

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/10/11

A Bill

HOUSE BILL 1251

5 By: Representative Nickels
6

For An Act To Be Entitled

8 AN ACT CONCERNING STATE AGENCY EMPLOYEE GRIEVANCES;
9 TO PROVIDE THE POSSIBILITY OF RELIEF FOR EMPLOYEES
10 WITH GROUNDS FOR A GRIEVANCE, INCLUDING WITHOUT
11 LIMITATION THE RECEIPT OF CREDIT UNDER AN APPLICABLE
12 RETIREMENT SYSTEM; AND FOR OTHER PURPOSES.
13
14

Subtitle

15
16 AN ACT CONCERNING STATE EMPLOYEE
17 GRIEVANCES AND POSSIBLE RELIEF FOR
18 GRIEVANCES, INCLUDING WITHOUT LIMITATION
19 CREDIT UNDER A RETIREMENT SYSTEM.
20
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. Arkansas Code § 16-7-104(8) and (9), concerning the powers*
25 *and duties of the Arkansas Alternative Dispute Resolution Commission, are*
26 *amended to read as follows:*

27 *(8) Apply for and accept gifts or grants from any public or*
28 *private source for use in maintaining and improving alternative dispute*
29 *resolution programs in the state; and*

30 *(9) Collect fees for tuition and registration of educational*
31 *programs and to assist in maintaining a roster of third party neutrals;*

32 *(10) Collect fees and assess fines to assist in maintaining*
33 *rosters of third-party neutrals;*

34 *(11) Establish rules for the certification, professional*
35 *conduct, discipline and training of persons who shall be eligible to*
36 *arbitrate appeals from the state employee grievance procedures under § 21-1-*



1 701 et seq.; and

2 (12) Collect a fee to provide arbitrators for appeals from the
3 state employee grievance procedures under § 21-1-701 et seq.

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5 SECTION 2. Arkansas Code Title 16, Chapter 7, Subchapter 1 is amended
6 to add an additional section to read as follows:

7 16-7-108. Appeals from state employee grievance procedures.

8 (a) The Arkansas Alternative Dispute Resolution Commission shall
9 maintain a roster of arbitrators qualified to hear appeals from state
10 employee grievance procedures under § 21-1-701 et seq.

11 (b) The commission shall provide a panel of arbitrators from which the
12 employee and state agency may select an arbitrator to hear the employee's
13 appeal from the state employee grievance procedures under § 21-1-701 et seq.

14 (c) The commission may promulgate rules concerning the selection of
15 arbitrators for appeals from state employee grievance procedures under § 21-
16 1-701 et seq.

17
18 SECTION 3. Arkansas Code Title 21, Chapter 1 is amended to add an
19 additional subchapter to read as follows:

20 Subchapter 7. Appeals of State Employee Grievances.

21 21-1-701. Definitions.

22 As used in this subchapter:

23 (1) "Adverse action" means the same as defined at § 21-1-602;

24 (2) "Appropriate authority" means the same as defined at § 21-1-
25 602;

26 (3) "Arbitrator" means an individual who is certified by the
27 Arkansas Alternative Dispute Resolution Commission to hear appeals under this
28 subchapter;

29 (4) "Communicating in good faith" means a verbal or written
30 report made at a time and in a manner that gives a state agency reasonable
31 notice of the need to correct a waste or violation;

32 (5)(A) "Employee" means a person regularly appointed or employed
33 in a position of state service by a state agency for which:

34 (i) He or she is compensated on a full-time
35 basis or on a pro rata basis; and

36 (ii) A class title and pay grade are

1 established in the appropriation act for the agency or institution in
2 accordance with the Uniform Classification and Compensation Act, § 21-5-201
3 et seq.

4 (B) "Employee" does not include a supervisory employee;

5 (6)(A) "State agency" means a board, commission, department,
6 division, or office of state government within the executive branch.

7 (B) "State agency" does not include:

8 (i) An institution of higher education;

9 (ii) The Arkansas State Highway and Transportation
10 Department; and

11 (iii) The Arkansas State Game and Fish Commission;

12 (7) "Supervisory employee" means any individual having:

13 (A) Authority in the interest of a state agency to
14 hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward,
15 or discipline other employees of the state agency; or

16 (B) If his or her exercise of authority requires the
17 use of independent judgment and is not of a merely routine or clerical
18 nature, the responsibility to direct other employees of the state agency by
19 which he or she is employed;

20 (8) "Violation" means the same as defined at § 21-1-602; and

21 (9) "Waste" means the same as defined at § 21-1-602.

22
23 21-1-702. Appeals.

24 (a)(1) Upon the completion of any employee grievance procedure
25 mandated by the executive branch, an employee who wishes to appeal the
26 results of the employee grievance procedure mandated by the executive branch
27 may file an appeal with the Office of Personnel Management of the Department
28 of Finance and Administration if the employee has been:

29 (A) Terminated;

30 (B) Demoted;

31 (C) Suspended for fourteen (14) or more days; or

32 (D)(i) Subject to adverse action by his or her state
33 agency for:

34 (a) Communicating in good faith to an
35 appropriate authority:

36 (1) The existence of waste of public

funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or

(2) A violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;

(b) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or

(c) Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state.

(ii) An employee filing an appeal under this subdivision (a)(1)(D) does not waive his or her right to file a claim under the Arkansas Whistle-Blower Act, § 21-1-601 et seq.

(2) The employee shall file the appeal with the Office of Personnel Management within thirty (30) days of the conclusion of any employee grievance procedures mandated by the executive branch.

(b)(1) The employee filing the appeal and the state agency shall select an arbitrator to hear the appeal from a panel of arbitrators provided by the Arkansas Alternative Dispute Resolution Commission under § 16-7-104.

(2)(A) The commission shall promulgate rules concerning the qualifications and certification process of arbitrators eligible to hear appeals.

(B)(i) The qualifications shall include a background in employer and employee relations.

(ii) The qualifications shall not require a person to be an attorney to hear appeals under this subchapter.

(c)(1) An employee appealing to the commission may request that the appeal be conducted by:

(A) A de novo before the arbitrator selected to hear the appeal; or

(B) The record being reviewed by the arbitrator selected to hear the appeal.

(2)(A) A state agency decision shall be sustained only if the state agency's decision is supported by:

1 (i) Substantial evidence, if the action was based on
2 an employee's unacceptable performance; or

3 (ii) A preponderance of the evidence, if the action
4 was based on factors other than an employee's unacceptable performance.

5 (B) A state agency decision shall not be upheld by the
6 arbitrator selected to hear the appeal if the employee shows:

7 (i) Harmful error in the state agency's procedures
8 in arriving at the decision;

9 (ii) That the decision was based on a prohibited
10 personnel practice; or

11 (iii) That the decision was not in accordance with
12 the law.

13 (d) An employee appealing under this subchapter may be represented by
14 an attorney or other representative in proceedings before an arbitrator
15 selected to hear the appeal.

16 (e)(1) The arbitrator shall conduct the appeal within forty-five (45)
17 days of the appeal's filing date.

18 (2) The arbitrator shall issue a final decision within twenty
19 (20) days of the date of the hearing or review of the record.

20 (3) The final decision of the arbitrator may not be appealed.

21
22 21-1-703. Relief.

23 (a) If an employee is the prevailing party in an appeal under this
24 subchapter, the employee shall be granted relief deemed appropriate by the
25 arbitrator, including without limitation:

26 (1) Attorney's fees; and

27 (2) The restoration of the employee to his or her previous
28 employment position.

29 (b)(1) An employee who is found to have been affected by an
30 unjustified or unwarranted personnel action that resulted in the withdrawal
31 or reduction of all or part of the employee's pay or allowances may receive,
32 at the discretion of the arbitrator, an amount equal to all or part of the
33 pay or allowances that the employee would have earned or received during the
34 period affected by the personnel action, less any amounts earned by the
35 employee through other employment during that period.

36 (2) If the arbitrator awards an amount under subdivision (b)(1)

1 of this section, the employee shall receive the following benefits if the
2 benefits were not received due to the personnel action:

3 (A) Annual and sick leave credit that the employee would
4 have earned or received during the period affected by the personnel action;
5 and

6 (B) Credit under an applicable state retirement system
7 that the employee would have earned or received during the period affected by
8 the personnel action.

9 (3) If the arbitrator awards an amount under subdivision (b)(1)
10 of this section, he or she shall also award interest, compounded daily,
11 calculated under rules promulgated by the Office of Personnel Management of
12 the Department of Finance and Administration.

13 (4) An amount awarded under subdivision (b)(1) of this section
14 shall not be an amount that results in the employee's exceeding the total
15 compensation authorized by law for the position at issue.

16 (c)(1) If the decision of the arbitrator requires a financial award to
17 an employee, the state agency shall pay the award ordered by the arbitrator
18 if it is ten thousand dollars (\$10,000) or less.

19 (2)(A) If the award exceeds ten thousand dollars (\$10,000), the
20 award shall be referred to the General Assembly for an appropriation.

21 (B) The Office of Personnel Management shall file a
22 written report of an award exceeding ten thousand dollars (\$10,000) to the
23 Claims Review Subcommittee of the Legislative Council.

24 (C) The report shall include a concise statement of the
25 facts with an explanation of the state agency's liability.

26 (D) The report shall be filed with the Claims Review
27 Subcommittee within thirty (30) days after the final decision of the
28 arbitrator.

29 (d) If the arbitrator determines, upon motion of the employee
30 appealing under this subchapter, that irreparable harm or damage would result
31 to the employee in the time period pending the appeal decision, the
32 arbitrator may grant an injunction that is to remain in effect until the
33 final decision of the arbitrator.

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35 21-1-704. Alternative dispute resolution.

36 (a) In lieu of requesting an appeal under § 21-1-702, an employee may

1 request that the appeal be mediated.

2 (b) If an employee requests mediation, the Arkansas Alternative
3 Dispute Resolution Commission shall select an appropriate mediator from a
4 roster maintained by the commission of those mediators who meet the
5 commission's guidelines for that type of case.

6 (c) If the parties reach an agreement through mediation, the mediator
7 shall provide a copy of the mediation agreement to the Office of Personnel
8 Management of the Department of Finance and Administration and the matter
9 shall be considered resolved and final.

10 (d)(1) If the parties are unable to reach an agreement through
11 mediation, the mediator shall report that information to the commission.

12 (2) An employee who is unable to reach an agreement through
13 mediation may request an appeal under § 21-1-702 within ten (10) days of the
14 unsuccessful mediation.

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16 21-1-705. Rules.

17 (a) The Department of Finance and Administration shall promulgate
18 rules governing appeals under this subchapter.

19 (b) The Arkansas Alternative Dispute Resolution Commission shall
20 promulgate rules governing the selection of arbitrators for the purpose of
21 hearing appeals under this subchapter.

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23 SECTION 4. DO NOT CODIFY. The Office of Personnel Management of the
24 Department of Finance and Administration shall begin receiving appeals under
25 this subchapter on July 1, 2012.

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27 /s/Nickels
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