

---

# policyprofiles

---

CENTER FOR GOVERNMENTAL STUDIES

**Northern Illinois University**

**issue:**      *Public Sector Collective Bargaining:  
The Illinois Experience*

**Martin H. Malin**

- *Illinois' public sector collective bargaining statutes have been a success.*
- *They have brought collective bargaining to thousands of the state's public employees.*
- *They did not result in an increase in strikes in Illinois.*
- *Interest arbitration has produced a rich body of arbitration awards, but it tends to discourage innovation.<sup>1</sup>*

It is often said that states are laboratories for experimenting with different ways to solve public problems. Nowhere is this more true than with respect to public sector collective bargaining. State law governs the collective bargaining rights of public employees, and the approaches range from such states as Texas and Virginia where public sector collective bargaining is illegal to Illinois and Minnesota which give government employees the most liberal right to strike in the country. This article will review the evolution of Illinois' approach to public employee unionization and collective bargaining.

## **How did Illinois' public sector bargaining law evolve?**

Collective bargaining legislation came comparatively late to the public sector. Although Congress enacted the Railway Labor Act governing railroads and later airlines in 1926, and the National Labor Relations Act governing the rest of the private sector in 1935, no state enacted a public sector collective bargaining statute until Wisconsin did so in 1959. Illinois' statutes were not enacted until 1983. They took effect in 1984.

The absence of a statute, however, did not prevent public employees from joining unions. The Chicago Teachers Federation, the forerunner of the Chicago Teachers Union, was organized in 1898; it affiliated with the Chicago Federation of Labor in 1902 and with the American Federation of Labor in 1914. By 1917, more than half of the 7,000 teachers in the Chicago Public Schools reportedly were members of the union. Also in that year, the Illinois Supreme Court held it lawful for the Chicago Board of Education to prohibit membership in the union on pain of discharge.

Courts at that time distinguished between an individual's First Amendment right of free association and the individual's government job, which the courts considered to be a privilege. In a series of decisions in the 1960s, the United States Supreme Court overruled this right/privilege distinction, and lower courts soon afterward held that public employees have a First Amendment right to join labor unions.

Union membership does not equate to union representation, however. In the absence of a statute, an employer would recognize and bargain with a union only if it chose to do so. An employer could rescind prior recognition regardless of how long the prior relationship had lasted and could discriminate between groups of employees, recognizing a union for one group while refusing to recognize a union for other groups.



# policyprofiles

Nevertheless, a good deal of collective bargaining occurred in Illinois before 1984. Although strikes were illegal, they still occurred with considerable frequency. The United States Bureau of Labor Statistics reported that the Illinois public sector averaged 40 strikes per year between 1974 and 1980, with a high of 53 strikes in 1979. The Illinois State Board of Education tracked strikes by elementary and secondary teachers by school year. Its data is presented in Table 1.

## table one

### Pre-IELRA K-12 Teacher Strikes

Year	No. of Strikes
1975-76	26
1976-77	25
1977-78	16
1978-79	26
1979-80	40
1980-81	36
1981-82	21
1982-83	16
1983-84	15

### How did the Illinois statutes come to be enacted?

Numerous collective bargaining bills were introduced in the legislature during the 1970s, but none were enacted until 1981. A 1981 amendment to the School Code gave public school employees a right to certify a union approved by a majority vote of the employees, but that statute neither required collective bargaining nor provided enforcement mechanisms.

In 1983, the legislature passed the Illinois Public Labor Relations Act (IPLRA) to cover all public employers in the state, including public education.

At virtually the same time, the legislature passed the Illinois Educational Labor Relations Act (IELRA) which covered only public education. Governor James Thompson, using his amendatory veto, deleted the coverage of public education from the IPLRA and then signed both bills. The IELRA justifies having a separate statute for education because “substantial differences exist between educational employees and other public employees as a result of the uniqueness of the educational work calendar and educational work duties and the traditional and historical patterns of collective bargaining . . .”

The Illinois Labor Relations Board (ILRB) administers the IPLRA. It is divided into a Local Panel, which has jurisdiction over Chicago, Cook County, and some special districts in the Chicago area except for the Regional Transportation Agency, and a State Panel, which has jurisdiction over all other state and local employers. The governor, mayor of Chicago and chair of the Cook County Board each appoint one member of the Local Panel. The governor appoints all members of the State Panel. The governor also appoints all members of the Illinois Educational Labor Relations Board (IELRB), which administers the IELRA.

### What rights do the statutes provide?

Both statutes provide that employees have the right to form and join unions and to engage in concerted activity for mutual aid and protection. The statutes also provide that individual employees have the right to refrain from engaging in such activities.

The statutes protect employee rights by prohibiting unfair labor practices by

employers. Employers may not, for example, interfere with the employees’ efforts to exercise their rights under the act, discriminate against an employee for participating in union activities, spend public funds to influence the outcome of a representation election, or refuse to bargain in good faith.

Similarly, the laws prohibit unfair labor practices by the unions or their members. Such practices include, for example, restraint or coercion of individual employees seeking to exercise their statutory rights, such as their right not to join a union; undue efforts to influence an employers’ choice of representatives for handling collective bargaining or grievances; or refusing to bargain in good faith.

### How do employees create a union?

The statutes provide two methods. An employer may voluntarily recognize an employee union, in which case it must post a notice of its intent. If, after the required time for posting, no rival union has filed a proper petition objecting to the proposed union, the employer and the proposed union may submit evidence that the union has the support of a majority of the employees to the labor board which may certify the union as exclusive representative.

In the absence of voluntary recognition, a union may petition the labor board to designate it as the employees’ exclusive representative for collective bargaining. The petition must show that at least 30 percent of the employees desire the union’s representation. The board then conducts an election, in which rival unions may intervene. If a union receives a majority of the votes cast, the board certifies it as exclusive representative.

# 3

## policyprofiles

---

### Can union representation be curtailed?

A group of employees may file a petition with the labor board showing that at least 30 percent of the employees no longer desire to be represented by an incumbent union. The labor board then conducts an election and, if the incumbent union does not receive a majority of the votes, the board decertifies it (i.e. the union will no longer be recognized as the exclusive bargaining representative until it wins another election proving majority support of the employees represented).

### About what are the parties required to bargain?

The acts require the parties to bargain about wages, hours, and terms and conditions of employment. Often matters related to public employees' working conditions also involve significant issues of public policy.

The Illinois Supreme Court has adopted a three step test to determine whether such an issue must be bargained. First, the labor board considers whether the matter involves wages, hours, or conditions of employment. Second, the board considers whether the decision involves a matter of inherent managerial authority. Third, if the first two questions are answered affirmatively, 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. Applying this approach, courts and labor boards have held, for example, that school districts must bargain over class size, but that the Illinois Department of Corrections need not bargain its decision to drug test correctional officers.

A very difficult issue is whether an employer may or must bargain proposals to arbitrate, discipline, and discharge as an alternative to, or substitute for, proceedings before a civil service commission. On this issue, the courts have held that different rules apply to home rule and non-home rule municipalities.

In contrast, the Illinois Supreme Court has held that a school district may not agree to arbitrate matters that might be part of the School Code's procedures for the dismissal of tenured teachers. Any such matter may only be litigated before a State Board of Education hearing officer in the School Code-provided dismissal hearing.

### What about the right to strike?

Illinois has one of the most liberal rights to strike in the country. Most states prohibit strikes by public employees. Of the states that allow strikes, many require prior resort to non-binding fact finding and rejection of the fact finder's recommendation. Illinois has five conditions for a lawful strike:

1. The employees are represented by an exclusive representative.
2. Any existing collective bargaining agreement has expired
3. The union has given at least five days notice of intent to strike.
4. There have been unsuccessful efforts to settle the dispute through mediation.
5. There is no agreement to arbitrate the dispute.

A number of states that allow strikes also provide that strikes may be enjoined if they pose a clear and present danger to the public health, safety or welfare. Illinois law expressly rejects allowing an injunction for strikes that endanger the public welfare, but it does

permit an injunction if the strike poses a clear and present danger to public health and safety.

This has clear implications for teacher strikes: they can not be stopped by court action. The only strikes in Illinois that have been found to endanger the public health and safety have been at water treatment facilities and municipal electric utilities. In these instances, the union must to provide a skeleton crew to keep the service operating and the parties must arbitrate their dispute.

### May police and firefighters strike?

Sworn law enforcement personnel, correctional officers, firefighters, and fire department paramedics do not have the right to strike. If their unions reach impasse with their employers, they have a right to arbitrate the disputed issues. While they have a right to use an arbitration panel, most parties have waived this right in favor of a single, neutral arbitrator.

Each party submits a final offer on each issue in dispute to the arbitrator. For non-economic issues, the arbitrator may select either final offer or a solution in between. For each economic issue, however, the arbitrator must select one of the final offers.

Within twenty days following issuance of the arbitration award, the employer's governing body may reject all or part of the award by a three-fifths vote. In the event of rejection, the parties return to the arbitrator for supplemental proceedings. The employer must pay the full cost of the supplemental proceedings, including the union's attorney fees. Thus far, governing body rejections have been rare and futile. In the few cases that have occurred, arbitrators have not allowed the employers to

modify their final offers without the union's consent.

### What has been the primary effect of the statutes?

By far, the primary effect of the statutes has been to bring collective bargaining to thousands of public employees who did not have it before. Although there have been a handful of decertification elections, the overwhelming majority of the labor boards' representation work involves certification of representatives in previously unrepresented bargaining units.

This effect of the act was immediate. In the first three years of the IELRA, 192 new bargaining units were certified in the state; the number of school districts engaged in collective bargaining with teachers increased by 53 per cent in the act's first year alone. The same effect occurred for non-education workers: in the first 30 months of the IPLRA, the number of recognized bargaining units increased by 418. As shown in Table 2, which reports recognition elections held and bargaining units recognized, the number of recognized bargaining units has continued to increase steadily.

Table 2 presents some other interesting patterns. Most recognitions occur through elections rather than voluntary recognitions, and unions win the overwhelming majority of representation elections. In many of those units, employees could not have obtained representation without the statute. In some, the unions may have exerted enough political and economic pressure to cause the employers to recognize them. The statute relieves employers of that pressure by enabling them to defer to the labor boards' election machinery. Unlike the private sector, most public employers do not mount overt and

aggressive anti-union campaigns. However, by deferring to labor board secret ballot elections, they enable questions concerning representation to be resolved by the most accurate available indicator of employee sentiment.

### What has been the experience with strikes under the acts?

Intuitively, one would expect that legalization would lead to an increase in strikes. That has not been the case. Outside of public education, strikes have been extremely rare; outside of education, Illinois averages less than one public employee union strike per year.

The impact of legalization can be gleaned from the strike experience in the early years following enactment of the IELRA. Using data obtained from the IELRA, Table 3 summarizes this experience.

In comparing Table 3 (post IELRA strike activity) with Table 1 (pre IELRA strike activity) one must realize that the post IELRA data also reflect a substantial increase in the number of

**tablethree**

### Strikes in Public Education

Year	No. of Strikes
1984-85	35
1985-86	13
1986-87	16
1987-88	6
1988-89	6
1989-90	11
1990-91	14
1991-92	25

units engaged in bargaining. Thus, it is readily apparent that legalization did not result in an increase in strike frequency.

Analyzing this data, a study published in the University of Michigan Journal of Law Reform in 1993 found a correlation between legalization and a decrease in the number of strikes. The study controlled for inflation (which is believed to correlate with increased strike activity) and unemployment rates (believed to correlate with decreased strike activity). Depending on the test used, legalization was able to explain up to 25 percent of the decrease in the number of strikes. The study concluded

**tabletwo** State Board/Panel Representation Activity

Fiscal Year	Election Unions Won	Election Unions Lost	No. of Employees	Voluntary Recognition	No. of Employees
1988	73	5	1,872	11	NA
1989	69	11	2,231	19	NA
1990	61	9	1,267	10	NA
1991	84	8	2,697	10	NA
1992	66	11	1,318	15	NA
1993	74	6	2,025	7	57
1994	81	15	2,968	5	77
1995	86	17	1,512	10	175
1996	79	9	1,467	10	169
1997	66	11	1,897	9	64
1998	82	6	2,024	7	73
1999	80	14	2,188	10	128
2000	77	12	2,326	8	162
2001	61	11	2,487	7	71

Source: Illinois Labor Relations Board

# policyprofiles

that legalization clearly did not increase strike frequency and suggested that it might have contributed to a decrease.

Illinois public sector strikes tend to be relatively short-lived. Most settle in two weeks or less. It is very rare for a strike to last longer than a month. The worst strike in the history of the IELRA began on October 17, 1986, in Homer School District 208 in rural Champaign County and lasted until after the end of the school year. Everyone lost, especially the 360 students who lost many days of school and endured a constant turnover in substitute teachers when classes were held. The school district went out of existence, merging with another district. Just one of the seven school board members continued to serve and only a few of the 30 striking teachers kept their jobs.

The Homer strike was propelled by such incredible animosity on both sides that it probably would have occurred even if strikes had not been legal. A court might have enjoined the strike, but the union probably would have defied the injunction even at the expense of seeing its leaders jailed. The animosity was so strong that an offer by Governor Thompson of substantially more state aid if the parties would settle could not induce a settlement. The law was essentially irrelevant in Homer as animosity and irrationality ruled the roost.

Fortunately, Homer stands out as an extreme aberration and a warning to parties of what can happen if the process gets out of control. Even today, parties can be heard to say that they do not want to be the next “Homer.”

## What has been Illinois’ experience with interest arbitration?

There are two general criticisms of interest arbitration — the use of arbitration when collective bargaining fails to secure agreement between the parties. First, it chills bargaining because parties hold back expecting the arbitrator to award something between their positions and their opponents’ positions. Second, it becomes addictive as parties return to the arbitrator multiple times instead of agreeing to terms.

In Illinois, on economic issues, arbitrators may not split the difference; they must pick one party’s final offer. But an arbitrator may pick the union’s final offer on one issue and the employer’s final offer on another. There is some anecdotal evidence that parties keep issues on the table that they don’t value highly because they believe they have to give the arbitrator something to award to the other side. To the extent this happens, it inhibits reaching agreement.

While some parties in Illinois appear to have succumbed to arbitration’s narcotic effect, the arbitration addiction does not appear to have become endemic in the state.

The primary effect of interest arbitration is its impact on bargaining. A rich body

of interest arbitration awards has evolved in this state. It is clear from those awards that arbitrators strongly prefer the status quo. A party seeking to add a new term or modify an existing term has a very heavy burden to convince the arbitrator to adopt its offer. This makes agreement to innovate more difficult to obtain in bargaining.

On economic issues, arbitrators place the most emphasis on the outcomes in comparable communities. This is because the arbitrator’s role is to issue an award that resembles the agreement the parties would likely have reached if their negotiations had not broken down. The best evidence of what wage and benefit settlements the parties might have accepted are the settlements reached by comparable parties. Consequently, interest arbitration tends to flatten out bargaining and induces parties to follow established patterns at the expense of local peculiarities.

To the extent that the effects of arbitration on bargaining are viewed negatively, they represent the price paid for avoiding strikes. The critical benefit of interest arbitration is that the parties involved in it virtually never strike. There isn’t much sentiment in Illinois or elsewhere for allowing police, deputy sheriffs, corrections officers, and firefighters to strike.

## conclusion:

### So, what’s the bottom line?

All-in-all, the Illinois public sector collective bargaining statutes have been a success. Under the statutes, public sector labor relations have matured and stabilized. For every antagonistic relationship, many more positive, cooperative relationships have evolved. Anecdotal evidence suggests that more is gained by both parties through bargaining than through strikes. Thus, more of the credit for the success of Illinois’ public sector collective bargaining laws is due to the maturity and sophistication of the bargaining parties than to the law itself.

# policyprofiles

Center for Governmental Studies

Northern Illinois University

*This article may be reproduced in whole or in part with attribution to the Center for Governmental Studies, Northern Illinois University, DeKalb, IL.*

## EDITORIAL ADVISORY BOARD:

Ken Alderson

*Executive Director, Illinois Municipal League*

Kathy Buettner

*Executive Director, State & Federal Relations,  
Northern Illinois University*

Philip Bus

*Executive Director, Kane County Development  
Department*

Steven C. Carter

*City Manager, City of Champaign*

Robert J. Christie

*Vice President, Public Affairs, Northwestern  
Memorial Hospital*

Roberta Lynch

*Deputy Director, American Federation of  
State, County & Municipal Employees*

Douglas L. Whitley

*President, Illinois Chamber of Commerce*

John Zeunick

*County Administrator, McLean County*

## ABOUT THE CONTRIBUTOR:

Martin H. Malin is professor of law and director of the Institute for Law and the Workplace at Chicago-Kent College of Law, Illinois Institute of Technology. From 1984-86 he served as a consultant to the Illinois public sector labor boards and drafted the regulations which implemented the Illinois labor relations acts.

<sup>1</sup>The views expressed in this edition of *Policy Profiles* are those of Professor Malin and do not necessarily represent the views of the Center for Governmental Studies or of Northern Illinois University.

# policyprofiles

*Policy Profiles* is a publication of the Center for Governmental Studies, Northern Illinois University and may be reproduced in its entirety with attribution to the Center for Governmental Studies, Northern Illinois University, DeKalb, Illinois.

**Director:** Charles E. "Pete" Trott  
**Editor:** James M. Banovetz  
**Contributor:** Martin H. Malin  
**Design:** Trittenhaus Design

**For more information contact:**  
Center for Governmental Studies  
815-753-1907  
fax 815-753-2305  
[www.cgsniu.org](http://www.cgsniu.org)