

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 85th General Assembly
3 Regular Session, 2005

As Engrossed: S4/6/05

A Bill

SENATE BILL 1180

4
5 By: Senator Wilkins
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND AND CLARIFY CERTAIN LAWS
10 PERTAINING TO PUBLIC EDUCATION; TO PROVIDE A
11 PROCEDURE FOR THE PROFESSIONAL NEGOTIATION
12 BETWEEN PUBLIC SCHOOL EMPLOYEES AND SCHOOL
13 DISTRICTS; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 THE PROFESSIONAL NEGOTIATION ACT FOR
17 PUBLIC EDUCATION OF 2005.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. This act shall be known and may be cited as the
23 "Professional Negotiation Act For Public Education of 2005".
24

25 SECTION 2. (a) The purpose of this act is to prescribe the rights and
26 obligations of school boards and their employees and to establish procedures
27 governing the relationships between them that are designed to meet the
28 special requirements and needs of public education.

29 (b) School boards and their employees have an obligation to the
30 public to exert full and continuing efforts to achieve the highest possible
31 education standards in the institutions that they serve. This requires the
32 establishment and maintenance of an educational climate and working
33 environment that will attract and retain a highly qualified staff and
34 stimulate optimum performance.

35 (c)(1) Experience has shown that school boards and their employees can
36 best reach these objectives if each utilizes the ability, experience, and



1 judgment of the other in formulating policies and making decisions that
2 involve the terms and conditions of employee service and other matters of
3 mutual concern.

4 (2) Such joint participation can be accomplished most
5 effectively if the employees have the right to the following activities to
6 improve the terms and conditions of employee service and other matters of
7 mutual concern:

8 (A) Form, join, and assist employee organizations; and

9 (B) Confer, consult, and negotiate with such school boards
10 through representatives of their own choosing.

11 (d) The General Assembly hereby declares that it is the policy of the
12 State of Arkansas to recognize the rights of employees of school boards to:

13 (1) Form, join, and assist employee organizations;

14 (2) Confer, consult, and negotiate with school boards over the
15 terms and conditions of employee service and other matters of mutual concern
16 through representatives of their own choosing for the purpose of
17 establishing, maintaining, protecting, and improving terms and conditions of
18 employee service and other matters of mutual concern; and

19 (3) Establish procedures that will facilitate and encourage the
20 amicable settlement of disputes.

21
22 SECTION 3. As used in this act:

23 (1) "School board" means:

24 (A) Any board authorized to direct the public educational
25 system of any school district; or

26 (B) Any person or persons designated by the board to
27 represent it in negotiations with an employee organization;

28 (2) "Employee" means any person employed by a school board,
29 except the superintendent and assistant superintendent of schools;

30 (3) "Employees' organization" means one (1) or more
31 organizations in which school employees participate and that exists for the
32 purpose, in whole or in part, of conferring, discussing, and negotiating with
33 school boards over the terms and conditions of school employee service and
34 other matters of mutual concern;

35 (4) "Representative" means any employees' organization or person
36 authorized or designated to act in its behalf;

1 (5) "Professional negotiation" means meeting, conferring,
2 consulting, discussing, or negotiating in a good faith effort to reach an
3 agreement with respect to the terms and conditions of employee service or
4 other matters of mutual concern, and the execution, if requested by either
5 party, of a written document incorporating any agreements reached;

6 (6) "Mediator" means a qualified impartial individual who
7 assists with the resolution of disputes including any individual from the
8 Federal Mediation and Conciliation Service or the American Arbitration
9 Association; and

10 (7) "Fact-finder" means a qualified impartial individual who
11 makes findings of fact with regard to a dispute including any individual from
12 the Federal Mediation and Conciliation Service or the American Arbitration
13 Association.

14
15 SECTION 4. (a)(1) There is established a commission to be known as
16 the "School Employee Relations Commission".

17 (b)(1) The commission shall consist of three (3) members appointed by
18 the Governor with the approval of the Senate.

19 (2) The members appointed in 2005 shall serve the following
20 terms:

21 (A) One (1) member to serve for a term of one (1) year;

22 (B) One (1) member to serve for a term of three (3) years;

23 and

24 (C) One (1) member to serve for a term of five (5) years.

25 (3) Subsequent appointments are for a term of five (5) years.

26 (c)(1) An appointed commission member shall be a resident of the State
27 of Arkansas at the time of appointment and throughout his or her term.

28 (2) Members shall be eligible for reappointment.

29 (d)(1) If a vacancy occurs in an appointed position, for any reason,
30 the vacancy shall be filled by appointment by the official that made the
31 appointment.

32 (2) The new appointee shall serve for the remainder of the
33 unexpired term.

34 (e)(1) The Governor shall designate one (1) member to serve as chair
35 of the commission.

36 (2) Any member of the Commission may be removed by the Governor,

1 upon notice and hearing, solely for neglect of duty or malfeasance in office.

2 (f)(1) The commission shall meet at times and places the chairperson
3 deems necessary. No meetings shall be held outside of the State of Arkansas.

4 (2) Two (2) members of the commission shall constitute a quorum
5 for the purpose of transacting business.

6 (3) A vacancy in the Commission shall not impair the right of
7 the remaining members to exercise all of the powers of the Commission.

8 (g) The commission may:

9 (1) Make, amend, and rescind rules and regulations as are
10 necessary to carry out the provisions and purposes of this act;

11 (2) Prevent any person from engaging in conduct in violation of
12 this act;

13 (3) Hold hearings;

14 (4) Subpoena witnesses;

15 (5) Administer oaths;

16 (6) Take the testimony or deposition of any person under oath;

17 (7) Issue subpoenas duces tecum to require the production and
18 examination of any governmental or other books or papers relating to any
19 matter pending before the commission; and

20 (8) Take other actions as may be necessary in the performance of
21 its duties under this act.

22 (h) The Commission shall appoint an executive director and may employ
23 other persons as may, from time to time, be necessary.

24 (i)(1) The Department of Education shall provide staff and office
25 space to the commission.

26 (2)(A) Members of the commission shall serve without pay.

27 (B) Members of the commission may receive expense
28 reimbursement in accordance with Arkansas Code § 25-16-902 to be paid by the
29 Department of Education to the extent money is available.

30
31 SECTION 5. (a) School employees shall have the right to form, join, or
32 assist employees' organizations, to participate in negotiation with school
33 boards through representatives of their own choosing for the purpose of
34 establishing, maintaining, protecting, or improving terms and conditions of
35 employee service and other matters of mutual concern.

36 (b) Employees' organizations shall have:

1 (1)(A)(i) Access at reasonable times to areas in which employees
2 work;

3 (ii) The right to use institutional bulletin boards,
4 mail boxes, or other communication media, subject to reasonable regulation;
5 and

6 (iii) The right to use institutional facilities at
7 reasonable times for the purpose of meetings concerned with the exercise of
8 the rights guaranteed by this act.

9 (B) However, if a representative of the school employee
10 organization has been selected or designated under Section 6 of this act, a
11 school board shall deny access and usage to any other employees' organization
12 until such time as a lawful and timely challenge to the majority status of
13 the representative is raised under Section 6 of this act; and

14 (2)(A) The right to have deducted from the salary of school
15 employees, upon receipt of an appropriate authorization form that shall not
16 be revocable for a period of more than one (1) year, the fees and dues
17 required for membership in an employees' organization.

18 (B) However, if a representative has been selected or
19 designated under Section 6 of this act, a school board shall deny such
20 deduction to any other employees' organization.

21
22 SECTION 6. (a)(1) The representative designated or selected for the
23 purpose of professional negotiation by the majority of the school employees
24 in an appropriate negotiating unit shall be the exclusive representative of
25 all of the school employees in such unit for such purpose, and a school board
26 shall not negotiate matters covered by this act with any other
27 representative.

28 (2)(A) However, nothing contained herein shall be construed to
29 prevent school employees, individually or as a group, from presenting
30 grievances informally to a school board and from having such grievances
31 adjusted without the intervention of the representative designated or
32 selected by the majority of the school employees in the unit of which they
33 are a part if:

34 (i) The representative is given an opportunity to be
35 present at the adjustment to make the representative's views known; and

36 (ii) The adjustment is not inconsistent with the

1 terms of an agreement between the school board and their representative that
2 is currently in effect.

3 (B) However, the employees shall not be represented by an
4 officer or agent of any employees' organization.

5 (b)(1) Any employees' organization may file a request with a school
6 board alleging that a majority of the school employees in an appropriate
7 negotiating unit wish to be represented for the purposes of professional
8 negotiation by the organization and asking the school board to recognize it
9 as the exclusive representative under subsection (a) of this section.

10 (2) Such a request shall describe the grouping of jobs or
11 positions that constitute the unit claimed to be appropriate and shall
12 include a demonstration of majority support through verified membership
13 lists.

14 (3) Notice of the request to the appropriate negotiating unit
15 shall immediately be posted by the school board on a bulletin board at each
16 school or other facility in which members of the unit claimed to be
17 appropriate are employed.

18 (4) The request for recognition shall be granted by the school
19 board unless:

20 (A) The school board doubts in good faith the accuracy or
21 validity of the evidence demonstrating majority support in an appropriate
22 negotiating unit or as to the appropriateness of the claimed unit;

23 (B) Another employees' organization files with the school
24 board a competing claim of majority support within ten (10) calendar days
25 after the posting of notice of the original request and submits as evidence
26 of its claim of majority support verified membership lists demonstrating
27 support of at least thirty percent (30%) of the school employees in the
28 appropriate negotiating unit;

29 (C) There is currently in effect a lawful written
30 agreement negotiated by the school board and another employees' organization
31 covering any school employees included in the unit described in the request
32 for recognition; or

33 (D) The school board has, within the previous twelve (12)
34 months, lawfully recognized another employees' organization as the exclusive
35 representative of any school employees included in the unit described in the
36 request for recognition.

1 (c) A petition may be filed with the School Employee Relations
2 Commission, in accordance with such rules and regulations as the commission
3 may prescribe for filing, asking the commission to investigate and decide the
4 question of whether school employees have selected or designated an exclusive
5 representative under subsection (a) of this section by:

6 (1) A school board alleging that it has received a request for
7 exclusive recognition from an employees' organization and doubts in good
8 faith the accuracy or validity of evidence demonstrating majority support in
9 an appropriate unit or as to the appropriateness of the claimed unit;

10 (2) An employees' organization alleging that it has filed a
11 request for recognition as exclusive representative with a school board and
12 that such request has been denied or has not been acted upon within thirty
13 (30) days after the filing of said request; or

14 (3) One (1) or more school employees or employees' organization
15 asserting that the school employees in an appropriate unit no longer desire a
16 particular employees' organization as their exclusive representative;
17 provided, however, that such petition is supported by signed statements to
18 that effect from at least thirty percent (30%) of the professional employees
19 in the appropriate negotiating unit.

20 (d)(1) Upon receipt of such petition, the commission or its agents
21 shall conduct inquiries and investigations or hold such hearings as it shall
22 deem necessary in order to decide the questions raised by the petition.

23 (2) The commission's determination may be based upon the
24 evidence adduced in such inquiries, investigations or hearings as the
25 commission or its agent shall make or hold, or upon the results of a secret
26 ballot election as the commission shall direct and conduct if deemed
27 necessary; provided, however that the commission shall dismiss, without
28 determining the questions raised therein, any petition filed pursuant to
29 subsections, (c)(2) or (3) of this section if:

30 (A) The petition filed by an employees' organization is
31 not supported by credible evidence in the form of verified membership lists
32 that at least thirty percent (30%) of the school employees in the unit
33 described therein are members in good standing of the organization seeking
34 recognition;

35 (B) There is currently in effect a lawful written
36 agreement negotiated by such school board and employees' organization other

1 than the petitioner covering any school employees included in the unit
2 described in the petition, unless the agreement has been in effect for more
3 than three (3) years, or unless the request for recognition is filed less
4 than sixty (60) days prior to the expiration date of the agreement or such
5 greater number of days prior to the expiration date of the agreement as the
6 commission may determine is reasonable because of the budget-making procedure
7 of the school board; or

8 (C) The school board has, within the previous twelve (12)
9 months, lawfully recognized an employees' organization other than the
10 petitioner as the exclusive representative of any school employees included
11 in the unit described in the petition.

12 (e) If the commission decides that it is necessary to direct and
13 conduct a secret ballot election in order to resolve the questions raised by
14 the petition, it shall order such election held, but in no event shall the
15 name of any intervening employees' organization appear on the ballot unless
16 the organization has submitted to the commission credible evidence in the
17 form of verified membership lists demonstrating that at least thirty percent
18 (30%) of the school employees in the appropriate unit are members in good
19 standing of such organization.

20 (f) In each case where the appropriateness of the claimed unit is at
21 issue, the commission shall decide the question on the basis of the community
22 interest between and among the school employees of the school board, their
23 wishes, and their established practices including, among others, the extent
24 to which such employees have joined an employees' organization, whether the
25 unit appropriate for the purposes of negotiation shall consist of all
26 persons employed by the school board who are engaged in teaching or
27 performing other duties of an educational nature or some subdivision thereof.

28
29 SECTION 7. (a)(1) Either a school board or the representative
30 selected or designated under Section 6 of this act may declare that an
31 impasse has been reached between the parties in negotiation over the terms
32 and conditions of employee service and other matters of mutual concern and
33 may request the School Employee Relations Commission to appoint a mediator
34 for the purpose of assisting them in reconciling their differences and
35 resolving the controversy on items that are mutually acceptable.

36 (2) If the commission determines that impasse exists, it shall,

1 in no event later than five (5) days after the receipt of a request, appoint
2 a mediator in accordance with rules and procedures for such appointment
3 prescribed by the commission.

4 (3) The commission may, on its own initiative, declare an
5 impasse and appoint a mediator in any particular negotiation.

6 (4)(A) The mediator shall meet with the parties or their
7 representatives, or both, either jointly or separately, and shall take such
8 other steps as he or she may deem appropriate in order to persuade the
9 parties to resolve their differences and effect a mutually acceptable
10 agreement.

11 (B) However, the mediator shall not, without the consent
12 of both parties, make findings of fact or recommend terms of settlement.

13 (b) The services of the mediator, including, if any, per diem
14 expenses, and actual and necessary travel and subsistence expenses, shall be
15 provided by the commission without cost to the parties. Nothing in this
16 subsection shall be construed to prevent the parties from mutually agreeing
17 upon their own mediation procedure and, in the event of such agreement, the
18 commission shall not appoint its own mediator unless failure to do so would
19 be inconsistent with the effectuation of the policies of this act.

20 (c)(1) If the mediator is unable to effect settlement of the
21 controversy within fifteen (15) days after his appointment, either party may,
22 by written notification to the other, request that their differences be
23 submitted to fact-finding with recommendations.

24 (2) Within ten (10) days after receipt of the written request
25 for fact-finding, the parties shall select a person to serve as fact-finder
26 and obtain a commitment to serve.

27 (3) If they are unable to agree upon a fact-finder or to obtain
28 such a commitment within ten (10) days, either party may request the
29 commission to designate a fact-finder.

30 (4) The commission, shall, within five (5) days after receipt of
31 such request, designate a fact-finder in accordance with rules and
32 regulations prescribed by the commission.

33 (5) The fact-finder so designated shall not, without the consent
34 of both parties, be the same person who was appointed mediator pursuant to
35 subsection (a) of this section.

36 (d)(1)(A) The fact-finder shall, within ten (10) days after his

1 appointment, meet with the parties or their representatives, or both, either
2 jointly or separately, at which time each party shall submit a certified copy
3 of the last and best offer that it has made to the other party.

4 (B) The fact-finder may make inquiries and investigations,
5 hold hearings, and take such other steps as he may deem appropriate.

6 (C) For the purpose of such hearings, investigations, and
7 inquiries, the fact-finder shall have the power to issue subpoenas requiring
8 the attendance and testimony of witnesses and the production of evidence.

9 (2) The several departments, commissions, divisions,
10 authorities, boards, bureaus, agencies, and officers of the State of Arkansas
11 or any political subdivision thereof, shall furnish the fact-finder, upon his
12 request, with all records, papers, and information in their possession
13 relating to any matter under investigation by or in issue before the fact-
14 finder.

15 (3)(A) If the dispute is not settled within thirty (30) days
16 after his appointment, the fact-finder shall make findings of fact and
17 recommend terms of settlement that shall consist of the final offer by either
18 party which in the opinion of the fact-finder is the most fair and
19 reasonable.

20 (B) Such recommendations by the fact-finder shall be
21 binding on the school board and the employees' organization. A copy shall be
22 submitted to the school board, the employees' organization, and the
23 commission.

24 (C) When making his or her findings of fact and
25 recommended terms of settlement, the fact-finder shall consider:

26 (i) The interests and the welfare of the public;

27 (ii) The interests and the welfare of the employees;

28 (iii) The interests and the welfare of students;

29 (iv) The finances of the district;

30 (v) The cost of living;

31 (vi) Comparisons with other employees in Arkansas
32 and the nation; and

33 (vii) Other factors normally taken into
34 consideration in similar arbitration proceedings.

35 (e)(1) Contracts and any other agreements covering salaries of
36 employees and other conditions of employment that were subjects of disputes

1 and were submitted to fact-finding shall, for the next contract period, be
2 based on and consistent with the recommendations of the fact-finder.

3 (2) Refusal by either party to enter into and to comply with
4 contracts and agreements based on the fact-finders recommended terms of
5 settlement shall be in violation of this act.

6 (f)(1) The costs for the services of the fact-finder, including per
7 diem expense, if any, and actual and necessary travel and subsistence
8 expenses, and any other mutually incurred costs, shall be borne equally by
9 the school board and the employees' representative.

10 (2) Any individually incurred costs shall be borne by the party
11 incurring them.

12
13 SECTION 8. (a) A school board and a representative selected or
14 designated under Section 6 of this act who enter into an agreement covering
15 terms and conditions of employee service and other matters of mutual concern
16 may include in the agreement procedures for final and binding arbitration of
17 such disputes as may arise involving the interpretation, or application of
18 such agreement or of established policies or practices of the school board
19 affecting terms and conditions of employee service and other matters of
20 mutual concern.

21 (b) If the agreement does not include procedures of the type provided
22 for in subsection (a) of this section, either party to the agreement may
23 submit such disputes to final and binding arbitration pursuant to rules and
24 procedures prescribed by the commission.

25 (c) Where a party to the agreement is aggrieved by the failure,
26 neglect, or refusal of the other party to proceed to arbitration pursuant to
27 the procedures provided therefore in the agreement pursuant to subsection (b)
28 of this section, the aggrieved party may file a complaint in court for a
29 summary action without jury seeking an order directing that the arbitration
30 proceed pursuant to the procedures provided therefore in the agreement or
31 pursuant to subsection (b) of this section.

32 (d) An award of an arbitrator under this section shall be final and
33 binding upon the parties and may be enforced by the court unless the award of
34 an arbitrator is deficient because:

35 (1) The award was procured by corruption, fraud, or other
36 misconduct;

