

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

As Engrossed: H3/6/03 H3/18/03 H4/11/03

A Bill

HOUSE BILL 1139

5 By: Representatives J. Elliott, Blair, Chesterfield, Clemons, Creekmore, Fite, Hathorn, J. Johnson, Judy,
6 Ledbetter, Lendall, Lewellen, Thomas
7
8

For An Act To Be Entitled

10 THE STATE EMPLOYEE LIMITED PUBLIC EMPLOYMENT
11 RELATIONS ACT.
12

Subtitle

14 THE STATE EMPLOYEE LIMITED PUBLIC
15 EMPLOYMENT RELATIONS ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

SECTION 1. Public policy.

21 The General Assembly declares that it is the public policy of the state
22 to promote harmonious and cooperative relationships between government and
23 its employees by permitting state employees to have a voice in determining
24 their conditions of work through collective bargaining; to protect the
25 citizens of this state by assuring effective and orderly operations of
26 government in providing for their health, safety, and welfare; and to protect
27 the rights of state employees to join or refuse to join, and to participate
28 in or refuse to participate in employee organizations of their own choosing.
29

SECTION 2. Title.

31 This act shall be known and may be cited as the "State Employee Limited
32 Public Employment Relations Act".
33

SECTION 3. Definitions.

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

36 (1) "Arbitration" means the procedure whereby the parties involved in



1 a dispute under a collective bargaining agreement submit their differences to
2 a third party for a final and binding decision or as provided in this act;

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

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

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

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

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

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

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

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

1 overseeing and administering collective bargaining agreements or major
2 personnel decisions;

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

4 (A) Who is engaged in work that:

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

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

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

15 (B) An employee who:

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

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

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

23
24 SECTION 4. Coverage and exclusions.

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

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

28 (2) Managerial representatives;

29 (3) Confidential employees;

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

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

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

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

1 Guard;

2 (6) Judicial officers, and employees of the judicial branch;

3 (7) Patients and inmates employed, sentenced or committed to any state
4 or local institution;

5 (8) Legislative branch employees; and

6 (9) Public school employees.

7
8 SECTION 5. Public Employment Relations Board.

9 (a) There is created within the executive branch a board to be known
10 as the "Public Employment Relations Board".

11 (1) The board shall be composed of three (3) members appointed
12 by the Governor, subject to confirmation by the Senate. One (1) member shall
13 by qualifications be representative of the employees. One (1) member shall
14 by qualifications be representative of the employers. One (1) member shall
15 by qualifications be considered a neutral in labor-management issues and must
16 have five (5) years' experience as a mediator or an arbitrator of labor
17 management disputes. In selecting the members of the board, consideration
18 shall be given to their knowledge, ability, and experience in the field of
19 labor-management relations. The member holding the neutral position shall
20 serve as the chairperson of the board.

21 (2) The initial employees' representative shall be appointed for
22 a two-year term of office, the initial employer representative shall be
23 appointed for a four-year term of office, and the initial neutral member
24 shall be appointed for a six-year term of office. Upon the expiration of any
25 term of office, the successor shall be appointed for a six-year term of
26 office.

27 (3) No member of the board shall engage in any political
28 activity while holding office.

29 (4) Any vacancy occurring shall be filled in the same manner as
30 regular appointments are made and the appointee shall serve the remainder of
31 the unexpired term of office.

32 (5) The board may, to the extent funds are available, employ
33 such persons as are necessary for the performance of its functions.

34 (6) To the extent funds are available therefor, members of the
35 board shall receive a stipend as provided in Arkansas Code 25-16-904 and
36 expense reimbursement as provided in Arkansas Code 25-16-902.

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

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

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

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

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

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

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

14
15 SECTION 6. State employee rights.

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

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

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

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

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

27 (b) It shall be unlawful for any employee or any employee organization
28 to induce, instigate, authorize, ratify, or participate in a strike against
29 the employer or to otherwise participate in any work stoppage or
30 interruption.

31
32 SECTION 7. Prohibited practices.

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

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

36 (2) Dominate or interfere with the formation or administration

1 of any employee organization;

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

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

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

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

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

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

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

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

22
23 SECTION 8. Prohibited practice violations.

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

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

29
30 SECTION 9. Judicial review.

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

34
35 SECTION 10. Exclusive representation process.

36 (a) Selection. The selection of a bargaining representative is the

1 prerogative of state employees and employers shall maintain a neutral
2 position with respect to the decision and choice by employees of an employee
3 bargaining representative.

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

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

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

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

18 (c) Board conducted election.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) Determination of bargaining unit.

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

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

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

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

10
11 SECTION 11. Collective bargaining.

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

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

25 (c) Scope of negotiations.

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

31 (2) Every collective bargaining agreement shall include:

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

34 (B) A provision for dues checkoff.

35 (d) Enforcement of agreement.

36 (1) The parties to a collective bargaining agreement may provide

1 for the final and binding arbitration of disputes arising under the
2 agreement.

3 (2) The judicial review, if any, of the arbitration decisions
4 shall be pursuant to the Uniform Arbitration Act.

5 (3) In the absence of an agreement for the arbitration of
6 disputes, the terms of any collective bargaining agreement may be enforced by
7 the appropriate circuit court upon the 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) Fact Finding.

2 (1) If the impasse persists ten (10) days after the mediator has
3 been appointed, the board shall appoint a fact finder representative of the
4 public from a list of qualified persons maintained by the board.

5 (2) The fact finder shall conduct a hearing, may administer
6 oaths, and may request the board to issue subpoenas.

7 (3) The fact finder shall secure from both parties agreements
8 reached by the parties prior to fact finding and the final position of each
9 party with regard to any subject of bargaining as to which the parties have
10 not reached agreement.

11 (4) In determining whether to include in his or her
12 recommendations the final position of either party, the fact finder shall
13 consider the following factors:

14 (A) Agreements reached in collective bargaining prior to
15 fact finding;

16 (B) The ability of the employer to meet costs, including
17 both available financial resources and sources of additional financial
18 resources, in light of any state imposed limitations on local spending or
19 revenue;

20 (C) The terms and conditions of employment of the
21 employees involved in fact finding hearings as compared to the terms and
22 conditions of employment of other employees of the employer and of other
23 public and private sector employees performing similar services in the same
24 community and in comparable communities; and

25 (D) Other factors that traditionally are taken into
26 consideration in the determination of terms and conditions of employment
27 through collective bargaining in public and private sector employment.

28 (4) The fact finder shall make written findings of facts and
29 recommendations for resolution of the dispute and, not later than fifteen
30 (15) days after the date of appointment, shall serve the findings and
31 recommendations on the employer and the employee organization.

32 (5) The employer shall immediately accept the fact finder's
33 recommendations or shall make public the report of the fact finder.

34 (6) The employer shall, on the sixth working day after making
35 the fact finder report public, take action of acceptance or rejection of each
36 recommendation of the fact finder.

1 (7) However, during the period of time between the employer
2 making the report public and taking action, the parties shall continue to
3 make good faith efforts to resolve the dispute.

4
5 SECTION 13. Registration of employee organizations.

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

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

14
15 SECTION 14. Filing agreement public access.

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

20
21 SECTION 15. General delegation.

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

26
27 SECTION 16. Involvement of Governor's Office.

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

31
32 SECTION 17. Strikes Prohibited.

33 (a) It is unlawful for:

34 (1) Any state employee or any employee organization to induce,
35 instigate, authorize, ratify, or participate in a strike against any
36 employer;

1 (2) Any employer to authorize, consent to, or condone a strike
2 against any employer or to pay or agree to pay any increase in compensation
3 or benefits to any employee in response to or as a result of a strike or any
4 act which violates subdivision (a)(1) of this section;

5 (3) Any official, director, or representative of any employer to
6 authorize, ratify, or participate in any violation of this subsection; or

7 (4) Any employer or employee organization to bargain at any time
8 regarding suspension or modification of any penalty provided in this section
9 or regarding any request by the public employer to a court for the suspension
10 or modification.

11 (b) If subdivision (a) of this section is violated, then, after the
12 violation has ceased, nothing in this section shall prevent new or renewed
13 bargaining and agreement within the scope of negotiations as defined in this
14 act.

15 (c)(1) If any violation or imminently threatened violation of
16 subsection (a) of this section exists, any citizen domiciled within the
17 jurisdictional boundaries of the 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 the violation or imminently threatened
20 violation.

21 (2) The Rules of Civil Procedure regarding injunctions shall
22 apply.

23 (3) The court shall grant a temporary injunction if the court
24 finds a violation of this section has occurred or is imminently threatened.

25 (4) The plaintiff is not required to prove that the violation or
26 threatened violation would greatly or irreparably injure the plaintiff.

27 (5) The court shall only require the plaintiff to post bond if
28 the court determines that a bond is necessary in the public interest.

29 (6)(A) Failure to comply with any temporary or permanent
30 injunction granted under this section shall constitute contempt of court.

31 (B) The punishment for each day during which the temporary
32 or permanent injunction is violated shall not exceed:

33 (i) Five hundred dollars (\$500) for an individual;

34 (ii) Ten thousand dollars (\$10,000) for an employee
35 organization or employer;

36 (iii) Imprisonment in a county jail not exceeding

1 six (6) months; or

2 (iv) Both fine and imprisonment.

3 (C) An individual or an employee organization which makes
4 an active good faith effort to comply fully with the injunction shall not be
5 deemed to be in contempt.

6 (d)(1) If any employee is held in contempt of court for failure to
7 comply with an injunction under this section, or pleads guilty or nolo
8 contendere to, or is found guilty of violating of this section:

9 (A) The employee shall be ineligible for any employment by
10 the same employer for a period of twelve (12) months; and

11 (B) The employee's employer shall immediately discharge
12 the employee.

13 (2) Upon the employee's request, the court shall stay the
14 discharge to permit further judicial proceedings.

15 (e)(1) If an employee organization or any of its officers is held to
16 be in contempt of court for failure to comply with an injunction under this
17 section, or pleads guilty or nolo contendere to, or is found guilty of
18 violating of this section, the employee organization shall:

19 (A) Be immediately decertified;

20 (B) Cease to represent the bargaining unit; and

21 (C) Cease to receive any dues by deduction.

22 (2) If an employee organization or any of its officers is held
23 to be in contempt of court for failure to comply with an injunction under
24 this section, or pleads guilty or nolo contendere to, or is found guilty of
25 violating this section, the employee organization may again be certified only
26 after:

27 (A) Twelve (12) months have elapsed after the effective
28 date of decertification; and

29 (B) A new compliance with section 9 of this act.

30 (3) The penalties provided in this section may be suspended or
31 modified by the court, but only:

32 (A) Upon request of the employer; and

33 (B) If the court determines the suspension or modification
34 is in the public interest.

35 (f) Each of the remedies and penalties provided by this section is
36 separate and several, and is in addition to any other legal or equitable

1 remedy or penalty.

2
3 SECTION 18. EMERGENCY CLAUSE. It is found and determined by the
4 General Assembly that this act creates the State Employment Relations Board;
5 that the appropriation for the operation of the board becomes effective at
6 the beginning of the next fiscal year; that it is necessary to coordinate the
7 effective date of this substantive act with its companion appropriation acts;
8 and that this emergency clause must be adopted to accomplish that purpose.
9 Therefore, an emergency is declared to exist and this act being immediately
10 necessary for the preservation of the public peace, health and safety shall
11 become effective on July 1, 2003.

12
13 /s/ J. Elliott, et al
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