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Illinois

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ILLINOIS
POLICE & NON-POLICE COLLECTIVE BARGAINING
FACT SHEET

As compared with other states, the Illinois Labor Relations Board ("ILRB" or "Board) is unusually protective of the right to bargain. The Board is more protective still of the ability of police unions to bargain over employer decisions. In the last several years in cases involving the Chicago Police Department, the Board has moderated somewhat by, in key cases, refusing to issue a decision but rather holding the matter "in abeyance." A few highlights follow:

- **Only Police Have the Right to Interest Arbitration**. The Illinois Labor Relations Act requires police bargaining units to resolve contractual impasses through interest arbitration. Most other types of public sector workers have the right to strike during a contract hiatus, but during its term the CBA generally precludes a strike. For police bargaining units, however, an impasse in mid-term bargaining would still be resolved through interest arbitration.
- **Illinois's Police Officers Bill of Rights Limits Any Changes to Disciplinary Processes**. For police (but no other unit), the Board holds that the terms of the disciplinary process are set by Illinois's Uniform Peace Officers Act and can be neither negotiated nor changed.
- **Illinois's Board is Unusually Protective of the Right to Bargain for Both Police and Non-Police.** The ILRB generally requires bargaining over changes to work rules because the violation of those rules could result in discipline. The decision to move work out of the bargaining unit is almost always a mandatory subject in all units.
- **In Politically Sensitive Police Cases, The Board Holds Police Decision "in Abeyance**." In cases involving the Chicago Police after the 2019 imposition of a consent decree, the Board has held the decisions over disciplinary enhancements "in abeyance" and ordered the parties to bargain. Likewise, the Board refused to decide whether the employer's decision to make police video recordings public is a mandatory subject of bargaining, instead holding the case "in abeyance" and ordering bargaining.
- **Moving to Civil Service is a MSB for All Units**. For both police and non-police, units, the Board has found that the decision to move review of disciplinary decision from private arbitration to a civil service forum to be a mandatory subject of bargaining.
- **Subcontracting More Likely to be an MSB for Police**. The Board is more likely to find the decision to subcontract a mandatory subject in a police units than in other types of unit.

STATUTORY AUTHORITY FOR COLLECTIVE BARGAINING

Coverage.

The Illinois Public Labor Relations Act, originally effective in 1984 covers both police and non-police collective bargaining.[1] The Illinois Education Labor Relations Act, also effective 1984, sets the process for collective bargaining between school districts and educational employees.[2] The statute largely treats police and non-police units the same, with the exception of impasse procedures.

Scope of Bargaining.

All parties are required to bargain collectively.[3] The statute defines "collective bargaining" as "bargaining over terms and conditions of employment, including hours, wages, and other conditions of employment, as detailed in Section 7 and which are not excluded by Section 4."[4] Section 7 again defines "collective bargaining" as follows:

> the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act.[5]

Section 4, then, sets out those things which are inherent management rights, to include "areas of discretion or policy such as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees."[6] Nonetheless, employers are required to bargain collectively with regard to policy over "matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives, except as provided in Section 7.5."[7] This, of course, creates a conflict, which the Board resolves by balancing the potential benefits of bargaining against the burden such bargaining will place on the employer.[8]

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[1] 5 ILL. COMP. STAT. §§ 315/1 to 315/28 (2024).
[2] 115 ILL. COMP. STAT. § 5/1 (2024).
[3] 5 ILL. COMP. STAT. § 315/10(a)(4) (2024).
[4] 5 ILL. COMP. STAT. § 315/3(b) (2024).
[5] 5 ILL. COMP. STAT. § 315/7 (2024).
[6] 5 ILL. COMP. STAT. § 315/4 (2014), *invalidated by In re Pension Reform Litig.*, 32 N.E.3d 1 (Ill. 2015) (finding reduction in pension benefits found in the same bill to be a constitutional violation inseverable from the remainder of the bill including this section).
[7] *Id.*
[8] *Central City Educ. Ass'n v. Ill. Educ. Lab. Rels. Bd.*, 599 N.E.2d 892 (Ill. 1992).

Impasse Procedure.

For non-police bargaining units, the ILRB maintains a roster of mediators available to assist parties reach an agreement.[9] In addition, non-police parties may elect to have an advisory interest arbitration decision issued by one of the arbitrators on the mediator roster.[10] Otherwise, non-police employees have the right to strike during a contract hiatus provided they have completed mediation and several other requirements.[11] During the term of a CBA, there is no right to strike and the employer may unilaterally implement if it reaches good faith impasse in negotiations.[12]

Police and fire fighters ("security and peace officers")[13] are precluded from striking.[14] Instead, those groups are required to go through mediation before declaring impasse.[15] Then, the parties are required to submit their unresolved issues to binding interest arbitration.[16] During the term of a contract, the parties also must employ interest arbitration to resolve bargaining disputes and the employer must maintain the status quo pending that arbitration decision.[17]

Unfair Labor Practices

The statute originally provided for two Labor Relations Boards: the State Board and the Local Board.[18] In 2000, the separate boards were eliminated, replaced by the "State Panel" and the "Local Panel" of the Illinois Labor Relations Board.[19] The State Panel decides cases involving state employees and smaller localities (population less than 2 million).[20] The Local Panel decides cases in localities with populations exceeding 2 million, which generally means Chicago, Cook County, and a few larger public districts.[21]

Where a party believes that an unfair labor practice has taken place, including the failure to bargain in good faith, the party may file a charge with the Illinois Labor Relations Board (ILRB). The Executive Director conducts an initial investigation to determine whether the allegations state a claims for a violation, and then the matter is heard before a hearing examiner, or it could be heard

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[9] 5 ILL. COMP. STAT. § 315/12 (2024).
[10] 5 ILL. COMP. STAT. § 315/13 (2024).
[11] 5 ILL. COMP. STAT. § 315/17 (2024).
[12] 5 ILL. COMP. STAT. § 315/17(a)(2) (2024) (allowing strikes only when the CBA "between the public employer and the public employees, if any, has expired, or such collective bargaining agreement does not prohibit the strike"); *cf. Chi. Transit Auth. v. Ill. Lab. Rels. Bd.*, 898 N.E.2d 176, 185–87 (Ill. App. Ct. 2008) (noting that the statutory requirements under Section 315/17 for conducting a lawful strike did not apply to a strike authorization vote where no strike actually occurred).
[13] 5 ILL. COMP. STAT. § 315/3(k) (2024) (defining peace officers); 5 ILL. COMP. STAT. § 315/3(p) (2024) (defining security employees).
[14] 5 ILL. COMP. STAT. § 315/18 (2024).
[15] 5 ILL. COMP. STAT. § 315/14 (2024).
[16] *Id.*
[17] *North Riverside Fire Fighters, Local 2714*, 33 PERI ¶ 33 (2016), *aff'd*, 34 PERI ¶ 69 (Ill. App. Ct. 2017).
[18] 5 ILL. COMP. STAT. § 315/5 (1999).
[19] 5 ILL. COMP. STAT. § 315/5.1 (2024).
[20] ILL. LAB. RELS. BD., ANNUAL REPORT 4 (2022), https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/publications/documents/FY22_Annual_Report.pdf
[21] *Id.*

directly before the appropriate panel of the Board.[22] If the matter is heard before a Hearing Examiner, parties may seek review by the Board by filing exceptions.[23]

Law Enforcement Officer Bill of Rights

Illinois has a "Uniform Peace Officers Disciplinary Act" (UPODA), which operates much like a Law Enforcement Officers Bill of Rights.[24] This statute places limits on any police department's ability to interrogate an officer by requiring the following: the investigation must take place at the facility where the officer is assigned,[25] the officer must be informed in writing of the nature of the investigation,[26] the interrogation must be for a "reasonable duration,"[27] a complete record or transcript of the interview must be provided to the officer, the officer has the right to have a lawyer present and must be advised in writing of that right,[28] and any admissions obtained cannot be used in future disciplinary investigations.[29]

In 2016, the Illinois legislature enacted the Police and Community Relations Improvement Act as an apparent counterweight to the UPODA.[30] That statute requires certain investigative processes in "officer-involved deaths."[31] The statute requires an outside investigation, including two investigators not employed by the law enforcement agency.[32] The outside agency is required to submit its investigative report to the State's Attorney.[33] If there are no charges filed against the officer, the report must be released publicly.[34]

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[22] 5 ILL. COMP. STAT. § 315/11 (2024). *See also Frequent Questions: What Happens When a Charge Is Filed with the Board?*, STATE OF ILL. LAB. RELS. BD., https://ilrb.illinois.gov/frequent.html#faq-item-faq_1485312475-0-9 [https://perma.cc/P2B5-R7XE] (last visited Nov. 4, 2024).
[23] ILL. ADMIN. CODE tit. 80, § 1200.135(b)(1)(B)–(C) (2024) (outlining appeals procedure for ULP claims and requiring exceptions be filed with the Board's General Counsel).
[24] 50 ILL. COMP. STAT. §§ 725/1–725/8 (2024).
[25] 50 ILL. COMP. STAT. § 725/3.1 (2024).
[26] 50 ILL. COMP. STAT. § 725/3.2 (2024).
[27] 50 ILL. COMP. STAT. § 725/3.5 (2024).
[28] 50 ILL. COMP. STAT. §§ 725/3.8–/3.9 (2024).
[29] 50 ILL. COMP. STAT. § 725/3.10 (2024).
[30] 2015 Ill. Laws 99–352 (codified as amended at 50 ILL. COMP. STAT. §§ 727/1-1 to /1-35 (2024)).
[31] 50 ILL. COMP. STAT. § 727/1-10 (2024).
[32] *Id.*
[33] *Id.*
[34] *Id.*

AGENCIES

Commonwealth Employment Relations Commission (CERB)

- **Statute:** 5 ILL. COMP. STAT. § 315/5 (2024).
- **Website:** linked here.

Board Members:

State Panel.

William E. Lowry (Chair)
Born in 1935 (87 years old), Lowry received an MS in industrial relations from Loyola Chicago. Host of *The Opportunity Line*, a weekly employment program that first aired on Chicago television station WBBM in 1967. VP HR at MacArthur Foundation.[35]

Kendra Cunningham.
Former staff attorney and business manager for the Illinois State Employees Association, Laborers' Local 2002.[36]

Jeffrey W. Mears. No information publicly available

Frances A. Hurley.
Hurley served five terms in the Illinois state legislature, representing the thirty-fifth district.[37] She was a member of the Joint Committee of Labor, Public Utilities Committee, and Elementary/Secondary Education Committee.[38]

Local Panel:

Lynn O. Sered (Chair)
Previously served on the Illinois Education Labor Relations Board as chair.[39] Also serves on City of Evanston Police and Fire Civil Service Commission.[40] Married to a state representative.[41]

Charles E. Anderson. No information publicly available

Angela C. Thomas. No information publicly available

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[35] *Biography: William E. Lowry, Jr.*, THE HISTORY MAKERS, https://www.thehistorymakers.org/biography/william-e-lowry-jr (last visited Nov. 4, 2024).
[36] David C.L. Bauer, *Murrayville Woman Reappointed to State Labor Relations Board*, JACKSONVILLE JOURNAL-COURIER (Jan. 26, 2021), https://www.myjournalcourier.com/news/article/Murrayville-woman-reappointed-to-state-Labor-15899164.php.
[37] *About Fran*, STATE REPRESENTATIVE FRAN HURLEY, https://franhurley.com/about (last visited Nov. 4, 2024).
[38] *Gov. Pritzker Announces Eight Appointments to Boards and Commissions*, ILLINOIS.GOV (Feb. 17, 2023), https://www.illinois.gov/news/press-release.26086.html [https://perma.cc/YLK3-KMEH].
[39] *See* ILL. EDUC. LAB. RELS. BD., ANNUAL REPORT: FISCAL YEAR 2020, at 3 (2020), https://www.ilga.gov/reports/ReportsSubmitted/2861RSGAEmail5393RSGAAttachAnnual%20Report%20FY%202020_07282021145403.pdf; Lynne Sered, LINKEDIN, https://www.linkedin.com/in/lynne-sered-a7a18742/ (last visited Nov. 4, 2024).
[40] Lynne Sered, LINKEDIN, https://www.linkedin.com/in/lynne-sered-a7a18742/ (last visited Nov. 4, 2024).
[41] Carol Felsenthal, *The Wives Club: No Wonder Blago Wanted that Job for Patti*, CHI. MAG. (May 13, 2010), https://www.chicagomag.com/chicago-magazine/felsenthal-files/may-2010/pat-quinn-carrie-zalewski-lynne-sered-patronage-appointments-dan-duffy/ [https://perma.cc/RF8Z-97SQ].

COMMON LAW OF MANDATORY SUBJECTS

In General

In determining whether a subject is mandatory, the ILRB uses the "*Central City*" test:

1. Is the matter one of wages, hours, and terms or conditions of employment;
2. If yes, is the matter one of inherent managerial authority; and
3. If yes, the Board balances the benefits that bargaining will have on the decision making process with the burdens that bargaining imposes on the employer's authority. [42]

Put another way, "[A] decision is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: 1) is either not a matter of inherent managerial authority; or 2) is a matter of inherent managerial authority, but the benefits of bargaining outweigh the burdens bargaining imposes on the employer's authority."[43] "A matter concerns 'wages, hours and terms and conditions of employment' if it '(1) involved a departure from previously established operating practices, (2) effected a change in the conditions of employment, or (3) resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit.'"[44]

Discipline and Oversight.

Work Rules. In both the police and non-police contexts, the Board is unusually protective of the right to bargain over disciplinary rules. In the non-police context, the Board finds in nearly every case there was a bargaining obligation even going so far as to say that the imposition of disciplinary rules is not an inherent management right.[45] "Implementation of a work rule which

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[42] *Central City Educ. Ass'n v. Ill. Educ. Lab. Rels. Bd.*, 599 N.E.2d 892, 905 (Ill. 1992).

[43] *Amalgamated Transit Union, Local 241*, 21 PERI ¶ 95 (2005).

[44] *International Brotherhood of Teamsters, Local 700*, 34 PERI ¶ 106 (2017) (quoting *International Brotherhood of Teamsters, Local 700 v. Ill. Lab. Rels. Bd.*, 73 N.E.3d 108, 122 (Ill. App. Ct. 2017)); *See e.g.*, *id.* (holding that a sheriff's order stating that employees may not associate with individuals who were gang members was a mandatory topic of bargaining); *Cnty. of Cook v. Ill. Lab. Rels. Bd*., 70 N.E.3d 795, 811 (Ill. App. Ct. 2017) (holding that a sheriff's order modifying its existing secondary employee policy was a mandatory topic of bargaining); *Chi. Park Dist. v. Ill. Lab. Resl. Bd.*, 820 N.E.2d 61, 67–68 (Ill. App. Ct. 2004).

[45] *CTA Trade Coalition*, 22 PERI ¶ 120 (2006) (implementation of a new "rule book" for CTA employees was an MSB); *see also Cicero Fire Fighters Union International Association of Fire Fighters, Local 717*, 24 PERI ¶ 75 (2008) (requiring medical evaluations for use of leave upon threat of loss of pay was a MSB); *Professional Fire Fighters of Elmhurst, Local 3541*, 39 PERI ¶ 99 (2023) (changes to "fitness for duty" requirements and requiring release of medical information were MSB which employer unilaterally changed in violation of the Act); *cf. Service Employees International Union, Local 73*, 24 PERI ¶ 26 (2008) (providing nurses with "progress reports" was not a MSB because there was an "objective account regarding various factors" and it "did not affect wages, promotional opportunities or initiate a new disciplinary policy"); *International Brotherhood of Teamsters, Local 700*, 35 PERI ¶ 154 (2019) (enhanced enforcement of existing requirements that garbage truck drivers complete "truck sheets" did not amount to a change, though the disciplinary rule was an MSB).

subjects employees to discipline has an obvious and plain impact on the wage, hours and terms and conditions of their employment."[46]

In the police context, the Board has been similarly protective,[47] but two cases in the last five years suggest a change in tone, if not outcome. The first case, decided shortly before the consent decree issued governing the Chicago Police, the department attempted to change its disciplinary matrix to enhance the penalties for some misconduct.[48] The union contended this was a subject that should have been bargained before implementation. The Board agreed with the union finding the disciplinary matrix to be a mandatory subject of bargaining.[49] Normally, this would have meant the City would have to withdraw its new rules during the pendency of interest arbitration, but the Board held its decision "in abeyance" to allow the parties to bargain over a new matrix.[50] In the second case, the union proposed to limit the reporting requirements for instances where an officer points a firearm at a citizen.[51] The City contended that this proposal is not a mandatory subject, and the Board agreed this time with the City, but still ordered bargaining over the "disciplinary issues surrounding the [reporting] policy."[52]

Surveillance. Before 2012, the Board generally found the implementation of surveillance mechanisms, like cameras, to be a mandatory subject.[53] In *Illinois Fraternal Order of Police Labor Council v. Village of Summit* (a police case), the Board found that the first time use of existing surveillance recordings as support for discipline did not require bargaining.[54] Thereafter, the Board's cases regarding non-police became much less likely to find implementation of surveillance required bargaining.[55] On the police side, strangely, there are no cases challenging the

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[46] *Service Employees International Union, Local 73*, 24 PERI ¶ 22 (2008) (requiring union stewards to sign in and out was an MSB).

[47] *E.g.*, *Service Employees International Union, Local 73*, 20 PERI ¶ 111 (2003) (employer's implementation discipline based on existing drug and alcohol policy stated a ULP); *Fraternal Order of Police, Lodge 7*, 38 PERI ¶ 56 (2021) (employer had obligation to bargain over the disciplinary impacts of its "swiping policy" requiring employees to record their time by swiping in and out).

[48] *Fraternal Order of Police, Lodge #7*, 34 PERI ¶ 178 (2018).

[49] *Id.*

[50] *Id.*

[51] *Fraternal Order of Police, Lodge No. 7 and City*, 37 PERI ¶ 55 (2020).

[52] *Id.*

[53] *See Service Employees International Union, Local 73*, 20 PERI ¶ 35 (2004) (installation of hidden cameras to capture potential wrongdoing of school district employee was an MSB); *Rossville-Alvin Community Unit School District No. 7*, 19 PERI ¶ 158 (2003) (fingerprinting of current employees—including those who are recently hired—was an MSB because the results of the fingerprinting might lead to an employee's discharge, the procedure also affects employees' job security).

[54] *Illinois Fraternal Order of Police Labor Council*, 28 PERI ¶ 154 (2012)("[W]e do not see how Respondent's merely evidentiary use of the video footage, from surveillance cameras whose presence was already well known to both the employees and the [Police union], constitutes a material change in the employees' terms and conditions of employment.").

[55] *Amalgamated Transit Union, Local 241*, 29 PERI ¶ 99 (2012) (implementation of "Drive Cam," a video surveillance system for bus drivers, was not an MSB because it did not materially change employees' terms and conditions of employment); *Painters District Council No. 14*, 33 PERI ¶ 61 (2016) (upholding examiner's decision that the use of surveillance cameras installed on the property to support discharge was an MSB—the use of handheld cameras was not an MSB because it did not differ from real-time observation); *cf. Service Employees International Union, Local 73*, 31 PERI ¶ 3 (2014) (finding the installation of a video camera intended to monitor library patrons but eventually used in employee discipline was an MSB because the union did not know of the cameras and the recording "intrude[d] upon employee interests including . . . privacy").

implementation of dashboard cameras but media attention to whether or not those cameras were ever used.[56] However, there are two cases regarding the release of video recordings of officer misconduct, both of which arose after in Chicago after the 2018 consent decree. In one case, the City implemented a "Transparency Policy" requiring the release of video recordings within 60 days of an event.[57] The union contended that bargaining was required, and the Board punted holding the matter "in abeyance" to allow the parties time to bargain.[58] There was no further litigation, so presumably, there was an agreement reached on the subject.[59]

Disciplinary Process and Review. As to disciplinary process changes, the cases are starkly different for police and non-police units. In non-police units, changes to the process are rarely found to be mandatory subject because, except in the most dramatic cases, the Board concludes that there is no actual change in the employer's practice.[60] In the case of police, the Uniform Peace Officers Discipline (UPOD) Act sets the terms for disciplinary process and, therefore, those rules cannot be changed, even through bargaining. Thus, the Board has found—even as the Chicago Police Department attempted to make changes in response to the 2019 consent decree—these subjects must remain unchanged because "[such bargaining would] seek a waiver of the Union's statutory rights."[61] Where the employer sought to retain disciplinary records indefinitely—a term not covered by UPOD—the Board still found this to be a mandatory subject of bargaining.[62] In 2023, the Board addressed the question of whether change to the Disciplinary Review Board's process must be bargained, concluding that it also was a mandatory subject.[63]

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[56] Perhaps fittingly, there have been a series of stories where Police dashboard cameras have not been operational despite special orders from Police Departments. *E.g.*, Carol Marin & Don Moseley, *Chicago Police Dashboard Cameras Questioned in Death of Teen Shot by Cop*, NBC CHI. (Nov. 14, 2015), https://www.nbcchicago.com/news/local/police-dashboard-cameras-questioned/2000338/; Samuel Lieberman, *Chicago Police Have Been Sabotaging Their Dash Cams*, INTELLIGENCER (Jan. 27, 2016), https://nymag.com/intelligencer/2016/01/chicago-police-officers-tampered-with-dash-cams.html (sabotaging dash cams).

[57] *Fraternal Order of Police, Lodge #7*, 35 PERI ¶ 148 (2019).

[58] *Id.*; *cf. International Brotherhood of Teamsters, Local 700*, 36 PERI ¶ 110 (2020) (publication of Merit Board decisions and related videos was not an MSB because it did not concern employees' terms and conditions of employment—failing the first prong of *Central City*).

[59] In the wake of the killing of 17-year-old Laquan McDonald, Chicago has become a leader of body-camera footage transparency. *See* Eric Umansky, *How Chicago Became an Unlikely Leader in Body-Camera Transparency*, PROPUBLICA (Jan. 23, 2024), https://www.propublica.org/article/how-chicago-became-leader-body-camera-transparency-police.

[60] *Compare Service Employees International Union, Local 73*, 25 PERI ¶ 76 (2009) (taping of disciplinary interviews was not a change to prior practice and therefore not an MSB), *with Professional Fire Fighters of Elmhurst, Local 3541*, 38 PERI ¶ 40 (2021) (an individual manager driving by employee's house to investigate whether he was appropriately on medical leave was insufficient to show a change in investigatory process).

[61] *Fraternal Order of Police, Lodge No. 7*, 37 PERI ¶ 48 (2020) (proposals to allow anonymous complaints against officers—eliminating the requirement of an affidavit and the requirement to inform the office of the name of the complainant—could not be included in the employer's final proposal submitted to interest arbitration).

[62] *Id. But see City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 181 N.E.3d 18 (Ill. 2020) (overturning a grievance arbitrator's award finding it was a violation of the CBA not to destroy disciplinary records because the decision was contrary to the well-defined public policy of retaining records).

[63] *Illinois Troopers Lodge No. 41, Fraternal Order of Police*, 40 PERI ¶ 43 (2023)(elimination of the existing Disciplinary Review Board and replacement with a new body, including the change to the officer's ability to provide an in-person statement, the mandatory application of a disciplinary matrix, and compulsory officer participation were MSBs); *Policemen's Benevolent & Protective Association, Unit 156 A, B, & C*, 40 PERI ¶ 40 (2023) (employer submission of proposed changes to the Disciplinary Review Board process was bargainable because it did not change any provision in the Uniform Peace Officers Disciplinary Act).

Some jurisdictions in Illinois have attempted to remove certain kinds of discipline from the contractual arbitration process in favor of a civil service-type process. In the non-police context, when an employer sought to remove discipline from the arbitration process altogether, the Board found it to be a violation of the underlying statute and, therefore, not bargainable.[64] In the police context, a 1998 Illinois Supreme Court decision held the opposite for police, *i.e.*, that a municipality could *not* delegate disciplinary review to an arbitrator where a public civil service agency had that authority. In response, in 1999 and again in 2007, the Illinois legislature amended the public safety civil service statute to reverse the ruling.[65] Thereafter, the Board required bargaining over any effort to move disciplinary disputes to a civil service forum.[66]

Reassignment and Skimming.

For both police and non-police, the Board is very protective of decisions to remove bargaining unit work or transfer it to another bargaining unit. [67] In the three part *Central City* test, the Board will generally find the "removal or transfer of bargaining unit work affects [terms and conditions]."[68] By contrast, the Board will usually find the move of job duties out of the bargaining unit is not an inherent management right unless is it part of a "genuine reorganization" To show a genuine reorganization:

> [A]n employer must demonstrate one or more of the following: 1) that its organizational structure has been fundamentally altered; 2) that the nature or essence of the services has been substantially changed; or 3) that the nature and essence of a position has been subjectively altered such that the occupants of that position no longer have the same qualifications, perform the same functions or have the same purpose or focus as had the previous employees.[69]

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[64] *Midlothian Professional Fire Fighters Association, Local 3148*, 29 PERI ¶ 125 (2013) (employer could not insist to impasse on contract provision removing grievance and arbitration from disciplinary decisions because 5 ILL. COMP. STAT. § 315/8 (2024) requires grievance and arbitration provisions, so changing the contract was impermissible); *International Association of Firefighters, Local 1526*, 8 PERI ¶ 2039 (1992), *aff'd* 638 N.E.2d 1144 (Ill. App. Ct. 1994). *Forest Preserve Dist. of Cook Cnty. v. Ill. Loc. Lab. Rels. Bd.*, 546 N.E.2d 675 283 (Ill. App. Ct. 1989) (duty to bargain arbitration of disciplinary disputes not preempted by the statutory civil service system).

[65] 1999 Ill. Laws 91-650; 2007 Ill. Laws 95-356 (codified as amended at 65 ILL. COMP. STAT. 5/10-2.1-17). Of relevant part, the statute reads, "The hearing shall be as hereinafter provided, unless the employer and the labor organization representing the person have negotiated an alternative or supplemental form of due process based upon impartial arbitration as a term of a collective bargaining agreement. Such bargaining shall be mandatory unless the parties mutually agree otherwise. Any such alternative agreement shall be permissive." 65 ILL. COMP. STAT. 5/10-2.1-17.

[66] *Policemen's Benevolent Labor Committee*, 31 PERI ¶ 166 (2013) (declaratory ruling that Employer's proposal to require certain kinds of discipline be challenged through the Merit System Board, and not arbitration, was an MSB and would have to be submitted to interest arbitration); *see also Fraternal Order of Police, Lodge #7*, 38 PERI ¶ 20 (2021) (declaratory ruling that an employer's proposal to exclude low-level discipline from arbitration was a permissive subject because it contravened the statutory allowance for discipline to be subject to arbitration).

[67] *Amalgamated Transit Union, Local 241*, 21 PERI ¶ 95 (2005).

[68] *Anna-Jonesboro Community High School Education Association, IEA-NEA*, 20 PERI ¶ 3 (2003).

[69] *American Federation of State, County and Municipal Employees, Council 31*, 17 PERI ¶ 2046. *See also Teamsters, Local Union No. 714*, 12 PERI ¶ 3021 (1996), *aff'd*, 14 PERI ¶ 4016 (1998) (unilateral decision to transfer unit work to non-unit personnel unlawful absent bona fide reorganization).

The ILRB is far more likely than most states to find bargaining required before moving bargaining unit work out of the unit. The ILRB's rationale for this expansive interpretation is that "the decision to transfer work out of a bargaining unit causes that unit to lose actual or potential work, wages, and hours."[70] This is true in both the police[71] and non-police context.[72]

Subcontracting.

The ILRB's basic rules for subcontracting decisions are the same across all units. An employer's unilateral subcontracting decision is a mandatory subject of bargaining when the subcontracting (1) involved a departure from previously established operating practices, (2) effected a change in the conditions of employment, or (3) resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit.[73]

In a little less than half of non-police cases, the ILRB finds no duty to bargain over a subcontracting decision.[74] In all of the police cases, however, the ILRB finds a bargaining obligation, including one case where Village of Ford Heights sought to enter into an agreement with another public agency to provide its police services after a Ford Heights officer engaged

[70] *Illinois Fraternal Order of Police Labor Council*, 20 PERI ¶ 99 (2004) (employer's decision to transfer work from patrol offices bargaining unit to non-unit part-time officers was an MSB).
[71] *E.g.*, *Illinois Fraternal Order of Police Labor Council*, 20 PERI ¶ 99 (2004) (police department' s decision to address staffing shortage by hiring part-time non-unit employees to perform unit work adversely affected the unit's viability even though no unit employees lost benefits or experienced a change in hours); *Peoria Firefighters Association, Local 544*, 3 PERI ¶ 2025 (1987) ("The fact that no presently employed police officer lost work due to the transfer of work out of the bargaining unit is not dispositive of bargainability . . . ."); *Illinois Fraternal Order of Police, Labor Council*, 28 PERI ¶ 18 (2011), *aff'd*, *Cnty. of St. Clair v. Ill. Lab. Rels. Bd.*, 29 PERI ¶ 20 (Ill. Ap. Ct. 2012) (finding a mandatory subject where the employer assigned patrol of Metrolink to a new division though the patrols had formerly been done by county police); *Village of Sauk Village*, 35 PERI ¶ 55 (2018) (union's proposal to limit the usage of part-time or reserve (non-bargaining unit) officers to 1/3 of the total bargaining unit officers was an MSB because it affected the employer's ability to transfer work out of the bargaining unit).
[72] *E.g.*, *American Federation of State, County and Municipal Employees, Council 31*, 28 PERI ¶ 67 (2011) (transfer of maintenance work out of the bargaining unit was mandatory subject even if it did not change bargaining unit employees' duties or benefits); *Harlem Federation of Teachers, Local 540*, 30 PERI ¶ 153 (2013) (elimination of school nurse position and assigning duties to non-bargaining unit positions was an MSB because it transferred work out of the unit); *Maine Teachers' Association, IEA-NEA*, 37 PERI ¶ 19 (2020) (transfer of work of school counselors to College Admission Specialists was an MSB because it removed work from the bargaining unit); *cf. American Federation of State, County and Municipal Employees, Council 31*, 29 PERI ¶ 162 (2013) (elimination of a call center system was a legitimate reorganization, and therefore the resulting elimination of work was not a mandatory subject).
[73] *City of Belvidere v. Ill. State Lab. Rels. Bd.*, 692 N.E.2d 295, 303 (1998).
[74] *Bellwood Professional Firefighters Association, IAFF, Local 4232*, 22 PERI ¶ 122 (2006) (contracting out paramedic functions was not a mandatory subject); *Amalgamated Transit Union, Local 241 v. Ill. Lab. Rels. Bd.*, 33 PERI ¶ 107 (Ill. App. Ct. 2017) (elimination of fare collection positions was not a mandatory subject); *Forrest Preserve Dist. of Cook Cnty. v. Ill. Lab. Rels. Bd.*, 22 PERI ¶ 171 (Ill. App. Ct. 2006) (privatization of golf courses was a mandatory subject); *Cmty. Unit Sch. Dist. No. 5 v. IELRB*, 30 PERI 313 (2014) *rev'g American Federation of State, County and Board of Education of McLean County Unit Dist. 5 v. Ill. Lab. Rels. Bd.*, 29 PERI ¶ 174 (Ill. App. Ct. 2013) (contracting out of all of the bargaining unit work during the course of bargaining the first contract was an unfair labor practice); *Service Employees International Union, Local 73*, 33 PERI ¶ 49 (2016) (decision to contract out all firefighting work was a mandatory subject).

extensive use of force on citizens including giving a suspect a black eye, shooting a dog, and dragging a woman out of a convenience store.[75]

There is, however, a dramatic difference between police and non-police units in how much the employer must do to satisfy its bargaining obligation.[76] In the non-police context, the ILRB holds that the employer must merely meet with the Union and received the Union's proposals.[77] A single meeting can be sufficient to meet this obligation.[78] Once the parties have met and failed to come to an agreement, the employer may implement its decision to subcontract.[79] In the police context, however, the employer cannot implement its decision to subcontract, even where the parties have negotiated to impasse. This is because the employer has an obligation to take any unresolved issue to interest arbitration and must maintain the status quo in the meantime:

> For the majority of public employees who preserve the right to strike, the inquiry does end with satisfying the requirements set forth in Section 7, after which they may elect to exercise their option to strike. However, for those categories of employees who are statutorily deprived of the right to strike in deference to larger societal interests, the Act creates the alternate protections . . . including the right to have the status quo unaltered during the pendency of that impasse resolution process, as expressly articulated in Section 14(1) . . . .
>
> . . . [W]e appreciate the frustration experienced by a public employer that is compelled to go through the interest arbitration process, trusting to the interest arbitrator to take cognizance of its financial constraints or ultimately being left to challenge the propriety of the award after being forced to expend significant costs to maintain the status quo already.[80]

Duties

In general, the Board finds that changes to work assignments involve a departure from previously established operating practices, and therefore affect employees' terms and conditions of employment when the change involves an increase in workload or expands the scope of employees' existing job functions.[81] Additionally, the Board will find changes to work assignments

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[75] *Metropolitan Alliance of Police, Ford Heights Chapter #243*, 26 PERI ¶ 145 (2010), *aff'd*, 28 PERI ¶ 147 (Ill. App. Ct. 2012); *see also Illinois Fraternal Order of Police, Lodge 7*, 21 PERI ¶ 83 (2005), *aff'd*, 22 PERI ¶ 82 (Ill. App. Ct. 2006) (finding the decision to provide some of the traffic control functions at Bears games at Soldiers Field was a mandatory subject).

[76] *SEIU Technical Staff Association, IEA-NEA*, 20 PERI ¶ 21 (2004) (where the decision to subcontract is a mandatory subject, the employer much provide the union with notice of the consideration of a subcontract before it is finalized and then meet with the union to provide an opportunity to discuss and explain the decision and give consideration to any counterproposals the union makes).

[77] *Community Unit School Dist. No. 5 v. Ill. Educ. Lab. Rels. Bd.*, 30 PERI ¶ 313 (Ill. App. Ct. 2014), *rev'g*, *American Federation of State, County and Board of Education of McLean County Unit Dist. 5*, 29 PERI ¶ 174 (2013) (the employer met its obligation by meeting several times with the Union)

[78] *Metropolitan Alliance of Police, Chapter, 117*, 31 PERI ¶ 157 (2015) (finding one meeting sufficient to meet obligation to bargain where the Bd finds the Union did "little to advance" negotiations).

[79] *Id.*

[80] *North Riverside Fire Fighters, Local 2714*, 33 PERI ¶ 33 (2016), *aff'd*, 34 PERI ¶ 69 (Ill. App. Ct. 2017).

[81] *Amalgamated Transit Unit, Local 241*, 34 PERI ¶ 1 (2017); *Vill. of Bensenville*, 14 PERI ¶ 2042 (1998).

that relate to employees' safety also impacts employees' terms and conditions of employment because health and safety matters regarding the unit employees' workplaces are of vital interest to the employees.[82]

These safety rules play out differently in non-police and police units. In the non-police units, the Board's decisions do not always equate safety with mandatory bargaining.[83] In police cases, though, safety issues generally led to a finding of a mandatory subject.[84] In an infamous 2017 case, two Chicago Airport officers physically removed a passenger from an aircraft after the passenger refused to relinquish his seat on an overbooked flight.[85] In response to public pressure, the City of Chicago removed certain law enforcement trappings and power from these officers, including the removal of the word "police" and a star logo from their uniforms, changing their titles to "Security Officers" from "Police", and withdrawing their power of arrest.[86] The Union alleged these changes affected the officers' safety in that the trappings of authority (and actual arrest authority) affected their ability to keep themselves and other safe by deterring harmful conduct.[87] The Board avoided deciding this question by basing its decision on its factual conclusion that these officers never possessed actual police powers and therefore this was not a change.[88] The Board concluded that, even if there were actual changes, the balance favors bargaining because in the emergent situation created by the incident there is no proposal the union could have made that would have affected the City's decision.[89] This leaves open the question of whether in a different case the removal of indicia of authority from police officers would need to be bargained.

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[82] *International Brotherhood of Teamsters, Local 700*, 34 PERI ¶ 106 (2017).
[83] *Compare id.* (assignment to cut grass on the side of the highway was a mandatory subject because it created safety risk for employee), *with Service Employees International Union, Local 73*, 21 PERI ¶ 146 (2005) (employer's decision to assign the duties of safety inspection to a particular employee was not a mandatory subject because "[d]istrict had a management right to determine whether there were unsafe conditions").
[84] *Metropolitan Alliance of Police, Bensenville Police Chapter #165*, 19 PERI ¶ 119 (2003) (department's requirement that police cross-train as EMT was a mandatory subject because affected police safety); *Policemen's Benevolent and Protective Association of Illinois, Unit 156-Sergeants*, 19 PERI ¶ 69 (2003) (Department's implementation of a post-9/11 "suspicious package response policy" which required officers to respond to a report of a suspicious package did affect terms and conditions of employment because of its impact on safety. However, the balancing favored no bargaining because of "the necessity for responding quickly and efficiently to the crisis.").
[85] Julie Creswell & Sapna Maheshwari, *United Grapples with PR Crisis Over Videos of Man Being Dragged Off Plane*, N.Y. TIMES (Apr. 11, 2017), https://www.nytimes.com/2017/04/11/business/united-airline-passenger-overbooked-flights.html.
[86] Travis M. Andrews, *United Airlines Dragging Incident That Went Viral Produces Firings, Suspensions of Officers*, WASH. POST (Oct. 17, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/10/17/united-airlines-dragging-incident-that-went-viral-produces-firings-suspensions-of-officers/.
[87] *Service Employees, International Union, Local 73*, 35 PERI ¶ 69 (2018).
[88] *Id.*
[89] *Id.*