring advanced
20 knowledge in a field of science or learning customarily
21 acquired by a prolonged course of specialized intellectual
22 instruction and study in an institution of higher learning or a
23 hospital, as distinguished from a general academic education or
24 from apprenticeship or from training in the performance of
25 routine mental, manual, or physical processes; or any employee
26 who has completed the courses of specialized intellectual
27 instruction and study prescribed in this subsection (m) and is
28 performing related work under the supervision of a professional
29 person to qualify to become a professional employee as defined
30 in this subsection (m).

31 (n) "Public employee" or "employee", for the purposes of
32 this Act, means any individual employed by a public employer,
33 including interns and residents at public hospitals and, as of
34 the effective date of this amendatory Act of the 93rd General
35 Assembly, but not before, personal care attendants and personal
36 assistants working under the Home Services Program under

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

23 Personal care attendants and personal assistants shall not
24 be considered public employees for any purposes not
25 specifically provided for in this amendatory Act of the 93rd
26 General Assembly, including but not limited to, purposes of
27 vicarious liability in tort and purposes of statutory
28 retirement or health insurance benefits. Personal care
29 attendants and personal assistants shall not be covered by the
30 State Employees Group Insurance Act of 1971 (5 ILCS 375/).

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

35 (o) "Public employer" or "employer" means the State of
36 Illinois; any political subdivision of the State, unit of local

1 government or school district; authorities including
2 departments, divisions, bureaus, boards, commissions, or other
3 agencies of the foregoing entities; and any person acting
4 within the scope of his or her authority, express or implied,
5 on behalf of those entities in dealing with its employees. As
6 of the effective date of this amendatory Act of the 93rd
7 General Assembly, but not before, the State of Illinois shall
8 be considered the employer of the personal care attendants and
9 personal assistants working under the Home Services Program
10 under Section 3 of the Disabled Persons Rehabilitation Act,
11 subject to the limitations set forth in this Act and in the
12 Disabled Persons Rehabilitation Act. The State shall not be
13 considered to be the employer of personal care attendants and
14 personal assistants for any purposes not specifically provided
15 for in this amendatory Act of the 93rd General Assembly,
16 including but not limited to, purposes of vicarious liability
17 in tort and purposes of statutory retirement or health
18 insurance benefits. Personal care attendants and personal
19 assistants shall not be covered by the State Employees Group
20 Insurance Act of 1971 (5 ILCS 375/). "Public employer" or
21 "employer" as used in this Act, however, does not mean and
22 shall not include the General Assembly of the State of
23 Illinois, the Executive Ethics Commission, the Offices of the
24 Executive Inspectors General, the Legislative Ethics
25 Commission, the Office of the Legislative Inspector General,
26 the Office of the Auditor General's Inspector General, and
27 educational employers or employers as defined in the Illinois
28 Educational Labor Relations Act, except with respect to a state
29 university in its employment of firefighters and peace
30 officers. County boards and county sheriffs shall be designated
31 as joint or co-employers of county peace officers appointed
32 under the authority of a county sheriff. Nothing in this
33 subsection (o) shall be construed to prevent the State Panel or
34 the Local Panel from determining that employers are joint or
35 co-employers.

36 (p) "Security employee" means an employee who is

1 responsible for the supervision and control of inmates at
2 correctional facilities. The term also includes other
3 non-security employees in bargaining units having the majority
4 of employees being responsible for the supervision and control
5 of inmates at correctional facilities.

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

11 (r) "Supervisor" is an employee whose principal work is
12 substantially different from that of his or her subordinates
13 and who has authority, in the interest of the employer, to
14 hire, transfer, suspend, lay off, recall, promote, discharge,
15 direct, reward, or discipline employees, to adjust their
16 grievances, or to effectively recommend any of those actions,
17 if the exercise of that authority is not of a merely routine or
18 clerical nature, but requires the consistent use of independent
19 judgment. Except with respect to police employment, the term
20 "supervisor" includes only those individuals who devote a
21 preponderance of their employment time to exercising that
22 authority, State supervisors notwithstanding. In addition, in
23 determining supervisory status in police employment, rank
24 shall not be determinative. The Board shall consider, as
25 evidence of bargaining unit inclusion or exclusion, the common
26 law enforcement policies and relationships between police
27 officer ranks and certification under applicable civil service
28 law, ordinances, personnel codes, or Division 2.1 of Article 10
29 of the Illinois Municipal Code, but these factors shall not be
30 the sole or predominant factors considered by the Board in
31 determining police supervisory status.

32 Notwithstanding the provisions of the preceding paragraph,
33 in determining supervisory status in fire fighter employment,
34 no fire fighter shall be excluded as a supervisor who has
35 established representation rights under Section 9 of this Act.
36 Further, in new fire fighter units, employees shall consist of

1 fire fighters of the rank of company officer and below. If a
2 company officer otherwise qualifies as a supervisor under the
3 preceding paragraph, however, he or she shall not be included
4 in the fire fighter unit. If there is no rank between that of
5 chief and the highest company officer, the employer may
6 designate a position on each shift as a Shift Commander, and
7 the persons occupying those positions shall be supervisors. All
8 other ranks above that of company officer shall be supervisors.

9 (s) (1) "Unit" means a class of jobs or positions that are
10 held by employees whose collective interests may suitably
11 be represented by a labor organization for collective
12 bargaining. Except with respect to non-State fire fighters
13 and paramedics employed by fire departments and fire
14 protection districts, non-State peace officers, and peace
15 officers in the Department of State Police, a bargaining
16 unit determined by the Board shall not include both
17 employees and supervisors, or supervisors only, except as
18 provided in paragraph (2) of this subsection (s) and except
19 for bargaining units in existence on July 1, 1984 (the
20 effective date of this Act). With respect to non-State fire
21 fighters and paramedics employed by fire departments and
22 fire protection districts, non-State peace officers, and
23 peace officers in the Department of State Police, a
24 bargaining unit determined by the Board shall not include
25 both supervisors and nonsupervisors, or supervisors only,
26 except as provided in paragraph (2) of this subsection (s)
27 and except for bargaining units in existence on January 1,
28 1986 (the effective date of this amendatory Act of 1985). A
29 bargaining unit determined by the Board to contain peace
30 officers shall contain no employees other than peace
31 officers unless otherwise agreed to by the employer and the
32 labor organization or labor organizations involved.
33 Notwithstanding any other provision of this Act, a
34 bargaining unit, including a historical bargaining unit,
35 containing sworn peace officers of the Department of
36 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 (Source: P.A. 93-204, eff. 7-16-03; 93-617, eff. 12-9-03.)