

**ARKANSAS SENATE**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

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**Subtitle of Senate Bill No. 448**

""THE PUBLIC EMPLOYMENT RELATIONS ACT""

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**Amendment No. 1 to Senate Bill No. 448.**

Amend Senate Bill No. 448 as originally introduced:

Page 1, strike Section 1 in its entirety, and substitute the following:

SECTION 1. Public Policy.

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

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

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

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

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

(b) The General Assembly declares that the purpose of the Public Employment Relations Board established by this act is to implement the provisions of this act and adjudicate and conciliate employment-related cases involving the State of Arkansas and other public employers and employee organizations. For this purpose the powers and duties of the board include but are not limited to the following:

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

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

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

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

- (5) Providing mediators, fact finders, and arbitrators to resolve impasses in negotiations;
- (6) Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees; and
- (7) Assisting the Attorney General in the preparation of legal briefs and the presentation of oral arguments in cases affecting the board.

SECTION 2. Title.

This act shall be known and may be cited as the "Public Employment Relations Act".

SECTION 3. Definitions.

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

- (1) "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this act;
- (2) "Board" means the public employment relations board established under this act;
- (3)(A) "Confidential employee" means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer;
  - (B) "Confidential employee" also includes the personal secretary of any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof or the deputy or first assistant of any of the foregoing;
- (4) "Employee organization" means an organization of any lawful association, organization, federation, council or labor union, the membership of which includes public employees and which assists its members to improve their wages, hours and conditions of employment;
- (5) "Fact-finding" means the procedure by which a qualified person makes written findings of fact and recommendations for resolution of an impasse;
- (6) "Governing body" means the board, council, commission, agency, department, or higher education institution, whether elected or appointed of the State of Arkansas and of any political subdivision of this state, including cities, counties, school districts and other special purpose districts, which determines the policies for the operation of the political subdivision;
- (7) "Impasse" means the failure of a public employer and the employee organization to reach agreement in the course of negotiations;
- (8) "Mediation" means assistance by an impartial third party to reconcile an impasse between the public employer and the employee organization through interpretation, suggestion, and advice;
- (9) "Professional employee" means any one (1) of the following:
  - (A) Any employee engaged in work:
    - (i) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
    - (ii) Involving the consistent exercise of discretion and judgment in its performance;

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

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

(B) Any employee who:

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

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

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

(11) "Public employer" means the State of Arkansas, its boards, commissions, agencies, departments, higher education institutions, and its political subdivisions including school districts, cities, counties, and any organization that receives public funds from the State of Arkansas, and other special purpose districts;

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

(13) "Supervisory employee" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. An employee is not included as a supervisor solely by reason of his or her membership on a faculty tenure or other governance committee or body or because of being a department chair. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

#### SECTION 4. Exclusions.

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

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

(2) Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, or first assistant;

(3) Confidential employees;

(4) Students working as part-time public employees twenty (20)

hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant;

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

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

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

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

#### SECTION 5. Public Employment Relations Board.

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

(2) The board shall consist of three (3) members appointed by the Governor, subject to confirmation by the Senate. One (1) member shall by qualifications be considered a representative of employees' organizations. One (1) member shall by qualifications be considered a representative of employers. One (1) member shall by qualifications be considered a neutral in labor-management issues with five (5) years experience as a mediator or an arbitrator of labor management disputes. No member shall engage in any political activity while holding office. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairperson shall receive an annual salary and the remaining two (2) members shall each receive a per diem as set by the General Assembly.

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

(4) The member holding the neutral position shall be appointed for a term of four (4) years and shall serve as chairperson and each of that member's successors shall also serve as chairperson.

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

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

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

#### SECTION 6. General powers and duties of the board. The board shall:

(1) Administer the provisions of this act;

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

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

and mediators; and establish compensation rates for arbitrators and mediators;

(4) Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including administrative law judges, for the performance of its functions. The board may petition a court of competent jurisdiction at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records; and

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

SECTION 7. Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

- (1) Direct the work of its public employees;
- (2) Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency;
- (3) Suspend or discharge public employees for proper cause;
- (4) Maintain the efficiency of governmental operations;
- (5) Relieve public employees from duties because of lack of work or for other legitimate reasons;
- (6) Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted;
- (7) Take such actions as may be necessary to carry out the mission of the public employer;
- (8) Initiate, prepare, certify and administer its budget; and
- (9) Exercise all powers and duties granted to the public employer by law.

SECTION 8. Public Employee Rights. Public employees shall have the right to:

- (1) Organize, or form, join, or assist any employee organization;
- (2) Negotiate collectively through representatives of their own choosing;
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this act or any other law of the state; and
- (4) Refuse to join or participate in the activities of employee organizations.

SECTION 9. Scope of Negotiations.

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

and safety matters, evaluation procedures, procedures for staff reduction, in-service training, class size and other matters mutually agreed upon. Nothing in this act shall limit the power of the General Assembly to fix the number and salaries of the employees of the different departments of the State of Arkansas. The salaries of all state public employees under a classification system and all other fringe benefits which are granted to all state public employees shall be negotiated with the Governor or the Governor's designee on a statewide basis with those employee organizations certified as representing state employees and submitted to the General Assembly as a recommendation from the executive branch of government.

(b) Negotiations may also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff by notifying the employee organization fourteen (14) calendar days in advance of the expiration of the collective bargaining agreement. In the absence of a collective bargaining agreement the provisions of Arkansas Code 19-4-1602 shall apply in regards to dues checkoff. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

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

#### SECTION 10. Prohibited practices.

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

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

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

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

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

(4) Discharge or discriminate against a public employee because the employee supports or has formed, joined or chosen to be represented by any employee organization or otherwise to encourage or discourage membership in or support for any employee organization or filed an affidavit, petition or complaint or given any information or testimony under this act;

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

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

(7) Refuse to participate in good faith in any agreed upon

impasse procedures or those set forth in this act; or

(8) Engage in a lockout.

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

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

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

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

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

(5) Violate Section 12;

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

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

(8) Picket for any unlawful purpose.

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

#### SECTION 11. Prohibited Practice Violations.

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

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

(c) The board shall appoint a certified court reporter to report the

proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

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

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

#### SECTION 12. Strikes prohibited.

(a) It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify or participate in a strike against any public employer.

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

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

(d) If a public employee is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is



convicted of violating this section, the employee shall be ineligible for any employment by the same public employer for a period of twelve (12) months. The employee's public employer shall immediately discharge the employee, but upon the employee's request the court shall stay the discharge to permit further judicial proceedings.

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

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

#### SECTION 13. Bargaining Unit Determination.

(a) The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the board shall not intervene in matters of recognition and unit definition except in the event of a dispute. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.

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

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

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

#### SECTION 14. Bargaining Representative Determination.

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

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

(c) The petition of a public employee shall allege that an employee

organization which has been certified as the bargaining representative does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of an employee organization. The petition shall be accompanied by written evidence that thirty percent (30%) of such public employees of the bargaining unit do not want to be represented by an employee organization.

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

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

(1) It finds that less than thirty percent (30%) of the public employees in the unit appropriate for collective bargaining, support the petition for decertification or for certification; and

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

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

(g) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employees as the exclusive representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative.

#### SECTION 15. Elections.

(a) Upon the filing of a petition for certification of an employee organization, the board shall submit a question to the public employees at an election in an appropriate bargaining unit. The question on the ballot shall permit the public employees to vote for no bargaining representation or for any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of ten percent (10%) percent or more of the public employees in the appropriate unit.

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

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

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

(e) Upon completion of a valid election in which the majority choice of the employees voting is determined, the board shall certify the results of the election and shall give reasonable notice of the order to all employee

organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit.

(f) A petition for certification as an exclusive bargaining representative shall not be considered by the board for a period of one (1) year after the date of the certification or non-certification of an exclusive bargaining representative or during the duration of a collective bargaining agreement. A collective bargaining agreement with the state, its boards, commissions, departments, and agencies shall be for two (2) years, and the provisions of a collective bargaining agreement except agreements agreed to or tentatively agreed to prior to the effective date of this act or arbitrators' award affecting state employees, shall not provide for renegotiations which would require the refinancing of salary and fringe benefits for the second year of the term of the agreement, except as provided in Section 17, subsection (f), and the effective date of any such agreement shall be July 1, provided that if an exclusive bargaining representative is certified on a date which will prevent the negotiation of a collective bargaining agreement prior to July 1 for a period of two (2) years, the certified collective bargaining representative may negotiate a one-year contract with a public employer which shall be effective from July 1. However, if a petition for decertification is filed during the duration of a collective bargaining agreement, the board shall award an election under this section not more than one hundred eighty (180) days nor less than one hundred fifty (150) days prior to the expiration of the collective bargaining agreement. If an employee organization is decertified, the board may receive petitions under Section 14, provided that no such petition and no election conducted pursuant to such petition within one (1) year from decertification shall include as a party the decertified employee organization.

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

SECTION 17. Procedures.

(a) The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. The employee organization may petition the board for permission to assess a reasonable fee for services rendered in representing a non-member in a negotiated grievance or arbitration procedure. However, any public employee may meet and adjust individual complaints with a public employer as long as such adjustment is not inconsistent with the collective bargaining agreement and the employee organization has notice of such adjustment. To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence, action or inaction by the organization which was arbitrary, discriminatory, or in bad faith.

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

(c) Negotiating sessions, strategy meetings of public employers or

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

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

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

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

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

(h) Nothing in this act shall limit the power of the General Assembly to fix the number and salaries of the employees of the different departments of the State of Arkansas. The salaries of all public employees of the state under a classification system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the Governor or the Governor's designee on a statewide basis with those employee organizations certified as representing state employees and submitted to the General Assembly as a recommendation from the executive branch of government.

All other terms and conditions of employment subject to negotiations for state employees shall be negotiated as per the requirements of Section 9.

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

(j) The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than fourteen (14) days after the General

Assembly has adjourned. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements.

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

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

(A) The negotiation of a proposed collective bargaining agreement shall be complete not later than May 31 of the year when the agreement is to become effective, absent the existence of an impasse agreement negotiated pursuant to Section 19 which provides for a different completion date. The board shall adopt rules providing for a date on which impasse items in such cases must be submitted to binding arbitration, and for procedures for the completion of negotiations of proposed collective bargaining agreements not later than May 31. The date selected for the mandatory submission of impasse items to binding arbitration in such cases shall be sufficiently in advance of May 31 to ensure that the arbitrator's decision can be reasonably made by May 31.

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

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

SECTION 19. Impasse procedures - agreement of parties. As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty (120) days prior to the certified budget submission date of the public employer. However, if public employees represented by the employee organization are teachers and the public employer is a school district or education service cooperative, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty (120) days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is a higher education institution, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty (120) days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the parties fail to agree upon impasse procedures under the provisions of this section, the impasse procedures provided in Sections 20 through 22 shall apply.

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

SECTION 21. Fact-finding.

(a) If the impasse persists ten (10) days after the mediator has been appointed, the board shall appoint a fact-finder from the Federal Mediation and Conciliation Service or the American Arbitration Association. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen (15) days after the day of appointment, shall serve such findings on the public employer and the certified employee organization.

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

report shall be made public by the board.

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

#### SECTION 22. Binding Arbitration.

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

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

(2) As an alternative procedure, the two (2) parties may agree to submit the dispute to an arbitration panel. If the parties cannot agree on the panel within four (4) days, the selection shall be made pursuant to subsection (e). The full costs of arbitration under this provision shall be shared by the parties to the dispute.

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

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

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

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

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

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

(e) If the third member has not been selected within four (4) days after notification as provided in subsection (b), a list of three (3)

arbitrators shall be submitted to the parties by the board. The two (2) arbitrators selected by the public employer and the employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the board. The arbitrator having the right to remove the first name shall do so within two (2) days and the second arbitrator shall have one (1) additional day to remove one (1) of the two (2) remaining names. The person whose name remains shall become the chairperson of the panel of arbitrators and shall call a meeting within ten (10) days at a location designated by the chairperson.

(f) If a vacancy should occur on the panel of arbitrators, the selection for replacement of such member shall be in the same manner and within the same time limits as the original member was chosen. No final selection shall be made by the board until the vacancy has been filled.

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

(h) From the time of appointment until such time as the arbitrator or arbitrators make a final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the arbitrator panel with parties other than those who are direct parties to the dispute. The arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(i) The arbitrators shall consider, in addition to any other relevant factors, the following factors:

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

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

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

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

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

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

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



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

SECTION 23. Legal actions. Any employee organization and public employer may sue or be sued as an entity under the provisions of this act. Service upon the public employer shall be in accordance with law or the rules of civil procedure. Nothing in this act shall be construed to make any individual or the individual's assets liable for judgment against a public or an employee organization.

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

SECTION 25. Internal conduct of employee organizations.

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

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

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

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

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

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

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

(6) A financial report and audit.

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

(1) Accurate accounts of all income and expenses shall be kept,

and annual financial report and audit shall be prepared. Such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members;

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

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

(d) The governing rules of every employee organization shall provide for periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

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

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

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

SECTION 26. Conflict with federal aid. If any provision of this act jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of this act shall, insofar as the fund is jeopardized, be deemed to be inoperative.

SECTION 27. Inconsistent statutes - effect. A law which is inconsistent with any term or condition of a collective bargaining agreement which is made final under this act shall supersede the term or condition of the collective bargaining agreement unless otherwise provided by the law. A provision of a proposed collective bargaining agreement negotiated according to this act which conflicts with a law shall not become a provision of the final collective bargaining agreement unless the law is amended to remove the conflict.

SECTION 28. Filing agreement - public access. Copies of collective bargaining agreements entered into between the state and the state employees' bargaining representatives and made final under this act shall be filed with

the Secretary of State and be made available to the public at cost.

SECTION 29. The General Assembly specifically confers upon the board, all public employers and all governing bodies, the power and authority to implement the provisions of this act, and further confers upon all public employers and governing bodies, the authority to recognize and enter into collective bargaining agreements with employee organizations."

**The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_**

**By: Senator B. Walker**

**LH/MHF**

**MHF764**

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**Secretary**