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Management Alert

State Of Illinois Makes It Easier To Exclude Public Employer Managers And Supervisors From Collective Bargaining -- But Only For Itself

For years, Illinois public employers have watched as their key managers and supervisors have been organized by unions due to the generous language in the Illinois Public Labor Relations Act (IPLRA) and the Illinois Educational Labor Relations Act (IELRA) that makes it very difficult to prove employees are exempt from organizing. It is harder for Illinois public employers to argue its employees are exempt from organizing as supervisors or managers than it is for private sector employers subject to the National Labor Relations Act. This has made it difficult for many public employers to manage their work forces.

During the recently ended lame-duck session, by the passage of Senate Bill 1556, the Illinois Legislature took action to address this issue -- but only for certain State employees. S.B. 1556, when signed by Governor Quinn, will amend the IPLRA to exclude more State managers, supervisors, newly excluded legislative liaisons, and other employees from bargaining. S.B. 1556 had passed the House back in May 2011, but only passed the Senate on January 3rd.

Under the new law, for State employees under the Attorney General, the Comptroller, the Secretary of State and the Treasurer, who were not already in a bargaining unit prior to December 2, 2008, the managerial exclusion has been revised as follows, with the new language underlined and the old, restrictive language struck through:

> "Managerial employee" means an individual who is engaged ~~predominantly~~ in executive and management functions or who ~~and~~ is charged with the ~~responsibility of directing the~~ effectuation of management policies and practices or who represents management interests by taking or recommending discretionary actions that effectively control or implement policy. Nothing in this definition prohibits an individual from also meeting the definition of "supervisor" under subsection (r) of this Section.

S.B. 1556, additions to 5 ILCS 315/3(j).

For State employees under the Attorney General, the Comptroller, the Secretary of State and the Treasurer, who were not already in a bargaining unit prior to December 2, 2008, the supervisory exclusion has been revised to simply subject these State employees to the same standard as private sector employees:

> [A "Supervisor is an] employee who qualifies as a supervisor under (A) Section 152 of the National Labor Relations Act and (B) orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

S.B. 1556, additions to 5 ILCS 315/3(r).

By adopting the NLRA definition and precedent, the Legislature basically removed the burdensome preponderance requirement applicable to non-police employees, eliminated the requirement that supervisors "consistently" exercise independent judgment, and added assignment of work as a supervisory function. Had the Legislature simply revised the IPLRA definition of supervisor, the language arguably would be changed as follows:

"Supervisor" is an employee ~~whose principal work is substantially different from that of his or her subordinates and~~ who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the ~~consistent~~ use of independent judgment. ~~Except with respect to police employment, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding~~.

5 ILCS 315/3(r) and 29 U.S.C. § 152(11). The bill also contains language, arguably applicable to all public employers, indicating that nothing prevents a person from being both an exempt manager and an exempt supervisor.

S.B. 1556 does not stop there. "Public Employer" has been amended to exclude from that definition the Office of the Governor, the Governor's Office of Management and Budget, the Illinois Finance Authority, the Office of the Lt. Governor, and the State Board of Elections. S.B. 1556, additions to 5 ILCS 315/3(o). Employers in those agencies now have no bargaining rights, as by definition they are no longer employed by public employers covered by the IPLRA.

S.B. 1556 creates a new exemption for "legislative liaisons" which applies not only to the Attorney General, Secretary of State, Comptroller and Treasurer, but also to any State agency. A "legislative liaison" is an individual whose job duties require the person to "regularly communicate in the course of his or her employment with any official or staff of the General Assembly . . . for the purpose of influencing any legislative action." S.B. 1556, adding 5 ILCS 315/3(i-5). "State agency" is narrowly defined to those in Section 3.1 of the Executive Reorganization and Implementation Act, the ICC, the Workers' Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Racing Board and the State Police Merit Board. S.B. 1556, adding 5 ILCS 315/3(g-5). S.B. 1556 further expressly excludes from the definition of "public employee" a variety of positions within State government, including but not limited to attorneys and certain decision-making employees under the Attorney General's office; certain Executive I or higher positions under the Secretary of State; certain positions exempt from the employment codes of the Treasurer, Comptroller, and Secretary of State; certain high level positions within State agencies; etc. S.B. 1556, additions to 5 ILCS 315/3(n).

Lastly, Governor Quinn will have a year from the effective date of the Act to designate as exempt up to 3,580 State employment positions within State agencies directly responsible to him. Up to 1,900 positions can be designated even though they already were certified in a bargaining unit on or after December 2, 2008. S.B. 1556, adding 5 ILCS 315/6.1. There are restrictions on which positions he can designate, which basically limit the designated exclusions to legislative liaisons, managerial employees, supervisors, Rutan-exempt positions exempt from jurisdiction B of the Personnel Code, certain term appointments, and certain director-level positions. That the Governor does not designate a position as exempt, however, will not prevent the State agency from challenging the certification of that position under the Act. *Id.*

Governor Quinn is anticipated to sign the legislation, although not right away. To get State Senator Harmon to drop a motion to reconsider the Senate vote, Governor Quinn did agree to: (1) negotiate with the unions over the law's implementation; (2) not sign the bill until the deadline for signing, so as to permit the negotiations to be completed and possible clarifying legislation to be drafted; (3) designate fewer employees as exempt than what the law permits; and (4) not cut the pay of employees whose positions are excluded from bargaining.

S.B. 1556 gives the State the ability to have more managers and supervisors who are not subject to organizing. But it does not address the fact that Illinois municipalities, universities, schools, and other governmental agencies face the same problems the State does by having so many managers and supervisors subject to organizing, and would have appreciated a public-employer-wide application of these changes.

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