

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

SENATE BILL

4 **By: Senators Moore, Canada, Jewell, Scott, and Lewellen**

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For An Act To Be Entitled

8 "AN ACT TO ESTABLISH CERTAIN RIGHTS OF PROFESSIONAL
9 EMPLOYEES IN PUBLIC SCHOOLS, TO PROHIBIT PRACTICES WHICH
10 ARE INIMICAL TO THE WELFARE OF SUCH PUBLIC SCHOOLS, AND TO
11 PROVIDE FOR THE ORDERLY AND PEACEFUL RESOLUTION OF
12 DISPUTES CONCERNING TERMS AND CONDITIONS OF PROFESSIONAL
13 SERVICE AND OTHER MATTERS OF MUTUAL CONCERN; AND FOR OTHER
14 PURPOSES."

15

16

Subtitle

17 "THE PROFESSIONAL NEGOTIATION ACT FOR PUBLIC EDUCATION."

18

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

20

21 SECTION 1. This act shall be known and may be cited as the
22 "Professional Negotiation Act for Public Education of 1993."

23

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

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

34 Experience has shown that school boards and their professional employees
35 can 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 terms and conditions of professional service and other matters of
3 mutual concern. Such joint participation can be accomplished most effectively
4 if the professional employees have the right to form, join and assist employee
5 organizations, to confer, consult and negotiate with such school boards
6 through representatives of their own choosing for the purpose of establishing,
7 maintaining, protecting and improving terms and conditions of professional
8 service and other matters of mutual concern.

9 It is, therefore, the policy of the State of Arkansas to recognize the
10 rights of professional employees of school boards to form, join and assist
11 employee organizations, to confer, consult and negotiate with school boards
12 over the terms and conditions of professional services and other matters of
13 mutual concern through representatives of their own choosing for the purpose
14 of establishing, maintaining, protecting and improving terms and conditions of
15 professional service and other matters of mutual concern, and to establish
16 procedures that will facilitate and encourage amicable settlement of disputes.
17

18 SECTION 3. As used in this act, unless the context otherwise requires:

19 (1) "School board" means any board authorized to direct the public
20 educational system of any school district, or any person or persons designated
21 by the board to represent it in negotiations with a professional employees_
22 organization.

23 (2) "Professional employee" means any person employed in a professional
24 educational capacity by a school board, except the superintendent of schools.

25 (3) "Professional employees_ organization" means one (1) or more
26 organizations in which professional employees participate and which exists for
27 the purpose, in whole or in part, of conferring, discussing and negotiating
28 with school boards over the terms and conditions of professional service and
29 other matters of mutual concern.

30 (4) "Representative" means any professional employees_ organization or
31 person authorized or designated to act in its behalf.

32 (5) "Professional negotiation" means meeting, conferring, consulting,
33 discussing and negotiating in a good faith effort to reach agreement with
34 respect to the terms and conditions of professional service and other matters
35 of mutual concern, and the execution, if requested by either party, of a

1 written document incorporating any agreements reached.

2

3 SECTION 4. (a) There is hereby created within the State Department of
 4 Education the "Professional Employee Relations Commission" (hereinafter
 5 referred to as the "Commission"), which shall consist of three (3) members
 6 appointed by the Governor with the approval of the Senate. One (1) member
 7 shall be appointed for a term of one (1) year, one (1) for a term of three (3)
 8 years and one (1) for a term of five (5) years. Their successors shall be
 9 appointed for terms of five (5) years, except that any person chosen to fill a
 10 vacancy shall be appointed only for the unexpired term of the member.
 11 Commission members shall be eligible for reappointment. The Governor shall
 12 designate one (1) member to serve as Chairman of the Commission. Any member
 13 of the Commission may be removed by the Governor, upon notice and hearing,
 14 solely for neglect of duty or malfeasance in office.

15 (b) A vacancy in the Commission will not impair the right of the
 16 remaining members to exercise all the powers of the Commission, and two (2)
 17 members of the Commission, shall, at all times, constitute a quorum.

18 (c) Members of the Commission, when performing the business of the
 19 Commission, shall receive compensation at the rate of twenty-five dollars
 20 (\$25.00) per diem, along with an allowance for actual and necessary travel and
 21 subsistence expenses. The Commission shall appoint an executive director and
 22 may employ other such persons as may, from time to time, be necessary.

23 (d) The Commission is hereby authorized to make, amend and rescind such
 24 rules and regulations as are necessary to carry out the provisions and
 25 purposes of this act and is expressly empowered and directed to prevent any
 26 person from engaging in conduct violative to this act. The Commission is also
 27 authorized to hold hearings, subpoena witnesses, administer oaths, take the
 28 testimony or deposition of any person under oath and, in connection therewith,
 29 to issue subpoenas duces tecum to require the production and examination of
 30 any governmental or other books or papers relating to any matter pending
 31 before it and to take other such actions as may be necessary to discharge the
 32 duties of the Commission.

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34 SECTION 5. (a) Professional employees shall have the right to form,
 35 join or assist professional employees_ organizations, to participate in

1 professional negotiation with school boards through representatives of their
2 own choosing for the purpose of establishing, maintaining, protecting or
3 improving terms and conditions of professional service and other matters of
4 mutual concern.

5 (b) Professional employees_ organizations shall have:

6 (1) Access at reasonable times to areas in which professional
7 employees work, the right to use institutional bulletin boards, mail boxes or
8 other communication media, subject to reasonable regulation, and the right to
9 use institutional facilities at reasonable times for the purpose of meetings
10 concerned with the exercise of the rights guaranteed by this act; provided,
11 however, that if a representative has been selected or designated pursuant to
12 the provisions of Section 6 of this act, a school board shall deny such access
13 and usage to any other professional employees_ organization until such time as
14 a lawful and timely challenge to the majority status of the representative is
15 raised pursuant to the provisions of Section 6 of this act; and

16 (2) The right to have deducted from the salary of professional
17 employees, upon receipt of an appropriate authorization form that shall not be
18 revocable for a period of more than one (1) year, the fees and dues required
19 for membership in a professional employees_ organization; provided, however,
20 that if a representative has been selected or designated pursuant to the
21 provisions of Section 6 of this act, a school board shall deny such deduction
22 to any other professional employees_ organization.

23

24 SECTION 6. (a) The representative designated or selected for the
25 purpose of professional negotiation by the majority of the professional
26 employees in an appropriate negotiating unit shall be the exclusive
27 representative of all the professional employees in such unit for such
28 purpose, and a school board shall not negotiate matters covered by this act
29 with any other representative; provided, however, that nothing contained
30 herein shall be construed to prevent professional employees, individually or
31 as a group, from presenting grievances informally to a school board and from
32 having such grievances adjusted without the intervention of the representative
33 designated or selected by the majority of the professional employees in the
34 unit of which they are a part, as long as the representative is given an
35 opportunity to be present at the adjustment and to make the representative_s

1 views known, and as long as the adjustment is not inconsistent with the terms
2 of an agreement between the school board and the representative that is
3 currently in effect; provided further that the employees shall not be
4 represented by an officer or agent of any professional employees_
5 organization.

6 (b) Any professional employees_ organization may file a request with a
7 school board alleging that a majority of the professional employees in an
8 appropriate negotiating unit wish to be represented for the purposes of
9 professional negotiation by the organization and asking the school board to
10 recognize it as the exclusive representative under subsection (a) of this
11 section. Such request shall describe the grouping of jobs or positions that
12 constitute the unit claimed to be appropriate and shall include a
13 demonstration of majority support through verified membership lists. Notice
14 of such request shall immediately be posted by the school board on a bulletin
15 board at each school or other facility in which members of the unit claimed to
16 be appropriate are employed. The request for recognition shall be granted by
17 the school board unless:

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

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

27 (3) There is currently in effect a lawful written agreement
28 negotiated by the school board and another professional employees_
29 organization covering any professional employees included in the unit
30 described in the request for recognition; or

31 (4) The school board has, within the previous twelve (12) months,
32 lawfully recognized another professional employees_ organization as the
33 exclusive representative of any professional employees included in the unit
34 described in the request for recognition.

35 (c) A petition may be filed with the Commission, in accordance with

1 such rules and regulations as the Commission may prescribe for filing, asking
2 the Commission to investigate and decide the question of whether professional
3 employees have selected or designated an exclusive representative under
4 subsection (a) of this section by:

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

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

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

21 (d) Upon receipt of such a petition, the Commission or its agents shall
22 conduct inquiries and investigations or hold such hearings as it shall deem
23 necessary in order to decide the questions raised by the petition. The
24 Commission_s determination may be based upon the evidence adduced in such
25 inquiries, investigations or hearings as the Commission or its agent shall
26 make or hold, or upon the results of a secret ballot election as the
27 Commission shall direct and conduct if deemed necessary; provided, however,
28 that the Commission shall dismiss, without determining the questions raised
29 therein, any petition filed pursuant to subsections (c)(2) or (3) of this
30 section if:

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

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

10 (3) The school board has, within the previous twelve (12) months,
11 lawfully recognized a professional employees_ organization other than the
12 petitioner as the exclusive representative of any professional employees
13 included in the unit described in the petition.

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

22 (f) In each case where the appropriateness of the claimed unit is at
23 issue, the Commission shall decide the question on the basis of the community
24 interest between and among the professional employees of the school board,
25 their wishes, and their established practices including, among others, the
26 extent to which such employees have joined a professional employees_
27 organization, whether the unit appropriate for the purposes of professional
28 negotiation shall consist of all persons employed by the school board who are
29 engaged in teaching or performing other duties of an educational nature or
30 some subdivision thereof; provided, however, that a unit including classroom
31 teachers shall not be appropriate unless it includes all such teachers
32 employed by the school board.

33

34 SECTION 7. (a) Either a school board or the representative selected or
35 designated pursuant to the provisions of Section 6 of this act may declare

1 that an impasse has been reached between the parties in negotiation over the
2 terms and conditions of professional service and other matters of mutual
3 concern and may request the Commission to appoint a mediator for the purpose
4 of assisting them in reconciling their differences and resolving the
5 controversy on terms that are mutually acceptable. If the Commission
6 determines that impasse exists, it shall, in no event later than five (5) days
7 after the receipt of a request, appoint a mediator in accordance with rules
8 and procedures for such appointment prescribed by the Commission. The
9 Commission may, on its own initiative, declare an impasse and appoint a
10 mediator in any particular negotiation. The mediator shall meet with the
11 parties or their representatives, or both, either jointly or separately, and
12 shall take such other steps as he may deem appropriate in order to persuade
13 the parties to resolve their differences and effect a mutually acceptable
14 agreement; provided, however, that the mediator shall not, without the consent
15 of both parties, make findings of fact or recommend terms of settlement.

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

23 (b) If the mediator is unable to effect settlement of the controversy
24 within fifteen (15) days after his appointment, either party may, by written
25 notification to the other, request that their differences be submitted to fact
26 finding with recommendations. Within ten (10) days after receipt of the
27 written request for fact finding, the parties shall select a person to serve
28 as fact finder and obtain a commitment to serve. If they are unable to agree
29 upon a fact finder or to obtain such a commitment within ten (10) days, either
30 party may request the Commission to designate a fact finder. The Commission,
31 shall, within five (5) days after receipt of such request, designate a fact
32 finder in accordance with rules and regulations prescribed by the Commission.
33 The fact finder so designated shall not, without the consent of both parties,
34 be the same person who was appointed mediator pursuant to subsection (a) of
35 this section.

1 The fact finder shall, within ten (10) days after his appointment, meet
2 with the parties or their representatives, or both, either jointly or
3 separately, at which time each party shall submit a certified copy of the last
4 and best offer that it has made to the other party. The fact finder may make
5 inquiries and investigations, hold hearings, and take such other steps as he
6 may deem appropriate. 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. The
9 several departments, commissions, divisions, authorities, boards, bureaus,
10 agencies, and officers of the State or any political subdivision thereof,
11 shall furnish the fact finder, upon his request, with all records, papers, and
12 information in their possession relating to any matter under investigation by
13 or in issue before the fact finder. If the dispute is not settled within
14 thirty (30) days after his appointment, the fact finder shall make findings of
15 fact and recommend terms of settlement that shall consist of the final offer
16 by either party which in the opinion of the fact finder is the most fair and
17 reasonable. Such recommendations by the fact finder shall be binding on both
18 the school board and the employees_ organization. A copy shall be submitted
19 to the school board, the employees_ organization and the Commission. When
20 making his findings and fact and recommended terms of settlement, the fact
21 finder shall consider:

- 22 (1) The interests and the welfare of the public;
- 23 (2) The interests and the welfare of the employees;
- 24 (3) The finances of the district;
- 25 (4) The cost of living;
- 26 (5) Comparisons with other employees in Arkansas and the nation;
- 27 and
- 28 (6) Other factors normally taken into consideration in similar
29 arbitration proceedings.

30 (c) Contracts and any other agreements covering salaries of
31 professional employees and other conditions of professional employment that
32 were subjects of disputes and were submitted to fact finding shall, for the
33 next contract period, be based on and consistent with the recommendations of
34 the fact finder. Refusal by either party to enter into and to comply with
35 contracts and agreements based on the fact finders recommended terms of

1 settlement shall be a violation of this act.

2 (d) The costs for the services of the fact finder, including per diem
3 expense, if any, and actual and necessary travel and subsistence expenses, and
4 any other mutually incurred costs, shall be borne equally by the school board
5 and the professional employees_ representative. Any individually incurred
6 costs shall be borne by the party incurring them.

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

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

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

27 (d) Unless the award of an arbitrator is deficient because:

- 28 (1) It was procured by corruption, fraud or other misconduct; or
 - 29 (2) Of partiality of the arbitrator; or
 - 30 (3) The arbitrator exceeded his powers or so imperfectly executed
- 31 them that a final and definite award upon the subject matter was not made,
32 such award shall be final and binding upon the parties and may be enforced by
33 the court.

34

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

1 (1) Impose or threaten to impose reprisals on professional
2 employees, to discriminate or threaten to discriminate against professional
3 employees, or to otherwise interfere with, restrain or coerce professional
4 employees because of their exercise of rights guaranteed in this act; or

5 (2) Deny to professional employees_ organizations rights
6 guaranteed to them by this act; or

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

10 (b) It shall be unlawful for:

11 (1) A professional employee or a professional employees_
12 organization to cause or attempt to cause a school board to engage in conduct
13 in violation of the provisions of Section 9(a) of this act; provided, however,
14 that this paragraph shall not impair the right of a professional employees_
15 organization to prescribe its own rules with respect to the acquisition or
16 retention of membership therein; or

17 (2) A representative selected or designated pursuant to the
18 provisions of Section 6 of this act to refuse or fail to negotiate in good
19 faith with a school board if requested to do so.

20

21 SECTION 10. Except as otherwise expressly provided herein, this act
22 shall not operate so as to annul, modify or preclude the renewal or
23 continuation of any lawful agreement previously entered into between a school
24 board and a professional employees_ organization covering terms and conditions
25 of professional service and other matters of mutual concern.

26

27 SECTION 11. All provisions of this act of a general and permanent
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
29 Code Revision Commission shall incorporate the same in the Code.

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31 SECTION 12. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

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SECTION 13. All laws and parts of laws in conflict with this act are hereby repealed.