

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas *As Engrossed: S2/24/99 S3/9/99 3/25/99*

2 82nd General Assembly

# A Bill

3 Regular Session, 1999

SENATE BILL 596

4

5 By: Senators Hopkins, Ross, Edwards, B. Walker

6 By: Representatives Lavery, Carson, T. Steele, Ammons, Creekmore, Trammell, Faris, Wilkinson, J.

7 Jeffress, Judy, Ferrell, Lendall, Booker, Willis, G. Jeffress, Prater, Allison, Hathorn, T. Smith, Napper, W.

8 *Walker, Gillespie, Jones, J. Lewellen, L. Thomas*

9

10

11

## For An Act To Be Entitled

12

"AN ACT TO BE KNOWN AS THE 'PUBLIC EMPLOYMENT  
13 RELATIONS ACT'; AND FOR OTHER PURPOSES."

14

15

## Subtitle

16

"THE PUBLIC EMPLOYMENT RELATIONS ACT."

17

18

19

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20

21

### SECTION 1. Public Policy.

22

(a) The General Assembly declares that it is the public policy of the  
23 state to:

24

(1) Promote harmonious and cooperative relationships between  
25 government and its employees by permitting public employees to organize and  
26 bargain collectively;

27

(2) Protect the citizens of this state by assuring effective and  
28 orderly operations of government in providing for their health, safety, and  
29 wel fare;

30

(3) Prohibit and prevent all strikes by public employees; and

31

(4) Protect the rights of public employees to join or refuse to  
32 join, and to participate in or refuse to participate in, employee  
33 organizations.

34

(b) The General Assembly declares that the purpose of the Public  
35 Employment Relations Board established by this act is to implement the  
36 provisions of this act and adjudicate and conciliate employment-related cases

1 involving the State of Arkansas and other public employers and employee  
2 organizations. For this purpose the powers and duties of the board include  
3 but are not limited to the following:

4 (1) Determining appropriate bargaining units and conducting  
5 representation elections;

6 (2) Adjudicating prohibited practice complaints including the  
7 exercise of exclusive original jurisdiction over all claims alleging the  
8 breach of the duty of fair representation imposed by Section 17;

9 (3) Fashioning appropriate remedial relief for violations of this  
10 act, including but not limited to the reinstatement of employees with or  
11 without back pay and benefits;

12 (4) Adjudicating and serving as arbitrators regarding state  
13 employee grievances and, upon joint request, grievances arising under  
14 collective bargaining agreements between public employers and certified  
15 employee organizations;

16 (5) Providing mediators, fact finders, and arbitrators to resolve  
17 impasses in negotiations;

18 (6) Collecting and disseminating information concerning the  
19 wages, hours, and other conditions of employment of public employees; and

20 (7) Assisting the attorney general in the preparation of legal  
21 briefs and the presentation of oral arguments in cases affecting the board.

22  
23 SECTION 2. Title.

24 This act shall be known as the "Public Employment Relations Act".  
25

26 SECTION 3. Definitions.

27 As used in this act, unless the context otherwise requires:

28 (1) "Arbitration" means the procedure whereby the parties  
29 involved in an impasse submit their differences to a third party for a final  
30 and binding decision or as provided in this act;

31 (2) "Board" means the public employment relations board  
32 established under Section 5 of this act;

33 (3)(A) "Confidential employee" means any public employee who  
34 works in the personnel offices of a public employer or who has access to  
35 information subject to use by the public employer in negotiating or who works  
36 in a close continuing working relationship with public officers or

1 representatives associated with negotiating on behalf of the public employer;

2 (B) "Confidential employee" also includes the personal  
3 secretary of any of the following: any elected official or person appointed to  
4 fill a vacancy in an elective office, member of any board or commission, the  
5 administrative officer, director, or chief executive officer of a public  
6 employer or major division thereof, or the deputy or first assistant of any of  
7 the foregoing.

8 (4) "Employee organization" means an organization of any kind in  
9 which public employees participate and which exists for the primary purpose of  
10 representing public employees in their employment relations;

11 (5) "Fact-finding" means the procedure by which a qualified  
12 person shall make written findings of fact and recommendations for resolution  
13 of an impasse;

14 (6) "Governing body" means the board, council, or commission,  
15 whether elected or appointed, of a political subdivision of this state,  
16 including school districts and other special purpose districts, which  
17 determines the policies for the operation of the political subdivision;

18 (7) "Impasse" means the failure of a public employer and the  
19 employee organization to reach agreement in the course of negotiations;

20 (8) "Mediation" means assistance by an impartial third party to  
21 reconcile an impasse between the public employer and the employee organization  
22 through interpretation, suggestion, and advice;

23 (9) "Professional employee" means any one (1) of the following:

24 (A) Any employee engaged in work:

25 (i) Predominantly intellectual and varied in  
26 character as opposed to routine mental, manual, mechanical or physical work;

27 (ii) Involving the consistent exercise of discretion  
28 and judgment in its performance;

29 (iii) Of such a character that the output produced or  
30 the result accomplished cannot be standardized in relation to a given period  
31 of time; and

32 (iv) Requiring knowledge of an advanced type in a  
33 field of science or learning customarily acquired by a prolonged course of  
34 specialized intellectual instruction and study in an institution of higher  
35 learning or a hospital, as distinguished from a general academic education or  
36 from an apprenticeship or from training in the performance of routine mental,

1 manual, or physical processes.

2 (B) Any employee who:

3 (i) Has completed the courses of specialized  
4 intellectual instruction and study described in (9)(A)(iv); and

5 (ii) Is performing related work under the supervision  
6 of a professional person to qualify the employee to become a professional  
7 employee as defined in subdivision (9)(A).

8 (10) "Public employee" means any individual employed by a public  
9 employer, except individuals exempted under the provisions of Section 4;

10 (11) "Public employer" means the State of Arkansas, its boards,  
11 commissions, agencies, departments, and its political subdivisions including  
12 school districts and other special purpose districts;

13 (12) "Strike" means a public employee's refusal, in concerted  
14 action with others, to report to duty, or a willful absence from the  
15 employee's position, or a stoppage of work by the employee, or the employee's  
16 abstinence in whole or in part from the full, faithful, and proper performance  
17 of the duties of employment, for the purpose of inducing, influencing or  
18 coercing a change in the conditions, compensation, rights, privileges or  
19 obligations of public employment; and

20 (13) "Supervisory employee" means any individual having authority  
21 in the interest of the public employer to hire, transfer, suspend, layoff,  
22 recall, promote, discharge, assign, reward or discipline other public  
23 employees, or the responsibility to direct them, or to adjust their  
24 grievances, or effectively to recommend such action, if, in connection with  
25 the foregoing, exercise of such authority is not of a merely routine or  
26 clerical nature, but requires the use of independent judgment. All school  
27 superintendents, assistant superintendents, principals and assistant  
28 principals shall be deemed to be supervisory employees.

29  
30 SECTION 4. Exclusions.

31 The following public employees are excluded from the provisions of this  
32 act:

33 (1) Elected officials and persons appointed to fill vacancies in  
34 elective offices, and members of any board or commission;

35 (2) Representatives of a public employer, including the  
36 administrative officer, director or chief executive officer of a public

1 employer or major division thereof as well as the officer's or director's  
2 deputy, first assistant, and any supervisory employees;

3 (3) Confidential employees;

4 (4) Students working as part-time public employees twenty (20)  
5 hours per week or less, except graduate or other postgraduate students in  
6 preparation for a profession who are engaged in academically related  
7 employment as a teaching, research, or service assistant;

8 (5) Temporary public employees employed for a period of four (4)  
9 months or less;

10 (6) Commissioned and enlisted personnel of the Arkansas National  
11 Guard;

12 (7) Judicial officers, and confidential, professional, or  
13 supervisory employees of the judicial branch;

14 (8) Patients and inmates employed, sentenced or committed to any  
15 state or local institution; and

16 (9) Faculty of any higher education institution.

17  
18 SECTION 5. Public Employment Relations Board.

19 (a)(1) There is established a board to be known as the "Public  
20 Employment Relations Board".

21 (2) The board shall consist of three (3) members appointed by the  
22 Governor, subject to confirmation by the Senate. One member shall by  
23 qualifications be considered a representative of public sector employees'  
24 organizations. One member shall by qualifications be considered a  
25 representative of public sector employers. One member shall by qualifications  
26 be considered a neutral in labor-management issues. No member shall engage in  
27 any political activity while holding office. In selecting the members of the  
28 board, consideration shall be given to their knowledge, ability, and  
29 experience in the field of labor-management relations. The chairperson and  
30 the remaining two members shall each receive an annual salary as set by the  
31 General Assembly.

32 (3) The members shall be appointed for staggered terms of four  
33 (4) years. The initial board shall be appointed so that one (1) member has a  
34 term of four (4) years, one (1) member has a term of three (3) years, and one  
35 (1) member has a term of two (2) years.

36 (4) The member holding the neutral position shall be appointed

1 for a term of four (4) years and shall serve as chairperson and each of that  
2 member's successors shall also serve as chairperson.

3 (b) Any vacancy occurring shall be filled in the same manner as regular  
4 appointments are made.

5 (c) The members of the board shall devote full time to their duties.

6 (d) The board may employ such persons as are necessary for the  
7 performance of its functions.

8 (e) Members of the board and other employees of the board shall be  
9 allowed their actual and necessary expenses incurred in the performance of  
10 their duties. All expenses and salaries shall be paid from appropriations for  
11 such purposes.

12  
13 SECTION 6. General powers and duties of the board.

14 The board shall:

15 (1) Administer the provisions of this act;

16 (2) Collect, for public employers other than the state and its boards,  
17 commissions, departments, and agencies, data and conduct studies relating to  
18 wages, hours, benefits and other terms and conditions of public employment and  
19 make the same available to any interested person or organization;

20 (3) Establish minimum qualifications for arbitrators and mediators,  
21 establish procedures for appointing, maintaining, and removing from a list  
22 persons representative of the public to be available to serve as arbitrators  
23 and mediators, and establish compensation rates for arbitrators and mediators;

24 (4) Hold hearings and administer oaths, examine witnesses and  
25 documents, take testimony and receive evidence, issue subpoenas to compel the  
26 attendance of witnesses and the production of records, and delegate such power  
27 to a member of the board, or persons appointed or employed by the board,  
28 including administrative law judges, for the performance of its functions.

29 The board may petition a court of competent jurisdiction at the seat of  
30 government or of the county where a hearing is held to enforce a board order  
31 compelling the attendance of witnesses and production of records; and

32 (5) Adopt rules in accordance with the provisions of the Arkansas  
33 Administrative Procedure Act, beginning at Arkansas Code 25-15-201, as it may  
34 deem necessary to carry out the purposes of this act.

35  
36 SECTION 7. Public employer rights.

1 Public employers shall have, in addition to all powers, duties, and  
2 rights established by constitutional provision, statute, ordinance, charter,  
3 or special act, the exclusive power, duty, and the right to:

4 (1) Direct the work of its public employees;

5 (2) Hire, promote, demote, transfer, assign and retain public employees  
6 in positions within the public agency;

7 (3) Suspend or discharge public employees for proper cause;

8 (4) Maintain the efficiency of governmental operations;

9 (5) Relieve public employees from duties because of lack of work or for  
10 other legitimate reasons;

11 (6) Determine and implement methods, means, assignments and personnel  
12 by which the public employer's operations are to be conducted;

13 (7) Take such actions as may be necessary to carry out the mission of  
14 the public employer;

15 (8) Initiate, prepare, certify and administer its budget; and

16 (9) Exercise all powers and duties granted to the public employer by  
17 law.

18  
19 SECTION 8. Public Employee Rights.

20 Public employees shall have the right to:

21 (1) Organize, or form, join, or assist any employee organization;

22 (2) Negotiate collectively through representatives of their own  
23 choosing;

24 (3) Engage in other concerted activities for the purpose of collective  
25 bargaining or other mutual aid or protection insofar as any such activity is  
26 not prohibited by this act or any other law of the state; and

27 (4) Refuse to join or participate in the activities of employee  
28 organizations.

29  
30 SECTION 9. Scope of Negotiations.

31 (a) The public employer and the employee organization shall meet at  
32 reasonable times, including meetings reasonably in advance of the public  
33 employer's budget-making process, to negotiate in good faith with respect to  
34 wages, hours, vacations, insurance, holidays, leaves of absence, shift  
35 differentials, overtime compensation, supplemental pay, seniority, transfer  
36 procedures, job classifications, health and safety matters, evaluation

1 procedures, procedures for staff reduction, in-service training, class size  
2 and other matters mutually agreed upon.

3 (b) Negotiations may also include terms authorizing dues checkoff for  
4 members of the employee organization and grievance procedures for resolving  
5 any questions arising under the agreement, which shall be embodied in a  
6 written agreement and signed by the parties. If an agreement provides for  
7 dues checkoff, a member's dues may be checked off only upon the member's  
8 written request and the member may terminate the dues checkoff by notifying  
9 the employee organization fourteen (14) calendar days in advance of the  
10 expiration of the collective bargaining agreement. In the absence of a  
11 collective bargaining agreement the provisions of Arkansas Code 11-9-205 shall  
12 apply in regards to dues checkoff. Such obligation to negotiate in good faith  
13 does not compel either party to agree to a proposal or make a concession.

14 (c) Nothing in this section shall diminish the authority and power of a  
15 public employer to recruit employees, prepare, conduct and grade examinations,  
16 rate candidates in order of their relative scores for certification for  
17 appointment or promotion or for other matters of classification,  
18 reclassification or appeal rights in the classified service of the public  
19 employer served.

20  
21 SECTION 10. Prohibited practices.

22 (a) It shall be a prohibited practice for any public employer, public  
23 employee or employee organization to willfully refuse to negotiate in good  
24 faith with respect to the scope of negotiations as defined in Section 9.

25 (b) It shall be a prohibited practice for a public employer or the  
26 employer's designated representative willfully to:

27 (1) Interfere with, restrain or coerce public employees in the  
28 exercise of rights granted by this act;

29 (2) Dominate or interfere in the administration of any employee  
30 organization;

31 (3) Encourage or discourage membership in any employee  
32 organization, committee or association by discrimination in hiring, tenure, or  
33 other terms or conditions of employment;

34 (4) Discharge or discriminate against a public employee because  
35 the employee has filed an affidavit, petition or complaint or given any  
36 information or testimony under this act, or because the employee has formed,

1 joined or chosen to be represented by any employee organization;

2 (5) Refuse to negotiate collectively with representatives of  
3 certified employee organizations as required in this act;

4 (6) Deny the rights accompanying certification or exclusive  
5 recognition granted in this act;

6 (7) Refuse to participate in good faith in any agreed upon  
7 impasse procedures or those set forth in this act; or

8 (8) Engage in a lockout.

9 (c) It shall be a prohibited practice for public employees or an  
10 employee organization or for any person, union or organization or their agents  
11 willfully to:

12 (1) Interfere with, restrain, coerce or harass any public  
13 employee with respect to any of the employee's rights under this act or in  
14 order to prevent or discourage the employee's exercise of any such right,  
15 including, without limitation, all rights under Section 8;

16 (2) Interfere, restrain, or coerce a public employer with respect  
17 to rights granted in this act or with respect to selecting a representative  
18 for the purposes of negotiating collectively on the adjustment of grievances;

19 (3) Refuse to bargain collectively with a public employer as  
20 required in this act;

21 (4) Refuse to participate in good faith in any agreed upon  
22 impasse procedures or those set forth in this act;

23 (5) Violate Section 12;

24 (6) Picket in a manner which interferes with ingress and egress  
25 to the facilities of the public employer;

26 (7) Engage in, initiate, or sponsor any picketing that is  
27 performed in support of a strike, work stoppage, boycott or slowdown against a  
28 public employer; or

29 (8) Picket for any unlawful purpose.

30 (d) The expressing of any views, argument or opinion, or the  
31 dissemination thereof, whether in written, printed, graphic, or visual form,  
32 shall not constitute or be evidence of any unfair labor practice under any of  
33 the provisions of this act, if such expression contains no threat of reprisal  
34 or force or promise of benefit.

35  
36 SECTION 11. Prohibited Practice Violations.

1        (a) Proceedings against a party alleging a violation of Section 10,  
2 shall be commenced by filing a complaint with the board within ninety (90)  
3 days of the alleged violation causing a copy of the complaint to be served  
4 upon the accused party in the manner of an original notice as provided in this  
5 act. The accused party shall have ten (10) days within which to file a  
6 written answer to the complaint. However, the board may conduct a preliminary  
7 investigation of the alleged violation, and if the board determines that the  
8 complaint has no basis in fact, the board may dismiss the complaint. The board  
9 shall promptly thereafter set a time and place for hearing in the county where  
10 the alleged violation occurred. The parties shall be permitted to be  
11 represented by counsel, summon witnesses, and request the board to subpoena  
12 witnesses on the requester's behalf. Compliance with the technical rules of  
13 pleading and evidence shall not be required.

14        (b) The board may designate an administrative law judge to conduct the  
15 hearing. The administrative law judge has the power as may be exercised by  
16 the board for conducting the hearing and shall follow the procedures adopted  
17 by the board for conducting the hearing. The decision of the administrative  
18 law judge may be appealed to the board and the board may hear the case de novo  
19 or upon the record as submitted before the administrative law judge.

20        (c) The board shall appoint a certified shorthand reporter to report  
21 the proceedings and the board shall fix the reasonable amount of compensation  
22 for such service, which amount shall be taxed as other costs.

23        (d) The board shall file its findings of fact and conclusions of law  
24 within sixty (60) days of the close of any hearing, receipt of the transcript,  
25 or submission of any briefs. If the board finds that the party accused has  
26 committed a prohibited practice, the board may, within thirty (30) days of its  
27 decision, enter into a consent order with the party to discontinue the  
28 practice, or after the thirty (30) days following the decision may petition  
29 court of competent jurisdiction for injunctive relief.

30        (e) The board's review of proposed decisions and the rehearing or  
31 judicial review of final decisions is governed by the provisions of the  
32 Arkansas Administrative Procedure Act, beginning at Arkansas Code 25-15-201.

33  
34        SECTION 12. Strikes prohibited.

35        (a) It shall be unlawful for any public employee or any employee  
36 organization, directly or indirectly, to induce, instigate, encourage,

1 authorize, ratify or participate in a strike against any public employer.

2 (b) It shall be unlawful for any public employer to authorize, consent  
3 to, or condone a strike against any public employer or to pay or agree to pay  
4 any increase in compensation or benefits to any public employee in response to  
5 or as a result of any strike or any act which violates subsection (a). It  
6 shall be unlawful for any official, director, or representative of any public  
7 employer to authorize, ratify or participate in any violation of this  
8 subsection. Nothing in this subsection shall prevent new or renewed  
9 bargaining and agreement within the scope of negotiations as defined by this  
10 act, at any time after such violation of subsection (a) has ceased, but it  
11 shall be unlawful for any public employer or employee organization to bargain  
12 at any time regarding suspension or modification of any penalty provided in  
13 this section or regarding any request by the public employer to a court for  
14 such suspension or modification.

15 (c) In the event of any violation or imminently threatened violation of  
16 subsection (a) or (b), any citizen domiciled within the jurisdictional  
17 boundaries of the public employer may petition a court of competent  
18 jurisdiction in the county in which the violation occurs or in Pulaski County  
19 for an injunction restraining such violation or imminently threatened  
20 violation. The Rules of Civil Procedure regarding injunctions shall apply.  
21 However, the court shall grant a temporary injunction if it appears to the  
22 court that a violation has occurred or is imminently threatened; the plaintiff  
23 need not show that the violation or threatened violation would greatly or  
24 irreparably injure the plaintiff; and no bond shall be required of the  
25 plaintiff unless the court determines that a bond is necessary in the public  
26 interest. Failure to comply with any temporary or permanent injunction granted  
27 pursuant to this section shall constitute a contempt. The punishment shall  
28 not exceed five hundred dollars (\$500) for an individual, or ten thousand  
29 dollars (\$10,000) for an employee organization or public employer, for each  
30 day during which the failure to comply continues, or imprisonment in a county  
31 jail not exceeding six (6) months, or both such fine and imprisonment. An  
32 individual or an employee organization which makes an active good faith effort  
33 to comply fully with the injunction shall not be deemed to be in contempt.

34 (d) If a public employee is held to be in contempt of court for failure  
35 to comply with an injunction pursuant to this section, or is convicted of  
36 violating this section, the employee shall be ineligible for any employment by

1 the same public employer for a period of twelve (12) months. The employee's  
2 public employer shall immediately discharge the employee, but upon the  
3 employee's request the court shall stay the discharge to permit further  
4 judicial proceedings.

5 (e) If an employee organization or any of its officers is held to be in  
6 contempt of court for failure to comply with an injunction pursuant to this  
7 section, or is convicted of violating this section, the employee organization  
8 shall be immediately decertified, shall cease to represent the bargaining  
9 unit, shall cease to receive any dues by checkoff, and may again be certified  
10 only after twelve (12) months have elapsed from the effective date of  
11 decertification and only after a new compliance with Section 14. The  
12 penalties provided in this section may be suspended or modified by the court,  
13 but only upon request of the public employer and only if the court determines  
14 the suspension or modification is in the public interest.

15 (f) Each of the remedies and penalties provided by this section is  
16 separate and several, and is in addition to any other legal or equitable  
17 remedy or penalty.

18  
19 SECTION 13. Bargaining Unit Determination.

20 (a) Board determination of an appropriate bargaining unit shall be upon  
21 petition filed by a public employer, public employee, or employee  
22 organization.

23 (b) Within thirty (30) days of receipt of a petition or notice to all  
24 interested parties if on its own initiative, the board shall conduct a public  
25 hearing, receive written or oral testimony, and promptly thereafter file an  
26 order defining the appropriate bargaining unit. In defining the unit, the  
27 board shall take into consideration, along with other relevant factors, the  
28 principles of efficient administration of government, the existence of a  
29 community of interest among public employees, the history and extent of public  
30 employee organization, geographical location, and the recommendations of the  
31 parties involved.

32 (c) Appeals from such order shall be governed by appeal provisions  
33 provided in Section 11.

34 (d) Professional and nonprofessional employees shall not be included in  
35 the same bargaining unit unless a majority of both agree.

36

1           SECTION 14. Bargaining Representative Determination.

2           (a) Board certification of an employee organization as the exclusive  
3 bargaining representative of a bargaining unit shall be upon a petition filed  
4 with the board by a public employer, public employee, or an employee  
5 organization and an election conducted pursuant to Section 15.

6           (b) The petition of an employee organization shall allege that the  
7 employee organization has submitted a request to a public employer to bargain  
8 collectively with a designated group of public employees and the petition  
9 shall be accompanied by written evidence that thirty percent (30%) of such  
10 public employees are members of the employee organization or have authorized  
11 it to represent them for the purposes of collective bargaining.

12           (c) The petition of a public employee shall allege that an employee  
13 organization which has been certified as the bargaining representative does  
14 not represent a majority of such public employees and that the petitioners do  
15 not want to be represented by an employee organization or seek certification  
16 of an employee organization.

17           (d) The petition of a public employer shall allege that it has received  
18 a request to bargain from an employee organization which has not been  
19 certified as the bargaining representative of the public employees in an  
20 appropriate bargaining unit.

21           (e) The board shall investigate the allegations of any petition and  
22 shall give reasonable notice of the receipt of such a petition to all public  
23 employees, employee organizations and public employers named or described in  
24 such petitions or interested in the representation questioned. The board shall  
25 thereafter call an election under Section 15, unless:

26                   (1) It finds that less than thirty percent (30%) of the public  
27 employees in the unit appropriate for collective bargaining support the  
28 petition for decertification or for certification.

29                   (2) The appropriate bargaining unit has not been determined  
30 pursuant to Section 13.

31           (f) The hearing and appeal procedures shall be the same as provided in  
32 Section 11.

33  
34           SECTION 15. Elections.

35           (a) Upon the filing of a petition for certification of an employee  
36 organization, the board shall submit a question to the public employees at an

1 election in an appropriate bargaining unit. The question on the ballot shall  
2 permit the public employees to vote for no bargaining representation or for  
3 any employee organization which has petitioned for certification or which has  
4 presented proof satisfactory to the board of support of ten (10) percent or  
5 more of the public employees in the appropriate unit.

6 (b) If a majority of the votes cast on the question is for no  
7 bargaining representation, the public employees shall not be represented by an  
8 employee organization. If a majority of the votes cast on the question is for  
9 a listed employee organization, then the employee organization shall represent  
10 the public employees in an appropriate bargaining unit.

11 (c) If none of the choices on the ballot receive the vote of a majority  
12 of the public employees voting, the board shall conduct a runoff election  
13 among the two choices receiving the greatest number of votes.

14 (d) Upon written objections filed by any party to the election within  
15 ten (10) days after notice of the results of the election, if the board finds  
16 that misconduct or other circumstances prevented the public employees eligible  
17 to vote from freely expressing their preferences, the board may invalidate the  
18 election and hold a second election for the public employees.

19 (e) Upon completion of a valid election in which the majority choice of  
20 the employees voting is determined, the board shall certify the results of the  
21 election and shall give reasonable notice of the order to all employee  
22 organizations listed on the ballot, the public employers, and the public  
23 employees in the appropriate bargaining unit.

24 (f) A petition for certification as an exclusive bargaining  
25 representative shall not be considered by the board for a period of one (1)  
26 year from the date of the certification or noncertification of an exclusive  
27 bargaining representative or during the duration of a collective bargaining  
28 agreement. A collective bargaining agreement with the state, its boards,  
29 commissions, departments, and agencies shall be for two (2) years and the  
30 provisions of a collective bargaining agreement except agreements agreed to or  
31 tentatively agreed to prior to the effective date of this act or arbitrators'  
32 award affecting state employees shall not provide for renegotiations which  
33 would require the refinancing of salary and fringe benefits for the second  
34 year of the term of the agreement, except as provided in Section 17,  
35 subsection (f), and the effective date of any such agreement shall be July 1,  
36 provided that if an exclusive bargaining representative is certified on a date

1 which will prevent the negotiation of a collective bargaining agreement prior  
2 to July 1 for a period of two (2) years, the certified collective bargaining  
3 representative may negotiate a one-year contract with a public employer which  
4 shall be effective from July 1. However, if a petition for decertification is  
5 filed during the duration of a collective bargaining agreement, the board  
6 shall award an election under this section not more than one hundred eighty  
7 (180) days nor less than one hundred fifty (150) days prior to the expiration  
8 of the collective bargaining agreement. If an employee organization is  
9 decertified, the board may receive petitions under Section 14, provided that  
10 no such petition and no election conducted pursuant to such petition within  
11 one (1) year from decertification shall include as a party the decertified  
12 employee organization.

13  
14 SECTION 16. Duty to bargain.

15 Upon the receipt by a public employer of a request from an employee  
16 organization to bargain on behalf of public employees, the duty to engage in  
17 collective bargaining shall arise if the employee organization has been  
18 certified by the board as the exclusive bargaining representative for the  
19 public employees in that bargaining unit.

20  
21 SECTION 17. Procedures.

22 (a) The employee organization certified as the bargaining  
23 representative shall be the exclusive representative of all public employees  
24 in the bargaining unit and shall represent all public employees fairly.  
25 However, any public employee may meet and adjust individual complaints with a  
26 public employer. To sustain a claim that a certified employee organization  
27 has committed a prohibited practice by breaching its duty of fair  
28 representation, a public employee must establish by a preponderance of the  
29 evidence action or inaction by the organization which was arbitrary,  
30 discriminatory, or in bad faith.

31 (b) The employee organization and the public employer may designate any  
32 individual as its representative to engage in collective bargaining  
33 negotiations.

34 (c) Negotiating sessions, strategy meetings of public employers or  
35 employee organizations, mediation and the deliberative process of arbitrators  
36 shall be exempt from the provisions of the Freedom of Information Act,

1 beginning at Arkansas Code 25-19-101. However, the employee organization  
2 shall present its initial bargaining position to the public employer at the  
3 first bargaining session. The public employer shall present its initial  
4 bargaining position to the employee organization at the second bargaining  
5 session, which shall be held no later than two (2) weeks following the first  
6 bargaining session. Both sessions shall be open to the public and subject to  
7 the provisions of the Freedom of Information Act, beginning at Arkansas Code  
8 25-19-101. Hearings conducted by arbitrators shall be open to the public.

9 (d) The terms of a proposed collective bargaining agreement shall be  
10 made available to the public by the public employer and reasonable notice  
11 shall be given to the public employees by the employee organization prior to a  
12 ratification election. The collective bargaining agreement shall become  
13 effective only if ratified by a majority of those voting by secret ballot.

14 (e) Terms of any collective bargaining agreement may be enforced by a  
15 civil action court of competent jurisdiction in which the agreement was made  
16 upon the initiative of either party.

17 (f) No collective bargaining agreement or arbitrators' decision shall  
18 be valid or enforceable if its implementation would be inconsistent with any  
19 statutory limitation on the public employer's funds, spending, or budget or  
20 would substantially impair or limit the performance of any statutory duty by  
21 the public employer. A collective bargaining agreement or arbitrators' award  
22 may provide for benefits conditional upon specified funds to be obtained by  
23 the public employer, but the agreement shall provide either for automatic  
24 reduction of such conditional benefits or for additional bargaining if the  
25 funds are not obtained or if a lesser amount is obtained.

26 (g) If agreed to by the parties nothing in this act shall be construed  
27 to prohibit supplementary bargaining on behalf of public employees in a part  
28 of the bargaining unit concerning matters uniquely affecting those public  
29 employees or cooperation and coordination of bargaining between two (2) or  
30 more bargaining units.

31 (h) The salaries of all public employees of the state under a  
32 classification system and all other fringe benefits which are granted to all  
33 public employees of the state shall be negotiated with the Governor or the  
34 Governor's designee on a statewide basis and submitted to the General Assembly  
35 as a recommendation from the executive branch of government, except those  
36 benefits which are not subject to negotiations pursuant to the provisions of

1 Section 9. Nothing in this act shall limit the power of the General Assembly  
2 to fix the number and salaries of the employees of the different departments  
3 of the State of Arkansas.

4 (i) A public employee or any employee organization shall not negotiate  
5 or attempt to negotiate directly with a member of the governing board of a  
6 public employer if the public employer has appointed or authorized a  
7 bargaining representative for the purpose of bargaining with the public  
8 employees or their representative, unless the member of the governing board is  
9 the designated bargaining representative of the public employer.

10 (j) The negotiation of a proposed collective bargaining agreement by  
11 representatives of a state public employer and a state employee organization  
12 shall be complete not later than fourteen (14) days after the Legislature has  
13 adjourned. The board shall provide, by rule, a date on which any impasse item  
14 must be submitted to binding arbitration and for such other procedures as  
15 deemed necessary to provide for the completion of negotiations of proposed  
16 state collective bargaining agreements.

17 (k)(1) In the absence of an impasse agreement negotiated pursuant to  
18 Section 19 which provides for a different completion date, public employees  
19 represented by a certified employee organization who are teachers and who are  
20 employed by a public employer which is a school district or education service  
21 cooperative shall complete the negotiation of a proposed collective bargaining  
22 agreement not later than May 31 of the year when the agreement is to become  
23 effective. The board shall provide, by rule, a date on which impasse items in  
24 such cases must be submitted to binding arbitration and for such other  
25 procedures as deemed necessary to provide for the completion of negotiations  
26 of proposed collective bargaining agreements not later than May 31. The date  
27 selected for the mandatory submission of impasse items to binding arbitration  
28 in such cases shall be sufficiently in advance of May 31 to ensure that the  
29 arbitrators' decision can be reasonably made before May 31.

30 (2) If the public employer is a state-supported institution of  
31 higher education, the following shall apply:

32 (A) The negotiation of a proposed collective bargaining  
33 agreement shall be complete not later than May 31 of the year when the  
34 agreement is to become effective, absent the existence of an impasse agreement  
35 negotiated pursuant to Section 19 which provides for a different completion  
36 date. The board shall adopt rules providing for a date on which impasse items

1 in such cases must be submitted to binding arbitration and for procedures for  
2 the completion of negotiations of proposed collective bargaining agreements  
3 not later than May 31. The date selected for the mandatory submission of  
4 impasse items to binding arbitration in such cases shall be sufficiently in  
5 advance of May 31 to ensure that the arbitrators' decision can be reasonably  
6 made by May 31.

7 (B) Notwithstanding subdivision (k)(2)(A), the May 31  
8 deadline may be waived by mutual agreement of the parties to the collective  
9 bargaining agreement negotiations.

10  
11 SECTION 18. Grievance procedures.

12 An agreement with an employee organization which is the exclusive  
13 representative of public employees in an appropriate unit may provide  
14 procedures for the consideration of public employee grievances and of disputes  
15 over the interpretation and application of agreements. Negotiated procedures  
16 may provide for binding arbitration of public employee grievances and of  
17 disputes over the interpretation and application of existing agreements. An  
18 arbitrator's decision on a grievance may not change or amend the terms,  
19 conditions or applications of the collective bargaining agreement. Such  
20 procedures shall provide for the invoking of arbitration only with the  
21 approval of the employee organization. The costs of arbitration shall be  
22 shared equally by the parties. Public employees of the state or public  
23 employees covered by civil service shall follow either the grievance  
24 procedures provided in a collective bargaining agreement, or in the event that  
25 grievance procedures are not provided, shall follow applicable grievance  
26 procedures established by law, executive order or regulation.

27  
28 SECTION 19. Impasse procedures - agreement of parties.

29 As the first step in the performance of their duty to bargain, the  
30 public employer and the employee organization shall endeavor to agree upon  
31 impasse procedures. Such agreement shall provide for implementation of these  
32 impasse procedures not later than one hundred twenty (120) days prior to the  
33 certified budget submission date of the public employer. However, if public  
34 employees represented by the employee organization are teachers and the public  
35 employer is a school district or education service cooperative, the agreement  
36 shall provide for implementation of impasse procedures not later than one

1 hundred twenty (120) days prior to May 31 of the year when the collective  
2 bargaining agreement is to become effective. If the public employer is a  
3 community college, the agreement shall provide for implementation of impasse  
4 procedures not later than one hundred twenty (120) days prior to May 31 of the  
5 year when the collective bargaining agreement is to become effective. If the  
6 parties fail to agree upon impasse procedures under the provisions of this  
7 section, the impasse procedures provided in Sections 20 through 22 shall  
8 apply.

9  
10 SECTION 20. Mediation.

11 In the absence of an impasse agreement negotiated pursuant to Section 19  
12 or the failure of either party to utilize its procedures, one hundred twenty  
13 (120) days prior to the certified budget submission date, or one hundred  
14 twenty (120) days prior to May 31 of the year when the collective bargaining  
15 agreement is to become effective if public employees represented by the  
16 employee organization are teachers and the public employer is a school  
17 district or education services cooperative, the board shall, upon the request  
18 of either party, appoint an impartial and disinterested person to act as  
19 mediator. The mediator shall be requested from the Federal Mediation and  
20 Conciliation Service or the American Arbitration Association. If the public  
21 employer is a state-supported institution of higher education, and in the  
22 absence of an impasse agreement negotiated pursuant to Section 19 or the  
23 failure of either party to utilize its procedures one hundred twenty (120)  
24 days prior to May 31 of the year when the collective bargaining agreement is  
25 to become effective, the board, upon the request of either party, shall  
26 appoint an impartial and disinterested person to act as mediator. It shall be  
27 the function of the mediator to bring the parties together to effectuate a  
28 settlement of the dispute, but the mediator may not compel the parties to  
29 agree.

30  
31 SECTION 21. Fact-finding.

32 (a) If the impasse persists ten (10) days after the mediator has been  
33 appointed, the board shall appoint a fact-finder from the Federal Mediation  
34 and Conciliation Service or the American Arbitration Association. The fact-  
35 finder shall conduct a hearing, may administer oaths, and may request the  
36 board to issue subpoenas. The fact-finder shall make written findings of

1 facts and recommendations for resolution of the dispute and, not later than  
2 fifteen (15) days from the day of appointment, shall serve such findings on  
3 the public employer and the certified employee organization.

4 (b) The public employer and the certified employee organization shall  
5 immediately accept the fact-finder's recommendation or shall within five (5)  
6 days submit the fact-finder's recommendations to the governing body and  
7 members of the certified employee organization for acceptance or rejection.  
8 If the dispute continues ten (10) days after the report is submitted, the  
9 report shall be made public by the board.

10 (c) However, the board shall not appoint a fact-finder representative  
11 of the public if the public employees represented by a certified employee  
12 organization are teachers and the public employer is a school district, a  
13 state-supported institution of higher education, or education service  
14 cooperative. The board shall adopt rules regarding the time period after  
15 mediation when binding arbitration procedures must begin for teachers exempt  
16 from this section.

17  
18 SECTION 22. Binding Arbitration.

19 (a) If an impasse persists after the findings of fact and  
20 recommendations are made public by the fact-finder, the parties may continue  
21 to negotiate or the board shall have the power, upon request of either party,  
22 to arrange for arbitration, which shall be binding. The request for  
23 arbitration shall be in writing and a copy of the request shall be served upon  
24 the other party. The board and/or the parties shall request an arbitrator from  
25 either the Federal Mediation and Conciliation Service or the American  
26 Arbitration Association.

27 (b)(1) Each party shall submit to the board within four (4) days of  
28 request a final offer on the impasse items with proof of service of a copy  
29 upon the other party. Each party shall also submit a copy of a draft of the  
30 proposed collective bargaining agreement to the extent to which agreement has  
31 been reached and the name of its selected arbitrator. The parties may  
32 continue to negotiate all offers until an agreement is reached or a decision  
33 rendered by the arbitrator.

34 (2) As an alternative procedure, the two (2) parties may agree to  
35 submit the dispute to an arbitration panel. If the parties cannot agree on the  
36 panel within four (4) days, the selection shall be made pursuant to subsection

1 (e). The full costs of arbitration under this provision shall be shared  
2 equally by the parties to the dispute.

3 (c) The submission of the impasse items to the arbitrator(s) shall be  
4 limited to those issues that have been considered by the fact-finder and upon  
5 which the parties have not reached agreement. With respect to each such item,  
6 the arbitrator(s) award shall be restricted to the final offers on each  
7 impasse item submitted by the parties to the arbitration board or to the  
8 recommendation of the fact-finder on each impasse item.

9 (d) The panel of arbitrators shall consist of three (3) members  
10 appointed in the following manner:

11 (1) One (1) member shall be appointed by the public employer;

12 (2) One (1) member shall be appointed by the employee  
13 organization;

14 (3) One (1) member shall be appointed mutually by the members  
15 appointed by the public employer and the employee organization. The last  
16 member appointed shall be the chairperson of the panel of arbitrators. No  
17 member appointed shall be an employee of the parties; and

18 (4) The public employer and employee organization shall each pay  
19 the fees and expenses incurred by the arbitrator each selected. The fee and  
20 expenses of the chairperson of the panel and all other costs of arbitration  
21 shall be shared equally.

22 (e) If the third member has not been selected within four (4) days of  
23 notification as provided in subsection (b), a list of three (3) arbitrators  
24 shall be submitted to the parties by the board. The two (2) arbitrators  
25 selected by the public employer and the employee organization shall determine  
26 by lot which arbitrator shall remove the first name from the list submitted by  
27 the board. The arbitrator having the right to remove the first name shall do  
28 so within two (2) days and the second arbitrator shall have one additional day  
29 to remove one (1) of the two (2) remaining names. The person whose name  
30 remains shall become the chairperson of the panel of arbitrators and shall  
31 call a meeting within ten (10) days at a location designated by the  
32 chairperson.

33 (f) If a vacancy should occur on the panel of arbitrators, the  
34 selection for replacement of such member shall be in the same manner and  
35 within the same time limits as the original member was chosen. No final  
36 selection under subsection (i) shall be made by the board until the vacancy

1 has been filled.

2 (g) The arbitrator(s) shall at no time engage in an effort to mediate  
3 or otherwise settle the dispute in any manner other than that prescribed in  
4 this section.

5 (h) From the time of appointment until such time as the arbitrator(s)  
6 makes its final determination, there shall be no discussion concerning  
7 recommendations for settlement of the dispute by the members of the  
8 arbitrator(s) with parties other than those who are direct parties to the  
9 dispute. The arbitrator(s) may conduct formal or informal hearings to discuss  
10 offers submitted by both parties.

11 (i) The arbitrator(s) shall consider, in addition to any other relevant  
12 factors, the following factors:

13 (1) Past collective bargaining contracts between the parties  
14 including the bargaining that led up to such contracts;

15 (2) Comparison of wages, hours and conditions of employment of  
16 the involved public employees with those of other public employees and private  
17 sector employees doing comparable work, giving consideration to factors  
18 peculiar to the area and the classifications involved;

19 (3) The interests and welfare of the public, the ability of the  
20 public employer to finance economic adjustments and the effect of such  
21 adjustments on the normal standard of services; and

22 (4) The power of the public employer to levy taxes and  
23 appropriate funds for the conduct of its operations.

24 (j) The chairperson of the panel of arbitrators or the single  
25 arbitrator may hold hearings and administer oaths, examine witnesses and  
26 documents, take testimony and receive evidence, issue subpoenas to compel the  
27 attendance of witnesses and the production of records, and delegate such  
28 powers to other members of the panel of arbitrators or the single arbitrator.  
29 The chairperson of the panel of arbitrators may petition a court of competent  
30 jurisdiction at the seat of government in the county in which any hearing is  
31 held to enforce the order of the chairperson or the single arbitrator  
32 compelling the attendance of witnesses and the production of records.

33 (k) A majority of the panel of arbitrators or the single arbitrator  
34 shall select within fifteen (15) days after its first meeting the most  
35 reasonable offer, in its judgment, of the final offers on each impasse item  
36 submitted by the parties, or the recommendations of the fact-finder on each

1 impasse item.

2 (l) The selections by the panel of arbitrators or arbitrator and items  
3 agreed upon by the public employer and the employee organization, shall be  
4 deemed to be the collective bargaining agreement between the parties.

5 (m) The determination of the panel of arbitrators shall be by majority  
6 vote and shall be final and binding subject to the provisions of Section 17,  
7 subsection (f). The panel of arbitrators shall give written explanation for  
8 its selection and inform the parties of its decision.

9  
10 SECTION 23. Legal actions.

11 Any employee organization and public employer may sue or be sued as an  
12 entity under the provisions of this act. Service upon the public employer  
13 shall be in accordance with law or the rules of civil procedure. Nothing in  
14 this act shall be construed to make any individual or the individual's assets  
15 liable for any judgment against a public employer or an employee organization.

16  
17 SECTION 24. Notice and service.

18 Any notice required under the provisions of this act shall be in  
19 writing, but service thereof shall be sufficient if mailed by restricted  
20 certified mail, return receipt requested addressed to the last known address  
21 of the parties, unless otherwise provided in this act. Refusal of restricted  
22 certified mail by any party shall be considered service. Prescribed time  
23 periods shall commence from the date of the receipt of the notice. Any party  
24 may at any time execute and deliver an acceptance of service in lieu of mailed  
25 notice.

26  
27 SECTION 25. Internal conduct of employee organizations.

28 (a) Every employee organization which is certified as a representative  
29 of public employees under the provisions of this act shall file with the board  
30 a registration report, signed by its president or other appropriate officer.  
31 The report shall be in a form prescribed by the board and shall be accompanied  
32 by two (2) copies of the employee organization's constitution and bylaws. A  
33 filing by a national or international employee organization of its  
34 constitution and bylaws shall be accepted in lieu of a filing of such  
35 documents by each subordinate organization. All changes or amendments to such  
36 constitutions and bylaws shall be promptly reported to the board.

1           (b) Every employee organization shall file with the board an annual  
2 report and an amended report whenever changes are made. The reports shall be  
3 in a form prescribed by the board, and shall provide the following  
4 information:

5                   (1) The names and addresses of the organization, any parent  
6 organization or organizations with which it is affiliated, the principal  
7 officers, and all representatives;

8                   (2) The name and address of its local agent for service of  
9 process;

10                   (3) A general description of the public employees the  
11 organization represents or seeks to represent;

12                   (4) The amounts of the initiation fee and monthly dues members  
13 must pay;

14                   (5) A pledge, in a form prescribed by the board, that the  
15 organization will comply with the laws of the state and that it will accept  
16 members without regard to age, race, sex, religion, national origin or  
17 physical disability as provided by law; and

18                   (6) A financial report and audit.

19           (c) The constitution or bylaws of every employee organization shall  
20 provide that:

21                   (1) Accurate accounts of all income and expenses shall be kept,  
22 and annual financial report and audit shall be prepared; such accounts shall  
23 be open for inspection by any member of the organization, and loans to  
24 officers and agents shall be made only on terms and conditions available to  
25 all members;

26                   (2) Business or financial interests of its officers and agents,  
27 their spouses, minor children, parents or otherwise, that conflict with the  
28 fiduciary obligation of such persons to the organization shall be prohibited;  
29 and

30                   (3) Every official or employee of an employee organization who  
31 handles funds or other property of the organization, or trust in which an  
32 organization is interested, or a subsidiary organization, shall be bonded.  
33 The amount, scope, and form of the bond shall be determined by the board.

34           (d) The governing rules of every employee organization shall provide  
35 for periodic elections by secret ballot subject to recognized safeguards  
36 concerning the equal right of all members to nominate, seek office, and vote

1 in such elections, the right of individual members to participate in the  
2 affairs of the organization, and fair and equitable procedures in disciplinary  
3 actions.

4 (e) The board shall prescribe rules necessary to govern the  
5 establishment and reporting of trusteeships over employee organizations.  
6 Establishment of such trusteeships shall be permitted only if the constitution  
7 or bylaws of the organization set forth reasonable procedures.

8 (f) An employee organization that has not registered or filed an annual  
9 report, or that has failed to comply with other provisions of this act, shall  
10 not be certified. Certified employee organizations failing to comply with  
11 this act may have such certification revoked by the board. Prohibitions may  
12 be enforced by injunction upon the petition of the board to a court of  
13 competent jurisdiction in the county in which the violation occurs.

14 Complaints of violation of this section shall be filed with the board.

15 (g) Upon the written request of any member of a certified employee  
16 organization, the Auditor of State may audit the financial records of the  
17 certified employee organization.

18  
19 SECTION 26. Conflict with federal aid.

20 If any provision of this act jeopardizes the receipt by the state or any  
21 of its political subdivisions of any federal grant-in-aid funds or other  
22 federal allotment of money, the provisions of this act shall, insofar as the  
23 fund is jeopardized, be deemed to be inoperative.

24  
25 SECTION 27. Inconsistent statutes - effect.

26 A law which is inconsistent with any term or condition of a collective  
27 bargaining agreement which is made final under this act shall supersede the  
28 term or condition of the collective bargaining agreement unless otherwise  
29 provided by the law. A provision of a proposed collective bargaining  
30 agreement negotiated according to this act which conflicts with a law shall  
31 not become a provision of the final collective bargaining agreement unless the  
32 law is amended to remove the conflict.

33  
34 SECTION 28. Filing agreement - public access.

35 Copies of collective bargaining agreements entered into between the  
36 state and the state employees' bargaining representatives and made final under

1 this act shall be filed with the Secretary of State and be made available to  
2 the public at cost.

3

4 SECTION 29. All provisions of this act of a general and permanent  
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
6 Code Revision Commission shall incorporate the same in the Code.

7

8 SECTION 30. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 act are declared to be severable.

13

14 SECTION 31. All laws and parts of laws in conflict with this act are  
15 hereby repealed.

16

*/s/ Hopkins*