



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5427

Introduced 2/5/2010, by Rep. Ed Sullivan, Jr.

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 315/28 new

Creates the Mass Transit District Labor Relations Act. Provides that no public employee or employee organization of a mass transit district shall engage in a strike, and no public employee or employee organization of a mass transit district shall cause, instigate, encourage, or condone a strike. Contains provisions concerning penalties, payroll deductions, objections, and injunctive relief. Amends the Illinois Public Labor Relations Act to make conforming changes. Effective immediately.

LRB096 16782 HLH 32082 b

1 AN ACT concerning local government.

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

4 Section 1. Short title. This Act may be cited as the Mass
5 Transit District Labor Relations Act.

6 Section 5. Strikes prohibited. No public employee or
7 employee organization of a mass transit district may engage in
8 a strike, and no public employee or employee organization of a
9 mass transit district may cause, instigate, encourage, or
10 condone a strike.

11 Section 10. Violations and penalties; presumption;
12 prohibition against consent to strike; determination; notice;
13 probation; payroll deductions; objections; and restoration.

14 (a) Violations and penalties. A public employee violates
15 this Act by engaging in a strike or violating subsection (c) of
16 this Section and is liable as provided in this Section. In
17 addition, any public employee who violates Section 5 of this
18 Act may be subject to removal or other disciplinary action for
19 misconduct.

20 (b) Presumption. For purposes of this Act, an employee who
21 is absent from work without permission or who abstains wholly
22 or in part from the full performance of his or her duties in

1 the normal manner without permission on the date when a strike
2 occurs, is presumed to have engaged in the strike on that date.

3 (c) Prohibition against consent to strike. No person
4 exercising any authority, supervision, or direction over any
5 public employee on the behalf of any public employer has the
6 power to authorize, approve, condone, or consent to a strike or
7 to the engaging in a strike by one or more public employees,
8 and that person shall not authorize, approve, condone, or
9 consent to that strike or engagement.

10 (d) Determination. If it appears that a violation of this
11 Act may have occurred, then the chief executive officer of the
12 unit of local government involved shall, on the basis of any
13 investigation and affidavits that he or she deems to be
14 appropriate, determine whether or not a violation has occurred
15 and the date or dates of the violation. If the chief executive
16 officer determines that a violation has occurred, he or she
17 shall further determine, on the basis of any further
18 investigation and affidavits that he or she deems to be
19 appropriate, the names of employees who committed the violation
20 and the date or dates thereof. That determination is not deemed
21 to be final until the completion of the procedures provided for
22 in this Act.

23 (e) Notice. The chief executive officer shall forthwith
24 notify each employee that he or she has been found to have
25 committed a violation, of the date or dates of the violation,
26 and of his or her right to object to the determination in

1 accordance with subsection (g) of this Section. He or she shall
2 also notify the chief fiscal officer of the unit of local
3 government of the names of all such employees and of the total
4 number of days, or part thereof, on which he or she determined
5 that a violation occurred. The notice to each employee must be
6 by personal service or by certified mail to the employee's last
7 address filed with the employer.

8 In cases regarding an employee governed under the Regional
9 Transportation Authority Act or the Metropolitan Transit
10 Authority Act, the chief executive officer is the Executive
11 Director of the Regional Transportation Authority.

12 (f) Payroll deductions. Not earlier than 30 nor later than
13 90 days following the date of a determination, the chief fiscal
14 officer of the unit of local government involved shall deduct
15 from the compensation of each such employee an amount equal to
16 twice his or her daily rate of pay for each day or part thereof
17 that it was determined that he or she had violated this Act.
18 The rate of pay must be computed as of the time of the
19 violation. In computing the deduction, a credit is allowed for
20 amounts already withheld from the employee's compensation on
21 account of absence from work or other withholding of services
22 on the day or days. In computing the 30-day to 90-day period of
23 time following the determination of a violation pursuant to
24 subsection (d) of this Section and when the employee's annual
25 compensation is paid over a period of time that is less than 52
26 weeks, that period of time between the last day of the last

1 payroll period of the employment term in which the violation
2 occurred and the first day of the first payroll period of the
3 next succeeding employment term is disregarded and not counted.

4 (g) Objections and restoration. Any employee who has been
5 determined to have violated this Act may object to that
6 determination by filing his or her sworn affidavit, supported
7 by available documentary proof, containing a short and plain
8 statement of the facts upon which he or she relies to show that
9 the determination was incorrect. The affidavit shall be subject
10 to the penalties of perjury. The affidavit must be submitted to
11 the chief executive officer within 20 days after the date on
12 which notice was served or mailed to him or her pursuant to
13 paragraph (e) of this Section. If the chief executive officer
14 determines that the affidavit and supporting proof establishes
15 that the employee did not violate this Act, then he or she
16 shall sustain the objection. If the chief executive officer
17 determines that the affidavit and supporting proof fails to
18 establish that the employee did not violate this subdivision,
19 he or she shall dismiss the objection and so notify the
20 employee. If the chief executive officer determines that the
21 affidavit and supporting proof raises a question of fact that,
22 if resolved in favor of the employee, would establish that the
23 employee did not violate this subdivision, he or she shall
24 appoint a hearing officer to determine whether in fact the
25 employee did violate this Act after a hearing at which the
26 employee shall bear the burden of proof. If the hearing officer

1 determines that the employee failed to establish that he or she
2 did not violate this Act, the chief executive officer shall so
3 notify the employee. If the chief executive officer sustains an
4 objection or the hearing officer determines on a preponderance
5 of the evidence that the employee did not violate this
6 subdivision, the chief executive officer shall forthwith
7 notify the chief fiscal officer who shall thereupon cease all
8 further deductions and refund any deductions previously made
9 pursuant to this Section. The determinations provided in this
10 paragraph are reviewable pursuant to the Administrative Review
11 Law.

12 Section 15. Disciplinary action; employee organizations.

13 (a) An employee organization that is determined to have
14 violated this Act is subject to disciplinary action in
15 accordance with the provisions of this Section.

16 (b) If it appears that a violation of this Act may have
17 occurred, it is the duty of the chief executive officer of the
18 public employer involved (i) forthwith to so notify the board
19 and the chief legal officer of the government involved and (ii)
20 to provide the Illinois Labor Relations Board and that chief
21 legal officer with such facilities, assistance, and data as
22 will enable the Board and the chief legal officer to carry out
23 their duties under this Section.

24 (c) If it appears that a violation of this Act may have
25 occurred, the chief legal officer of the government involved,

1 or the Board on its own motion, shall forthwith institute
2 proceedings before the Board to determine whether the employee
3 organization has violated the provisions of this Act.

4 (d) Proceedings against an employee organization under
5 this Section must be commenced by service upon it of a written
6 notice, together with a copy of the charges. A copy of the
7 notice and charges must also be served, for their information,
8 upon the appropriate government officials who recognize that
9 employee organization and grant to it the rights accompanying
10 that recognition. The employee organization has 8 days within
11 which to serve its written answer to the charges. The Board's
12 hearing must be held promptly thereafter, and at the hearing,
13 the parties may be represented by counsel and may summon
14 witnesses in their behalf. Compliance with the technical rules
15 of evidence is not required.

16 (e) In determining whether an employee organization has
17 violated this Act, the Board shall consider (i) whether the
18 employee organization called the strike or tried prevent it and
19 (ii) whether the employee organization made or was making good
20 faith efforts to terminate the strike.

21 (f) If the Board determines that an employee organization
22 has violated the provisions of this Act, the Board shall order
23 forfeiture of the employee organization's rights for such
24 specified period of time as the Board shall determine, or, in
25 the discretion of the Board, for an indefinite period of time
26 subject to restoration upon application, with notice to all

1 interested parties, supported by proof of good faith compliance
2 with the requirements of this Section since the date of the
3 violation, that proof to include, for example, the successful
4 negotiation, without a violation of this Act, of a contract
5 covering the employees in the unit affected by the violation.
6 If, however, a fine imposed on an employee organization remains
7 wholly or partly unpaid after the exhaustion of the cash and
8 securities of the employee organization, then the Board shall
9 direct that, notwithstanding the forfeiture, the membership
10 dues deduction are continued to the extent necessary to pay the
11 fine and the public employer shall transmit the moneys to the
12 court. In fixing the duration of the forfeiture, the Board
13 shall consider all the relevant facts and circumstances,
14 including but not limited to: (i) the extent of any willful
15 defiance of this Act, (ii) the impact of the strike on the
16 public health, safety, and welfare of the community, and (iii)
17 the financial resources of the employee organization.
18 Additionally, the Board may consider (i) the refusal of the
19 employee organization or the appropriate public employer or the
20 representative thereof, to submit to the mediation and
21 fact-finding procedures provided in this Act and (ii) whether,
22 if so alleged by the employee organization, the appropriate
23 public employer or its representatives engaged in such acts of
24 extreme provocation as to detract from the responsibility of
25 the employee organization for the strike. In determining the
26 financial resources of the employee organization, the Board

1 shall consider both the income and the assets of the employee
2 organization. If membership dues are collected by the public
3 employer, then the books and records of the public employer are
4 prima facie evidence of the amount so collected.

5 (g) An employee organization whose rights have been ordered
6 forfeited under this Section may be granted those rights after
7 the termination of the forfeiture only after complying with the
8 provisions of this Act.

9 (h) No compensation may be paid by a public employer to a
10 public employee with respect to any day or part thereof when
11 that employee is engaged in a strike against the employer. The
12 chief fiscal officer of the government involved shall withhold
13 compensation upon receipt of the notice; notwithstanding the
14 failure to have received that notice, no public employee or
15 officer having knowledge that the employee has so engaged in a
16 strike may deliver or cause to be delivered to that employee
17 any cash, check, or payment that, in whole or in part,
18 represents compensation.

19 Section 20. Public report. Within 60 days after the
20 termination of a strike, the chief executive officer of the
21 government involved shall prepare and make public a report in
22 writing, which shall contain the following information: (i) the
23 circumstances surrounding the commencement of the strike, (ii)
24 the efforts used to terminate the strike, (iii) the names of
25 those public employees whom the public officer or body had

1 reason to believe were responsible for causing, instigating, or
2 encouraging the strike and the varying degrees of individual
3 responsibility, and (iv) the sanctions imposed or proceedings
4 pending against each individual public employee.

5 Section 25. Application for injunctive relief.
6 Notwithstanding any other provision of law, if it appears that
7 public employees or an employee organization threaten or are
8 about to do, or are doing, an act in violation this Act, the
9 chief executive officer of the government involved shall (i)
10 forthwith notify the chief legal officer of the government
11 involved and (ii) provide that chief legal officer with such
12 facilities, assistance, and data as will enable the chief legal
13 officer to carry out his or her duties under this Section, and,
14 notwithstanding the failure or refusal of the chief executive
15 officer to so act, the chief legal officer of the government
16 involved shall forthwith apply to the circuit court for
17 injunctive relief.

18 Section 70. The Illinois Public Labor Relations Act is
19 amended by adding Section 28 as follows:

20 (5 ILCS 315/28 new)

21 Sec. 28. Mass transit workers. Beginning on the effective
22 date of this amendatory Act of the 96th General Assembly,
23 public employees and employee organizations of mass transit

1 districts are subject to the provisions of the Mass Transit
2 District Labor Relations Act, as well as to the provisions of
3 this Act. To the extent of any conflict, the provisions of the
4 Mass Transit District Labor Relations Act control over the
5 provisions of this Act.

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