

**ARKANSAS SENATE**  
85th General Assembly - Regular Session, 2005  
**Amendment Form**

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**Subtitle of Senate Bill No. 1180**

"AN ACT TO AMEND AND CLARIFY CERTAIN LAWS PERTAINING TO PUBLIC  
EDUCATION."

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**Amendment No. 1 to Senate Bill No. 1180.**

Amend Senate Bill No. 1180 as originally introduced:

Page 1, delete line 5 and substitute:  
"By: Senator Wilkins"

AND

Delete the title and substitute:  
"AN ACT TO AMEND AND CLARIFY CERTAIN LAWS PERTAINING TO PUBLIC EDUCATION; TO  
PROVIDE A PROCEDURE FOR THE PROFESSIONAL NEGOTIATION BETWEEN PUBLIC SCHOOL  
EMPLOYEES AND SCHOOL DISTRICTS; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:  
"THE PROFESSIONAL NEGOTIATION ACT FOR  
PUBLIC EDUCATION OF 2005."

AND

Delete everything following the enacting clause and substitute:  
"SECTION 1. This act shall be known and may be cited as the  
Professional Negotiation Act For Public Education of 2005".

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

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



(c)(1) Experience has shown that school boards and their employees can best reach these objectives if each utilizes the ability, experience, and judgment of the other in formulating policies and making decisions that involve the terms and conditions of employee service and other matters of mutual concern.

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

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

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

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

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

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

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

SECTION 3. As used in this act:

(1) "School board" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

(2) Members shall be eligible for reappointment.

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

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

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

(2) Any member of the Commission may be removed by the Governor, upon notice and hearing, solely for neglect of duty or malfeasance in office.

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

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

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

(g) The commission may:

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

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

(3) Hold hearings;

(4) Subpoena witnesses;

(5) Administer oaths;

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

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

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

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

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

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

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

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

(b) Employees' organizations shall have:

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

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

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

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

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

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

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

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

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

(ii) The adjustment is not inconsistent with the terms of an agreement between the school board and their representative that is currently in effect.

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

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

(2) Such a request shall describe the grouping of jobs or

positions that constitute the unit claimed to be appropriate and shall include a demonstration of majority support through verified membership lists.

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

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

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

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

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

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

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

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

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

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

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

(2) The commission's determination may be based upon the evidence adduced in such inquiries, investigations or hearings as the commission or its agent shall make or hold, or upon the results of a secret ballot election as the commission shall direct and conduct if deemed

necessary; provided, however that the commission shall dismiss, without determining the questions raised therein, any petition filed pursuant to subsections, (c)(2) or (3) of this section if:

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

(B) There is currently in effect a lawful written agreement negotiated by such school board and employees' organization other than the petitioner covering any school employees included in the unit described in the petition, unless the agreement has been in effect for more than three (3) years, or unless the request for recognition is filed less than sixty (60) days prior to the expiration date of the agreement or such greater number of days prior to the expiration date of the agreement as the commission may determine is reasonable because of the budget-making procedure of the school board; or

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

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

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

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

(2) If the commission determines that impasse exists, it shall, in no event later than five (5) days after the receipt of a request, appoint a mediator in accordance with rules and procedures for such appointment prescribed by the commission.

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

(4)(A) The mediator shall meet with the parties or their

representatives, or both, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement.

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

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

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

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

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

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

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

(d)(1)(A) The fact-finder shall, within ten (10) days after his appointment, meet with the parties or their representatives, or both, either jointly or separately, at which time each party shall submit a certified copy of the last and best offer that it has made to the other party.

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

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

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

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

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

commission.

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

- (i) The interests and the welfare of the public;
- (ii) The interests and the welfare of the employees;
- (iii) The interests and the welfare of students;
- (iv) The finances of the district;
- (v) The cost of living;
- (vi) Comparisons with other employees in Arkansas and the nation; and
- (vii) Other factors normally taken into consideration in similar arbitration proceedings.

(e)(1) Contracts and any other agreements covering salaries of employees and other conditions of employment that were subjects of disputes and were submitted to fact-finding shall, for the next contract period, be based on and consistent with the recommendations of the fact-finder.

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

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

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

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

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

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

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

- (1) The award was procured by corruption, fraud, or other misconduct;
- (2) The arbitrator was not impartial; or
- (3) The arbitrator exceeded his powers or so imperfectly



executed them that a final and definite award upon the subject matter was not made.

SECTION 9. (a) It shall be unlawful for a school board to:

(1)(A) Impose or threaten to impose reprisals on employees;

(B) Discriminate or threaten to discriminate against employees; or

(C) Otherwise interfere with, restrain, or coerce employees because of their exercise of rights guaranteed in this act;

(2) Deny to employees' organizations the rights guaranteed to them by this act; or

(3) Refuse or fail to negotiate in good faith with the representatives selected or designated pursuant to the provisions of Section 6 of this act if requested to do so.

(b) It shall be unlawful for:

(1)(A) An employee or an employees' organization to cause or attempt to cause a school board to engage in conduct in violation of Section 9(a) of this act.

(B) However, this subsection shall not impair the right of an employees' organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

(2) A representative selected or designated under Section 6 of this act to refuse or fail to negotiate in good faith with a school board if requested to do so; or

(3) Employees to strike.

SECTION 10. Except as otherwise expressly provided herein, this act shall not operate so as to annul, modify, or preclude the renewal or continuation of any lawful agreement previously entered into between a school board and an employees' organization covering terms and conditions of employee services and other matters of mutual concern."

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

By: Senator Wilkins

JSE/JSE - 04-06-2005 09:07

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Secretary