

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

SENATE BILL 595

4 By: Senators Edwards, Bookout, Canada, Everett, Lewellen, Scott, Walker, and  
5 Wilson

6

7

## 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

18

"THE PROFESSIONAL NEGOTIATION ACT FOR  
PUBLIC EDUCATION."

19

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

21

22 SECTION 1. This act shall be known and may be cited as the  
23 "Professional Negotiation Act for Public Education of 1995".

24

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

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

35

Experience has shown that school boards and their professional

1 employees can best reach these objectives if each utilizes the ability,  
2 experience and judgment of the other in formulating policies and making  
3 decisions that involve terms and conditions of professional service and other  
4 matters of mutual concern. Such joint participation can be accomplished most  
5 effectively if the professional employees have the right to form, join and  
6 assist employee organizations, to confer, consult and negotiate with such  
7 school boards through representatives of their own choosing for the purpose  
8 of establishing, maintaining, protecting and improving terms and conditions  
9 of professional service and other matters of mutual concern.

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

19

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

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

25 (2) "Professional employee" means any person employed in a  
26 professional educational capacity by a school board, except the  
27 superintendent and assistant superintendent of schools.

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

33 (4) "Representative" means any professional employees\_ organization  
34 or person authorized or designated to act in its behalf.

35 (5) "Professional negotiation" means meeting, conferring, consulting,

1 discussing and negotiating in a good faith effort to reach agreement with  
2 respect to the terms and conditions of professional service and other matters  
3 of mutual concern, and the execution, if requested by either party, of a  
4 written document incorporating any agreements reached.

5 (6) "Mediator" means a qualified impartial individual, including  
6 individuals from the Federal Mediation and Conciliation Service or the  
7 American Arbitration Association.

8 (7) "Fact-Finder" means a qualified impartial individual, including  
9 individuals from the Federal Mediation and Conciliation Service or the  
10 American Arbitration Association.

11

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

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

27 (c) Members of the Commission, when performing the business of the  
28 Commission, shall receive compensation at the rate of twenty-five dollars  
29 (\$25.00) per diem, along with an allowance for actual and necessary travel  
30 and subsistence expenses. The Commission shall appoint an executive director  
31 and may employ other such persons as may, from time to time, be necessary.

32 (d) The Commission is hereby authorized to make, amend and rescind  
33 such rules and regulations as are necessary to carry out the provisions and  
34 purposes of this act and is expressly empowered and directed to prevent any  
35 person from engaging in conduct violative to this act. The Commission is

1 also authorized to hold hearings, subpoena witnesses, administer oaths, take  
2 the testimony or deposition of any person under oath and, in connection  
3 therewith, to issue subpoenas duces tecum to require the production and  
4 examination of any governmental or other books or papers relating to any  
5 matter pending before it and to take other such actions as may be necessary  
6 to discharge the duties of the Commission.

7

8 SECTION 5. (a) Professional employees shall have the right to form,  
9 join or assist professional employees\_ organizations, to participate in  
10 professional negotiation with school boards through representatives of their  
11 own choosing for the purpose of establishing, maintaining, protecting or  
12 improving terms and conditions of professional service and other matters of  
13 mutual concern.

14 (b) Professional employees\_ organizations shall have:

15 (1) Access at reasonable times to areas in which professional  
16 employees work, the right to use institutional bulletin boards, mail boxes or  
17 other communication media, subject to reasonable regulation, and the right to  
18 use institutional facilities at reasonable times for the purpose of meetings  
19 concerned with the exercise of the rights guaranteed by this act; provided,  
20 however, that if a representative has been selected or designated pursuant to  
21 the provisions of Section 6 of this act, a school board shall deny such  
22 access and usage to any other professional employees\_ organization until such  
23 time as a lawful and timely challenge to the majority status of the  
24 representative is raised pursuant to the provisions of Section 6 of this act;  
25 and

26 (2) The right to have deducted from the salary of professional  
27 employees, upon receipt of an appropriate authorization form that shall not  
28 be revocable for a period of one (1) year, the fees and dues required for  
29 membership in a professional employees\_ organization; provided, however, that  
30 if a representative has been selected or designated pursuant to the  
31 provisions of Section 6 of this act, a school board shall deny such deduction  
32 to any other professional employees\_ organization.

33

34 SECTION 6. (a) The representative designated or selected for the  
35 purpose of professional negotiation by the majority of the professional

1 employees in an appropriate negotiating unit shall be the exclusive  
2 representative of all the professional employees in such unit for such  
3 purpose, and a school board shall not negotiate matters covered by this act  
4 with any other representative; provided, however, that nothing contained  
5 herein shall be construed to prevent professional employees, individually or  
6 as a group, from presenting grievances informally to a school board and from  
7 having such grievances adjusted without the intervention of the  
8 representative designated or selected by a majority of the professional  
9 employees in the unit of which they are a part, as long as the representative  
10 is given an opportunity to be present at the adjustment and to make the  
11 representative's views known, and as long as the adjustment is not  
12 inconsistent with the terms of an agreement between the school board and the  
13 representative that is currently in effect; provided further that the  
14 employees shall not be represented by an officer or agent of any professional  
15 employees\_ organization.

16 (b) Any professional employees\_ organization may file a request with a  
17 school board alleging that a majority of the professional employees in an  
18 appropriate negotiating unit wish to be represented for the purposes of  
19 professional negotiation by the organization and asking the school board to  
20 recognize it as the exclusive representative under subsection (a) of this  
21 section. Such request shall describe the grouping of jobs or positions that  
22 constitute the unit claimed to be appropriate and shall include a  
23 demonstration of majority support through verified membership lists. Notice  
24 of such request shall immediately be posted by the school board on a bulletin  
25 board at each school or other facility in which members of the unit claimed  
26 to be appropriate are employed. The request for recognition shall be granted  
27 by the school board unless:

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

31 (2) Another professional employees\_ organization files with the  
32 school board a competing claim of majority support within ten (10) calendar  
33 days after the posting of notice of the original request and submits as  
34 evidence of its claim of majority support verified membership lists  
35 demonstrating support of at least thirty percent (30%) of the professional

1 employees in the appropriate negotiating unit; or

2           (3) There is currently in effect a lawful written agreement  
3 negotiated by the school board and another professional employees\_  
4 organization covering any professional employees included in the unit  
5 described in the request for recognition; or

6           (4) The school board has, within the previous twelve (12)  
7 months, lawfully recognized another professional employees\_ organization as  
8 the exclusive representative of any professional employees included in the  
9 unit described in the request for recognition.

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

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

20           (2) By a professional employees\_ organization alleging that it  
21 has filed a request for recognition as exclusive representative with a school  
22 board and that such request has been denied or has not been acted upon within  
23 thirty (30) days after the filing of said request; or

24           (3) By one (1) or more professional employees or a professional  
25 employees\_ organization asserting that the professional employees in an  
26 appropriate unit no longer desire a particular professional employees\_  
27 organization as their exclusive representative; provided, however, that such  
28 petition is supported by signed statements to that effect from at least  
29 thirty percent (30%) of the professional employees in the appropriate  
30 negotiating unit.

31          (d) Upon receipt of such a petition, the Commission or its agents  
32 shall conduct inquiries and investigations or hold such hearings as it shall  
33 deem necessary in order to decide the questions raised by the petition. The  
34 Commission\_s determination may be based upon the evidence adduced in such  
35 inquiries, investigations or hearings as the Commission or its agent shall

1 make or hold, or upon the results of a secret ballot election as the  
2 Commission shall direct and conduct if deemed necessary; provided, however,  
3 that the Commission shall dismiss, without determining the questions raised  
4 therein, any petition filed pursuant to subsections (c) (2) or (3) of this  
5 section if:

6           (1) The petition filed by a professional employees\_ organization  
7 is not supported by credible evidence in the form of verified membership  
8 lists that at least thirty percent (30%) of the professional employees in the  
9 unit described therein are members in good standing of the organization  
10 seeking recognition; or

11           (2) There is currently in effect a lawful written agreement  
12 negotiated by such school board and a professional employees\_ organization  
13 other than the petitioner covering any professional employees included in the  
14 unit described in the petition, unless the agreement has been in effect for  
15 more than three (3) years, or unless the request for recognition is filed  
16 less than sixty (60) days prior to the expiration date of the agreement or  
17 such greater number of days prior to the expiration date of the agreement as  
18 the Commission may determine is reasonable because of the budget-making  
19 procedure of the school board; or

20           (3) The school board has, within the previous twelve (12)  
21 months, lawfully recognized a professional employees\_ organization other than  
22 the petitioner as the exclusive representative of any professional employees  
23 included in the unit described in the petition.

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

32           (f) In each case where the appropriateness of the claimed unit is at  
33 issue, the Commission shall decide the question on the basis of the community  
34 interest between and among the professional employees of the school board,  
35 their wishes, and their established practices including, among others, the

1 extent to which such employees have joined a professional employees\_  
2 organization, whether the unit appropriate for the purposes of professional  
3 negotiation shall consist of all persons employed by the school board who are  
4 engaged in teaching or performing other duties of an educational nature or  
5 some subdivision thereof; provided, however, that a unit including classroom  
6 teachers shall not be appropriate unless it includes all such teachers  
7 employed by the school board.

8

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

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

34       (b) If the mediator is unable to effect settlement of the controversy  
35 within fifteen (15) days after his appointment, either party may, by written



1 notification to the other, request that their differences be submitted to  
2 fact finding with recommendations. Within ten (10) days after receipt of the  
3 written request for fact finding, the parties shall select a person to serve  
4 as fact finder and obtain a commitment to serve. If they are unable to agree  
5 upon a fact finder or to obtain such a commitment within ten (10) days,  
6 either party may request the Commission to designate a fact finder. The  
7 commission, shall, within five (5) days after receipt of such request,  
8 designate a fact finder in accordance with rules and regulations prescribed  
9 by the Commission. The fact finder so designated shall not, without the  
10 consent of both parties, be the same person who was appointed mediator  
11 pursuant to subsection (a) of this section.

12         The fact finder shall, within ten (10) days after his appointment, meet  
13 with the parties or their representatives, or both, either jointly or  
14 separately, at which time each party shall submit a certified copy of the  
15 last and best offer that it has made to the other party. The fact finder may  
16 make inquiries and investigations, hold hearings, and take such other steps  
17 as he may deem appropriate. For the purpose of such hearings,  
18 investigations, and inquiries, the fact finder shall have the power to issue  
19 subpoenas requiring the attendance and testimony of witnesses and the  
20 production of evidence. The several departments, commissions, divisions,  
21 authorities, boards, bureaus, agencies, and officers of the State or any  
22 political subdivision thereof, shall furnish the fact finder, upon his  
23 request, with all records, papers, and information in their possession  
24 relating to any matter under investigation by or in issue before the fact  
25 finder. If the dispute is not settled within thirty (30) days after his  
26 appointment, the fact finder shall make findings of fact and recommend terms  
27 of settlement that shall consist of the final offer by either party which in  
28 the opinion of the fact finder is the most fair and reasonable. Such  
29 recommendations by the fact finder shall be binding on the school board and  
30 the employees\_ organization. A copy shall be submitted to the school board,  
31 the employees\_ organization and the Commission. When making his findings and  
32 fact and recommended terms of the settlement, the fact finder shall consider:  
33 (1) The interests and the welfare of the public;  
34 (2) The interests and the welfare of the employees;  
35 (3) The finances of the district;

1 (4) The cost of living;

2 (5) Comparisons with other employees in Arkansas and the  
3 nation; and

4 (6) Other factors normally taken into consideration in similar  
5 arbitration proceedings.

6 (c) Contracts and any other agreements covering salaries of  
7 professional employees and other conditions of professional employment that  
8 were subjects of disputes and were submitted to the fact finding shall, for  
9 the next contract period, be based on and consistent with the recommendations  
10 of the fact finder. Refusal by either party to enter into and to comply with  
11 contracts and agreements based on the fact finders recommended terms of  
12 settlement shall be a violation of this act.

13 (d) The costs for the services of the fact finder, including per diem  
14 expense, if any, and actual and necessary travel and subsistence expenses,  
15 and any other mutually incurred costs, shall be borne equally by the school  
16 board and the professional employees\_ representative. Any individually  
17 incurred costs shall be borne by the party incurring them.

18

19 SECTION 8. (a) A school board and a representative selected or  
20 designated pursuant to the provisions of Section 6 of this act who enter into  
21 an agreement covering terms and conditions of professional service and other  
22 matters of mutual concern may include in the agreement procedures for final  
23 and binding arbitration of such disputes as may arise involving the  
24 interpretation, or application of such agreement or of established policies  
25 or practices of the school board affecting terms and conditions of  
26 professional service and other matters of mutual concern.

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

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

1 proceed pursuant to the procedures provided therefor in the agreement or  
2 pursuant to subsection (b) of this section.

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

4 (1) It was procured by corruption, fraud or other misconduct; or

5 (2) Of partiality of the arbitrator; or

6 (3) The arbitrator exceeded his powers or so imperfectly  
7 executed them that a final and definite award upon the subject matter was not  
8 made, such award shall be final and binding upon the parties and may be  
9 enforced by the court.

10

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

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

16 (2) Deny to professional employees\_ organizations rights  
17 guaranteed to them by this act; or

18 (3) Refuse or fail to negotiate in good faith with the  
19 representatives selected or designated pursuant to the provisions of Section  
20 6 of this act if requested to do so.

21 (b) It shall be unlawful for:

22 (1) A professional employee or a professional employees\_  
23 organization to cause or attempt to cause a school board to engage in conduct  
24 in violation of the provisions of Section 9(a) of this act; provided,  
25 however, that this paragraph shall not impair the right of a professional  
26 employees\_ organization to prescribe its own rules with respect to the  
27 acquisition or retention of membership therein; or

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

31 (3) Professional employees to strike.

32

33 SECTION 10. Except as otherwise expressly provided herein, this act  
34 shall not operate so as to annul, modify or preclude the renewal or  
35 continuation of any lawful agreement previously entered into between a school

1 board and a professional employees\_ organization covering terms and  
2 conditions of professional service and other matters of mutual concern.

3

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

7

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

13

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