

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 1139

5 By: Representative J. Elliott
6
7

For An Act To Be Entitled

8 THE STATE EMPLOYEE LIMITED PUBLIC EMPLOYMENT
9 RELATIONS ACT.
10

Subtitle

11 THE STATE EMPLOYEE LIMITED PUBLIC
12 EMPLOYMENT RELATIONS ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Public policy.

20 The General Assembly declares that it is the public policy of the state
21 to promote harmonious and cooperative relationships between government and
22 its employees by permitting state employees to have a voice in determining
23 their conditions of work through collective bargaining; to protect the
24 citizens of this state by assuring effective and orderly operations of
25 government in providing for their health, safety, and welfare; and to protect
26 the rights of state employees to join or refuse to join, and to participate
27 in or refuse to participate in employee organizations of their own choosing.
28

29 SECTION 2. Title.

30 This act shall be known and may be cited as the "State Employee Limited
31 Public Employment Relations Act".
32

33 SECTION 3. Definitions.

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

35 (1) "Arbitration" means the procedure whereby the parties involved in
36 an impasse submit their differences to a third party for a final and binding



1 decision or as provided in this act;

2 (2) "Board" means the State Employment Relations Board established
3 under this act;

4 (3) "Collective bargaining" means the performance of the mutual
5 obligations of the employer and an exclusive representative as set forth in
6 this act and includes the obligation to meet at reasonable times, to confer
7 and negotiate in good faith with the aim of reaching agreement on wages,
8 benefits and other terms and conditions of employment, to execute a written
9 document setting forth the final terms of agreement, and to comply with such
10 terms of the collective bargaining agreement; provided, however, that in the
11 course of negotiations neither party shall be compelled to agree to any
12 specific proposal or be required to make a concession thereon;

13 (4) "Confidential employee" means an employee who works in the
14 personnel offices of an employer or who has access to information subject to
15 use by the employer in negotiating or who works in a close continuing working
16 relationship with public officers or representatives associated with
17 negotiating on behalf of the employer;

18 (5) "Employee organization" means any lawful association,
19 organization, federation, council or labor union that exists for the purpose
20 of dealing with employers on behalf of employees concerning hours or terms
21 and other conditions of employment;

22 (6) "Employer" means each executive branch agency of the State of
23 Arkansas;

24 (7) "Exclusive representative" means the representative designated or
25 selected in accordance with this act for purposes of collective bargaining by
26 employees in a unit appropriate for those purposes which has the sole right
27 to represent all employees within the unit;

28 (8) "Impasse" means the failure of an employer and an employee
29 organization to reach agreement in the course of negotiations;

30 (9) "Managerial representative" means an individual whose principal
31 duties entail major administrative or management responsibilities on behalf
32 of the employer, including responsibility for direction of a major division
33 or function of the employer, for developing, implementing and evaluating
34 goals and objectives to meet the responsibilities of the employer, for
35 formulating policy on behalf of the state or governing board, or for
36 overseeing and administering collective bargaining agreements or major

1 personnel decisions;

2 (10) "Professional employee" means an employee:

3 (A) Who is engaged in work that:

4 (i) Is predominately intellectual and varied in character
5 as opposed to routine mental, manual, mechanical or physical work;

6 (ii) Involves the consistent exercise of discretion and
7 judgment in its performance; and

8 (iii) Requires knowledge of an advanced type in a field of
9 science or learning customarily acquired by a prolonged course of specialized
10 intellectual instruction and study in an institution of higher learning or a
11 hospital, as distinguished from a general academic education or from an
12 apprenticeship or from training in the performance of routine mental, manual,
13 or physical processes; or

14 (B) An employee who:

15 (i) Has completed the courses of specialized intellectual
16 instruction and study described above; and

17 (ii) Is performing related work under the supervision of a
18 professional person to qualify the employee to become engaged in work
19 described in subdivision (10)(A); and

20 (11) "State employee" means any person employed by the State of
21 Arkansas except persons excluded from coverage under Section 4.

22
23 SECTION 4. Coverage and exclusions.

24 This act applies to all state employees except the following:

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

27 (2) Managerial representatives;

28 (3) Confidential employees;

29 (4) Students working part-time for twenty (20) hours or less per week
30 unless they are:

31 (A) Graduate or postgraduate students in preparation for a
32 profession and are engaged in academically related employment as a teaching,
33 research, or service assistant; or

34 (B) Medical interns and residents employed at a public hospital;

35 (5) Commissioned and enlisted personnel of the Arkansas National
36 Guard;

- 1 (6) Judicial officers, and employees of the judicial branch;
- 2 (7) Patients and inmates employed, sentenced or committed to any state
- 3 or local institution;
- 4 (8) Legislative branch employees;
- 5 (9) Public school employees; and
- 6 (10) Employees of state supported post-secondary education
- 7 institutions.

8

9 SECTION 5. Public Employment Relations Board.

10 (a) There is created within the executive branch a board to be known

11 as the "Public Employment Relations Board".

12 (1) The board shall be composed of three (3) members appointed

13 by the Governor, subject to confirmation by the Senate. One (1) member shall

14 by qualifications be representative of labor. One (1) member shall by

15 qualifications be representative of state agencies. One (1) member shall by

16 qualifications be considered a neutral in labor-management issues and must

17 have five (5) years' experience as a mediator or an arbitrator of labor

18 management disputes. In selecting the members of the board, consideration

19 shall be given to their knowledge, ability, and experience in the field of

20 labor-management relations. The member holding the neutral position shall

21 serve as the chairperson of the board.

22 (2) The initial labor representative shall be appointed for a

23 two-year term of office, the initial employer representative shall be

24 appointed for a four-year term of office, and the initial neutral member

25 shall be appointed for a six-year term of office. Upon the expiration of any

26 term of office, the successor shall be appointed for a six-year term of

27 office.

28 (3) No member of the board shall engage in any political

29 activity while holding office.

30 (4) Any vacancy occurring shall be filled in the same manner as

31 regular appointments are made and the appointee shall serve the remainder of

32 the unexpired term of office.

33 (5) The board may, to the extent funds are available, employ

34 such persons as are necessary for the performance of its functions.

35 (6) To the extent funds are available therefor, members of the

36 board shall receive a stipend as provided in Arkansas Code 25-16-904 and

1 expense reimbursement as provided in Arkansas Code 25-16-902.

2 (b) In addition to any authority or responsibilities provided
 3 elsewhere in this act, the board may:

4 (1) Administer and enforce the provisions of this act;

5 (2) Establish minimum qualifications for arbitrators and
 6 mediators;

7 (3) Establish procedures for appointing, maintaining, and
 8 removing arbitrators and mediators;

9 (4) Establish compensation rates for arbitrators and mediators;

10 (5) Take such other action as it considers necessary to carry
 11 out properly its functions and powers; and

12 (6) Adopt regulations in accordance with the Arkansas
 13 Administrative Procedure Act, beginning at Arkansas Code 25-15-201, as it may
 14 deem necessary to carry out the purposes of this act.

15
 16 SECTION 6. State employee rights.

17 (a) State employees shall have the right, free from interference,
 18 restraint or coercion, to:

19 (1) Organize, form, join, assist and participate in activities of
 20 employee organizations;

21 (2) Engage in collective bargaining regarding terms and
 22 conditions of employment through exclusive representatives of their own
 23 choosing;

24 (3) Engage in concerted activities for the purpose of collective
 25 bargaining or other mutual aid or protection; and

26 (4) Refrain from any or all of the activities described in this
 27 subsection (a).

28 (b) This act in no way authorizes or provides any right to employees
 29 to strike or to otherwise participate in any work stoppage or interruption.

30
 31 SECTION 7. Prohibited practices.

32 (a) An employer and its representatives or agents shall not:

33 (1) Interfere with, restrain or coerce state employees in the
 34 exercise of rights granted by this act;

35 (2) Dominate or interfere with the formation or administration
 36 of any employee organization;

1 (3) Encourage or discourage membership in or support for any
2 employee organization, committee or association;

3 (4) Discharge, discriminate or take adverse action against a
4 state employee because the employee supports or has formed, joined or chosen
5 to be represented by any employee organization, exercised his or her rights
6 under this act, filed an affidavit, petition or complaint, or given any
7 information or testimony under this act;

8 (5) Refuse to recognize or to negotiate collectively with an
9 employee bargaining representative as required in this act.

10 (b) An employee organization and its representatives or agents shall
11 not:

12 (1) Interfere with, restrain, or coerce state employees in the
13 exercise of rights granted by this act;

14 (2) Restrain or coerce an employer with respect to selecting a
15 representative for the purposes of negotiating collectively on the adjustment
16 of grievances;

17 (3) Refuse to bargain collectively with an employer as required
18 in this act;

19 (4) Breach its duty of fair representation if the breach results
20 from action or inaction that was arbitrary, discriminatory, or in bad faith.

21
22 SECTION 8. Prohibited practice violations.

23 (a) The board shall prevent and remedy any prohibited practices under
24 this act.

25 (b) An order of the board under this section may be enforced by any
26 party to the board proceeding by filing a petition with the appropriate
27 circuit court.

28
29 SECTION 9. Judicial review.

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

33
34 SECTION 10. Exclusive representation process.

35 (a) Selection. The selection of a bargaining representative is the
36 prerogative of state employees and employers shall maintain a neutral

1 position with respect to the decision and choice by employees of an employee
2 bargaining representative.

3 (b) Majority designation by employees. An employee organization that
4 is designated as the collective bargaining representative by a majority of
5 state employees in an appropriate unit may request recognition as the
6 exclusive representative of such unit by the employer. The request shall
7 identify the unit sought to be represented and the basis on which majority
8 support is claimed. The employer shall grant the requested recognition
9 unless:

10 (1) The employer has a reasonable, good faith doubt as to the
11 accuracy or validity of the employee organization’s claim of majority
12 support;

13 (2) The board currently has pending a request by another employee
14 organization for a representation election for employees who would be
15 included within the requested unit; or

16 (3) The bargaining unit sought is not appropriate.

17 (c) Board conducted election.

18 (1) An employee organization may file a request for a secret
19 ballot election with the board upon a showing of thirty percent (30%)
20 interest among employees in a designated bargaining unit.

21 (2) Upon receipt of the petition, the board shall determine
22 whether it is appropriate to direct and conduct a secret ballot election.

23 (A) The petition shall be dismissed if the board
24 determines that:

25 (i) The bargaining unit sought is not appropriate;

26 (ii) The petition is not supported by at least
27 thirty percent (30%) of the employees;

28 (iii) The employee organization filing the request
29 had been decertified or lost a representation election for the same unit
30 within the previous twelve (12) months; or

31 (iv) Another employee or organization has been
32 lawfully recognized or certified as exclusive bargaining representative for
33 employees included within the unit within the previous twelve (12) months, or
34 is party to a collective bargaining agreement to which the board determines a
35 contract bar applies.

36 (B) Unless the petition is dismissed, the board, within

1 thirty (30) days after receipt of a petition, shall enter an order
 2 establishing the time and place for a secret ballot election. The board
 3 shall give no less than ten (10) days' notice of the time and place of the
 4 election.

5 (3) Following the filing of a petition, any employee
 6 organization may intervene and be included on the election ballot upon a
 7 timely showing of proof satisfactory to the board of support from at least
 8 ten percent (10%) of the employees in the unit.

9 (4) The question on the ballot shall include, in addition to the
 10 petitioning employee organization and any other employee organization that
 11 has timely intervened, a choice for "no representative".

12 (5)(A) If a majority of the votes cast in the election is for
 13 one (1) employee organization, then that employee organization shall be
 14 certified as the exclusive representative.

15 (B) If a majority of the votes cast in the election is for
 16 "no representative", then the board shall certify that the employees elected
 17 to have no exclusive representative.

18 (C) If none of the choices on the ballot receive a
 19 majority of the votes, then the board shall conduct a runoff election between
 20 the two choices receiving the greatest number of votes.

21 (6) The board shall promulgate regulations concerning the
 22 conduct of elections including access rights for employee organizations to
 23 communicate with state employees and means for guaranteeing the secrecy of
 24 the ballot.

25 (d) Determination of bargaining unit.

26 (1) The board shall not intervene in matters of recognition and
 27 unit definition except in the event of a dispute between the parties.

28 (2) In the event of a dispute, the board shall conduct a public
 29 hearing, receive written or oral testimony, and promptly thereafter file an
 30 order defining the appropriate bargaining unit.

31 (3) The board shall prescribe rules and regulations and
 32 establish procedures for the determination of appropriate bargaining units.
 33 In defining the unit, the board shall take into consideration, along with
 34 other relevant factors, the principles of efficient administration of
 35 government, the desire to avoid excessive fragmentation, the community of
 36 interest among the employees, the history and extent of the state employee

1 organization, the geographical location and the recommendations of the
 2 parties involved. Professional employees shall not be included in a unit
 3 with nonprofessional employees unless a majority of professional employees
 4 voting agree. Health care employees providing direct care shall not be
 5 included in a unit with non-direct care employees unless a majority of the
 6 direct care employees voting agree. Guards, corrections officers and police
 7 officers shall not be included in a unit with other employees unless a
 8 majority of the guards, corrections officers, or police officers agree.

9
 10 SECTION 11. Collective bargaining.

11 (a) Exclusive representative. The lawfully recognized or certified
 12 exclusive bargaining representative selected by state employees shall be the
 13 exclusive representative of all the employees in the unit. An employee
 14 organization may assess a reasonable fee to a non-member for services
 15 rendered in representing the employee in a negotiated grievance or
 16 arbitration procedure in the absence of an alternative fee system negotiated
 17 between the parties.

18 (b) Commencement of negotiations. Following recognition or
 19 certification of an employee organization as exclusive representative or
 20 within ninety (90) days prior to the expiration of a collective bargaining
 21 agreement between the parties, the designated representatives of the employee
 22 organization and of the employer shall commence collective bargaining with an
 23 aim to reaching an agreement in an expeditious manner.

24 (c) Scope of negotiations.

25 (1) The employer and the employee organization may negotiate
 26 regarding hours, non-monetary terms and conditions of employment, shift
 27 differentials, seniority, transfer procedures, health and safety matters,
 28 evaluation procedures, procedures for staff reduction, in-service training,
 29 class size and other matters mutually agreed upon.

30 (2) Every collective bargaining agreement shall include:

31 (A) Procedures to address state employee grievances and
 32 disputes over the interpretation and application of agreements; and

33 (B) A provision for dues checkoff.

34 (3) The parties may agree to a provision requiring that each
 35 non-member of a collective bargaining unit pay a fee to the exclusive
 36 bargaining representative which represents the pro-rata cost of

1 representation, determined pursuant to a full and fair procedure. Payment of
 2 the fee shall not be deemed a prerequisite to or condition of employment.
 3 The board shall, by regulation, establish the appropriate procedure for
 4 implementing any such agreement through checkoff.

5 (d) Enforcement of agreement. The terms of any collective bargaining
 6 agreement may be enforced by the appropriate circuit court upon the
 7 initiative of either party.

8 (e) Limitations.

9 (1) No collective bargaining agreement or arbitrator's decision
 10 shall be valid or enforceable if its implementation would be inconsistent
 11 with any statutory limitation on the employer's funds, or budget, or would
 12 substantially impair or limit the performance of any statutory duty by the
 13 employer.

14 (2) Nothing in this act shall limit the power of the General
 15 Assembly to fix the number or salaries of state employees.

16
 17 SECTION 12. Impasse procedures.

18 (a) Absence of impasse agreement. In the absence of an impasse
 19 agreement negotiated between the parties, the procedures prescribed in this
 20 section shall apply.

21 (b) Mediation. If an agreement has not been reached within ninety
 22 (90) days after the initiation of collective bargaining, the board shall,
 23 within five (5) days after the request of either party, appoint an impartial
 24 and disinterested person to act as mediator for the purpose of assisting the
 25 parties in reconciling their differences and resolving the controversy on
 26 mutually acceptable terms. The mediator shall take immediate steps to meet
 27 with the parties and may take such other steps as deemed appropriate in order
 28 to persuade the parties to resolve their differences and effect a mutually
 29 acceptable agreement in a timely fashion. The board may compel the
 30 attendance of all parties at any and all meetings scheduled by the mediator.
 31 If the mediator has not effected a settlement of the issue in dispute within
 32 ten (10) days of his or her appointment, either party, by written
 33 notification to the other, may request implementation of the arbitration
 34 procedure described in subsection (c). This section does not preclude the
 35 parties from mutually agreeing upon a mediator who, upon the parties joint
 36 request, shall be appointed by the board to serve in that capacity.

1 (c) Binding arbitration. If an impasse persists beyond ten (10) days
 2 after appointment of a mediator, the board, at the request of either party,
 3 shall refer the matter to one (1) or more arbitrators for binding
 4 arbitration.

5 (1) The request for arbitration shall be in writing and a copy
 6 of the request shall be served upon the other party.

7 (2) The arbitrator shall be selected jointly by the parties
 8 within fifteen (15) days from lists provided by either the Federal Mediation
 9 and Conciliation Service or the American Arbitration Association. In the
 10 event that the parties are unable to jointly agree upon the arbitrator the
 11 board shall resolve the matter independently. At the request of the parties,
 12 the board may appoint an arbitration panel in lieu of a single arbitrator.
 13 The arbitration panel shall consist of three (3) members, one (1) of whom
 14 shall be selected by the employer, one (1) of whom shall be selected by the
 15 employee organization, and one (1) of whom shall be selected by mutual
 16 agreement of the other two (2) arbitrators. The jointly selected member
 17 appointed shall be the chairperson of the panel of arbitrators. No member
 18 appointed shall be an employee of the parties. Any decision of the panel of
 19 arbitrators shall be by majority vote.

20 (3) Within five (5) days of the appointment of the arbitrator or
 21 arbitration panel, each party shall submit to the arbitrator a statement of
 22 its final offer on all matters about which the parties are at impasse, with
 23 proof of service of a copy upon the other party. The parties shall jointly
 24 submit a copy of a draft of the proposed collective bargaining agreement
 25 containing all matters on which agreement has been reached. The parties may
 26 continue to negotiate all offers until an agreement is reached or a decision
 27 rendered by the arbitrator.

28 (4) The arbitrator may conduct hearings and require, by
 29 subpoena, the attendance and testimony of witnesses and the production of
 30 books, records or other evidence relevant to the issues presented.

31 (5) Within thirty (30) days after appointment, the arbitrator
 32 shall issue a written decision setting out the final terms on the matter of
 33 an impasse with an explanation thereof. In making a decision, the arbitrator
 34 shall consider, in addition to any other relevant factors, the following:

35 (A) Past collective bargaining contracts between the
 36 parties, including the bargaining that led up to the contracts;

1 (B) Comparison of conditions of employment of the involved
 2 state employees with those of other state employees and private sector
 3 employees doing comparable work, giving consideration to factors peculiar to
 4 the area and the classifications involved;

5 (C) The interests and welfare of the public, the ability
 6 of the employer to finance economic adjustments and the effect of such
 7 adjustments on the normal standard of services; and

8 (D) The power of the employer to levy taxes and
 9 appropriate funds for the conduct of its operations.

10 (6) The decision of the arbitrators on the matters at impasse
 11 together with the provisions previously agreed to by the employer and the
 12 employee organization, shall be deemed to be the collective bargaining
 13 agreement between the parties and shall be final and binding, subject to any
 14 requirements for approval or ratifications set forth in Section 11.

15 (7) The full costs of arbitration under this section shall be
 16 shared by the parties to the dispute. In the case of an arbitration panel,
 17 the employer and the employee organization shall each pay the fees and
 18 expenses incurred by the arbitrator each selected, the fee and expenses of
 19 the chairperson of the panel and all other costs of arbitration shall be
 20 shared equally.

21
 22 SECTION 13. Registration of employee organizations.

23 (a) An employee organization seeking to represent state employees
 24 under the provisions of this act shall file with the board a registration
 25 document stating its intent to become a representative of state employees.

26 (b) Any employee organization subject to the Labor-Management
 27 Reporting and Disclosure Act of 1959, beginning at 29 U.S.C. 401, may file
 28 with the board copies of all reports required to be filed under that act in
 29 lieu of the filings required by this act, other than those required by
 30 subsection (a).

31
 32 SECTION 14. Filing agreement public access.

33 Copies of collective bargaining agreements entered into between the
 34 employer and the state employee's bargaining representative and made final
 35 under this act shall be filed with the Secretary of State and be made
 36 available to the public at cost.

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SECTION 15. General delegation.

The General Assembly specifically confers upon the board and all employers the power and authority to implement the provisions of this act, and further confers upon all employers the authority to recognize and enter into collective bargaining agreements with employee organizations.

SECTION 16. Involvement of Governor's Office.

All employer functions shall be administered through the Office of the Governor, who may designate an official state negotiator to engage in collective bargaining negotiations and oversight on behalf of the employer.

SECTION 17. EMERGENCY CLAUSE. It is found and determined by the General Assembly that this act creates the State Employment Relations Board; that the appropriation for the operation of the board becomes effective at the beginning of the next fiscal year; that it is necessary to coordinate the effective date of this substantive act with its companion appropriation acts; and that this emergency clause must be adopted to accomplish that purpose. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2003.