

SB1988



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1988

Introduced 2/10/2011, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

5 ILCS 315/3

from Ch. 48, par. 1603

Amends the Illinois Public Labor Relations Act. Provides that persons who are serving or have served in positions that are wholly exempt from the requirements of *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), do not qualify as public employees under the Act.

LRB097 09291 JDS 49426 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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.

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

3 (e) "Essential services employees" means those public
4 employees performing functions so essential that the
5 interruption or termination of the function will constitute a
6 clear and present danger to the health and safety of the
7 persons in the affected community.

8 (f) "Exclusive representative", except with respect to
9 non-State fire fighters and paramedics employed by fire
10 departments and fire protection districts, non-State peace
11 officers, and peace officers in the Department of State Police,
12 means the labor organization that has been (i) designated by
13 the Board as the representative of a majority of public
14 employees in an appropriate bargaining unit in accordance with
15 the procedures contained in this Act, (ii) historically
16 recognized by the State of Illinois or any political
17 subdivision of the State before July 1, 1984 (the effective
18 date of this Act) as the exclusive representative of the
19 employees in an appropriate bargaining unit, (iii) after July
20 1, 1984 (the effective date of this Act) recognized by an
21 employer upon evidence, acceptable to the Board, that the labor
22 organization has been designated as the exclusive
23 representative by a majority of the employees in an appropriate
24 bargaining unit; (iv) recognized as the exclusive
25 representative of personal care attendants or personal
26 assistants under Executive Order 2003-8 prior to the effective

1 date of this amendatory Act of the 93rd General Assembly, and
2 the organization shall be considered to be the exclusive
3 representative of the personal care attendants or personal
4 assistants as defined in this Section; or (v) recognized as the
5 exclusive representative of child and day care home providers,
6 including licensed and license exempt providers, pursuant to an
7 election held under Executive Order 2005-1 prior to the
8 effective date of this amendatory Act of the 94th General
9 Assembly, and the organization shall be considered to be the
10 exclusive representative of the child and day care home
11 providers as defined in this Section.

12 With respect to non-State fire fighters and paramedics
13 employed by fire departments and fire protection districts,
14 non-State peace officers, and peace officers in the Department
15 of State Police, "exclusive representative" means the labor
16 organization that has been (i) designated by the Board as the
17 representative of a majority of peace officers or fire fighters
18 in an appropriate bargaining unit in accordance with the
19 procedures contained in this Act, (ii) historically recognized
20 by the State of Illinois or any political subdivision of the
21 State before January 1, 1986 (the effective date of this
22 amendatory Act of 1985) as the exclusive representative by a
23 majority of the peace officers or fire fighters in an
24 appropriate bargaining unit, or (iii) after January 1, 1986
25 (the effective date of this amendatory Act of 1985) recognized
26 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

1 officials.

2 (g-2) "General Assembly of the State of Illinois" means the
3 legislative branch of the government of the State of Illinois,
4 as provided for under Article IV of the Constitution of the
5 State of Illinois, and includes but is not limited to the House
6 of Representatives, the Senate, the Speaker of the House of
7 Representatives, the Minority Leader of the House of
8 Representatives, the President of the Senate, the Minority
9 Leader of the Senate, the Joint Committee on Legislative
10 Support Services and any legislative support services agency
11 listed in the Legislative Commission Reorganization Act of
12 1984.

13 (h) "Governing body" means, in the case of the State, the
14 State Panel of the Illinois Labor Relations Board, the Director
15 of the Department of Central Management Services, and the
16 Director of the Department of Labor; the county board in the
17 case of a county; the corporate authorities in the case of a
18 municipality; and the appropriate body authorized to provide
19 for expenditures of its funds in the case of any other unit of
20 government.

21 (i) "Labor organization" means any organization in which
22 public employees participate and that exists for the purpose,
23 in whole or in part, of dealing with a public employer
24 concerning wages, hours, and other terms and conditions of
25 employment, including the settlement of grievances.

26 (j) "Managerial employee" means an individual who is

1 engaged predominantly in executive and management functions
2 and is charged with the responsibility of directing the
3 effectuation of management policies and practices.

4 (k) "Peace officer" means, for the purposes of this Act
5 only, any persons who have been or are hereafter appointed to a
6 police force, department, or agency and sworn or commissioned
7 to perform police duties, except that the following persons are
8 not included: part-time police officers, special police
9 officers, auxiliary police as defined by Section 3.1-30-20 of
10 the Illinois Municipal Code, night watchmen, "merchant
11 police", court security officers as defined by Section 3-6012.1
12 of the Counties Code, temporary employees, traffic guards or
13 wardens, civilian parking meter and parking facilities
14 personnel or other individuals specially appointed to aid or
15 direct traffic at or near schools or public functions or to aid
16 in civil defense or disaster, parking enforcement employees who
17 are not commissioned as peace officers and who are not armed
18 and who are not routinely expected to effect arrests, parking
19 lot attendants, clerks and dispatchers or other civilian
20 employees of a police department who are not routinely expected
21 to effect arrests, or elected officials.

22 (l) "Person" includes one or more individuals, labor
23 organizations, public employees, associations, corporations,
24 legal representatives, trustees, trustees in bankruptcy,
25 receivers, or the State of Illinois or any political
26 subdivision of the State or governing body, but does not

1 include the General Assembly of the State of Illinois or any
2 individual employed by the General Assembly of the State of
3 Illinois.

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

22 (n) "Public employee" or "employee", for the purposes of
23 this Act, means any individual employed by a public employer,
24 including (i) interns and residents at public hospitals, (ii)
25 as of the effective date of this amendatory Act of the 93rd
26 General Assembly, but not before, personal care attendants and

1 personal assistants working under the Home Services Program
2 under Section 3 of the Disabled Persons Rehabilitation Act,
3 subject to the limitations set forth in this Act and in the
4 Disabled Persons Rehabilitation Act, and (iii) as of the
5 effective date of this amendatory Act of the 94th General
6 Assembly, but not before, child and day care home providers
7 participating in the child care assistance program under
8 Section 9A-11 of the Illinois Public Aid Code, subject to the
9 limitations set forth in this Act and in Section 9A-11 of the
10 Illinois Public Aid Code, but excluding all of the following:
11 employees of the General Assembly of the State of Illinois;
12 elected officials; executive heads of a department; members of
13 boards or commissions; the Executive Inspectors General; any
14 special Executive Inspectors General; employees of each Office
15 of an Executive Inspector General; commissioners and employees
16 of the Executive Ethics Commission; the Auditor General's
17 Inspector General; employees of the Office of the Auditor
18 General's Inspector General; the Legislative Inspector
19 General; any special Legislative Inspectors General; employees
20 of the Office of the Legislative Inspector General;
21 commissioners and employees of the Legislative Ethics
22 Commission; employees of any agency, board or commission
23 created by this Act; employees appointed to State positions of
24 a temporary or emergency nature; all employees of school
25 districts and higher education institutions except
26 firefighters and peace officers employed by a state university

1 and except peace officers employed by a school district in its
2 own police department in existence on the effective date of
3 this amendatory Act of the 96th General Assembly; managerial
4 employees; short-term employees; confidential employees;
5 independent contractors; persons who are serving, or have
6 served, in a position that is wholly exempt from the
7 requirements of *Rutan v. Republican Party of Illinois*, 497 U.S.
8 62 (1990); and supervisors except as provided in this Act.

9 Personal care attendants and personal assistants shall not
10 be considered public employees for any purposes not
11 specifically provided for in the amendatory Act of the 93rd
12 General Assembly, including but not limited to, purposes of
13 vicarious liability in tort and purposes of statutory
14 retirement or health insurance benefits. Personal care
15 attendants and personal assistants shall not be covered by the
16 State Employees Group Insurance Act of 1971 (5 ILCS 375/).

17 Child and day care home providers shall not be considered
18 public employees for any purposes not specifically provided for
19 in this amendatory Act of the 94th General Assembly, including
20 but not limited to, purposes of vicarious liability in tort and
21 purposes of statutory retirement or health insurance benefits.
22 Child and day care home providers shall not be covered by the
23 State Employees Group Insurance Act of 1971.

24 Notwithstanding Section 9, subsection (c), or any other
25 provisions of this Act, all peace officers above the rank of
26 captain in municipalities with more than 1,000,000 inhabitants

1 shall be excluded from this Act.

2 (o) Except as otherwise in subsection (o-5), "public
3 employer" or "employer" means the State of Illinois; any
4 political subdivision of the State, unit of local government or
5 school district; authorities including departments, divisions,
6 bureaus, boards, commissions, or other agencies of the
7 foregoing entities; and any person acting within the scope of
8 his or her authority, express or implied, on behalf of those
9 entities in dealing with its employees. As of the effective
10 date of the amendatory Act of the 93rd General Assembly, but
11 not before, the State of Illinois shall be considered the
12 employer of the personal care attendants and personal
13 assistants working under the Home Services Program under
14 Section 3 of the Disabled Persons Rehabilitation Act, subject
15 to the limitations set forth in this Act and in the Disabled
16 Persons Rehabilitation Act. The State shall not be considered
17 to be the employer of personal care attendants and personal
18 assistants for any purposes not specifically provided for in
19 this amendatory Act of the 93rd General Assembly, including but
20 not limited to, purposes of vicarious liability in tort and
21 purposes of statutory retirement or health insurance benefits.
22 Personal care attendants and personal assistants shall not be
23 covered by the State Employees Group Insurance Act of 1971 (5
24 ILCS 375/). As of the effective date of this amendatory Act of
25 the 94th General Assembly but not before, the State of Illinois
26 shall be considered the employer of the day and child care home

1 providers participating in the child care assistance program
2 under Section 9A-11 of the Illinois Public Aid Code, subject to
3 the limitations set forth in this Act and in Section 9A-11 of
4 the Illinois Public Aid Code. The State shall not be considered
5 to be the employer of child and day care home providers for any
6 purposes not specifically provided for in this amendatory Act
7 of the 94th General Assembly, including but not limited to,
8 purposes of vicarious liability in tort and purposes of
9 statutory retirement or health insurance benefits. Child and
10 day care home providers shall not be covered by the State
11 Employees Group Insurance Act of 1971.

12 "Public employer" or "employer" as used in this Act,
13 however, does not mean and shall not include the General
14 Assembly of the State of Illinois, the Executive Ethics
15 Commission, the Offices of the Executive Inspectors General,
16 the Legislative Ethics Commission, the Office of the
17 Legislative Inspector General, the Office of the Auditor
18 General's Inspector General, and educational employers or
19 employers as defined in the Illinois Educational Labor
20 Relations Act, except with respect to a state university in its
21 employment of firefighters and peace officers and except with
22 respect to a school district in the employment of peace
23 officers in its own police department in existence on the
24 effective date of this amendatory Act of the 96th General
25 Assembly. County boards and county sheriffs shall be designated
26 as joint or co-employers of county peace officers appointed

1 under the authority of a county sheriff. Nothing in this
2 subsection (o) shall be construed to prevent the State Panel or
3 the Local Panel from determining that employers are joint or
4 co-employers.

5 (o-5) With respect to wages, fringe benefits, hours,
6 holidays, vacations, proficiency examinations, sick leave, and
7 other conditions of employment, the public employer of public
8 employees who are court reporters, as defined in the Court
9 Reporters Act, shall be determined as follows:

10 (1) For court reporters employed by the Cook County
11 Judicial Circuit, the chief judge of the Cook County
12 Circuit Court is the public employer and employer
13 representative.

14 (2) For court reporters employed by the 12th, 18th,
15 19th, and, on and after December 4, 2006, the 22nd judicial
16 circuits, a group consisting of the chief judges of those
17 circuits, acting jointly by majority vote, is the public
18 employer and employer representative.

19 (3) For court reporters employed by all other judicial
20 circuits, a group consisting of the chief judges of those
21 circuits, acting jointly by majority vote, is the public
22 employer and employer representative.

23 (p) "Security employee" means an employee who is
24 responsible for the supervision and control of inmates at
25 correctional facilities. The term also includes other
26 non-security employees in bargaining units having the majority

1 of employees being responsible for the supervision and control
2 of inmates at correctional facilities.

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

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

1 the sole or predominant factors considered by the Board in
2 determining police supervisory status.

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

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

1 effective date of this Act). With respect to non-State fire
2 fighters and paramedics employed by fire departments and
3 fire protection districts, non-State peace officers, and
4 peace officers in the Department of State Police, a
5 bargaining unit determined by the Board shall not include
6 both supervisors and nonsupervisors, or supervisors only,
7 except as provided in paragraph (2) of this subsection (s)
8 and except for bargaining units in existence on January 1,
9 1986 (the effective date of this amendatory Act of 1985). A
10 bargaining unit determined by the Board to contain peace
11 officers shall contain no employees other than peace
12 officers unless otherwise agreed to by the employer and the
13 labor organization or labor organizations involved.
14 Notwithstanding any other provision of this Act, a
15 bargaining unit, including a historical bargaining unit,
16 containing sworn peace officers of the Department of
17 Natural Resources (formerly designated the Department of
18 Conservation) shall contain no employees other than such
19 sworn peace officers upon the effective date of this
20 amendatory Act of 1990 or upon the expiration date of any
21 collective bargaining agreement in effect upon the
22 effective date of this amendatory Act of 1990 covering both
23 such sworn peace officers and other employees.

24 (2) Notwithstanding the exclusion of supervisors from
25 bargaining units as provided in paragraph (1) of this
26 subsection (s), a public employer may agree to permit its

1 supervisory employees to form bargaining units and may
2 bargain with those units. This Act shall apply if the
3 public employer chooses to bargain under this subsection.

4 (3) Public employees who are court reporters, as
5 defined in the Court Reporters Act, shall be divided into 3
6 units for collective bargaining purposes. One unit shall be
7 court reporters employed by the Cook County Judicial
8 Circuit; one unit shall be court reporters employed by the
9 12th, 18th, 19th, and, on and after December 4, 2006, the
10 22nd judicial circuits; and one unit shall be court
11 reporters employed by all other judicial circuits.

12 (Source: P.A. 95-331, eff. 8-21-07; 96-1257, eff. 7-23-10.)