

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 46

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEE
BARGAINING ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT.--The purpose of the Public
Employee Bargaining Act is to guarantee public employees the
right to organize and bargain collectively with their
employers, to promote harmonious and cooperative relationships
between public employers and public employees and to protect
the public interest by ensuring, at all times, the orderly
operation and functioning of the state and its political
subdivisions.

Section 3. CONFLICTS.--In the event of conflict with

1 other laws, the provisions of the Public Employee Bargaining
2 Act shall supersede other previously enacted legislation and
3 regulations; provided that the Public Employee Bargaining Act
4 shall not supersede the provisions of the Bateman Act, the
5 Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the
6 Group Benefits Act, the Per Diem and Mileage Act, the Retiree
7 Health Care Act, public employee retirement laws or the Tort
8 Claims Act.

9 Section 4. DEFINITIONS. -- As used in the Public Employee
10 Bargaining Act:

11 A. "appropriate bargaining unit" means a group of
12 public employees designated by the board or local board for the
13 purpose of collective bargaining;

14 B. "appropriate governing body" means the
15 policymaking body or individual representing a public employer
16 as designated in Section 7 of the Public Employee Bargaining
17 Act;

18 C. "authorization card" means a signed affirmation
19 by a member of an appropriate bargaining unit designating a
20 particular organization as exclusive representative;

21 D. "board" means the public employee labor
22 relations board;

23 E. "certification" means the designation by the
24 board or local board of a labor organization as the exclusive
25 representative for all public employees in an appropriate

1 bargaining unit;

2 F. "collective bargaining" means the act of
3 negotiating between a public employer and an exclusive
4 representative for the purpose of entering into a written
5 agreement regarding wages, hours and other terms and conditions
6 of employment;

7 G. "confidential employee" means a person who
8 devotes a majority of his time to assisting and acting in a
9 confidential capacity with respect to a person who formulates,
10 determines and effectuates management policies;

11 H. "emergency" means a one-time crisis that was
12 unforeseen and unavoidable;

13 I. "exclusive representative" means a labor
14 organization that, as a result of certification, has the right
15 to represent all public employees in an appropriate bargaining
16 unit for the purposes of collective bargaining;

17 J. "fair share" means the payment to a labor
18 organization which is the exclusive representative for an
19 appropriate bargaining unit by an employee of that bargaining
20 unit who is not a member of that labor organization equal to a
21 certain percentage of membership dues. Such figure is to be
22 calculated based on United States and New Mexico statutes and
23 case law identifying those expenditures by a labor organization
24 which are permissibly chargeable to all employees in the
25 appropriate bargaining unit under United States and New Mexico

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1 statutes and case law, including but not limited to all
2 expenditures incurred by the labor organization in negotiating
3 the contract applicable to all employees in the appropriate
4 bargaining unit, servicing such contract and representing all
5 such employees in grievances and disciplinary actions;

6 K. "impasse" means failure of a public employer and
7 an exclusive representative, after good-faith bargaining, to
8 reach agreement in the course of negotiating a collective
9 bargaining agreement;

10 L. "labor organization" means an employee
11 organization, one of whose purposes is the representation of
12 public employees in collective bargaining and in otherwise
13 meeting, consulting and conferring with employers on matters
14 pertaining to employment relations;

15 M. "local board" means a local labor relations
16 board established by a public employer, other than the state,
17 through ordinance, resolution or charter amendment;

18 N. "lockout" means an act by a public employer to
19 prevent its employees from going to work for the purpose of
20 resisting the demands of the employees' exclusive
21 representative or for the purpose of gaining a concession from
22 the exclusive representative;

23 O. "management employee" means an employee who is
24 engaged primarily in executive and management functions and is
25 charged with the responsibility of developing, administering or

1 effectuating management policies. An employee shall not be
2 deemed a management employee solely because the employee
3 participates in cooperative decision-making programs on an
4 occasional basis;

5 P. "mediation" means assistance by an impartial
6 third party to resolve an impasse between a public employer and
7 an exclusive representative regarding employment relations
8 through interpretation, suggestion and advice;

9 Q. "professional employee" means an employee whose
10 work is predominantly intellectual and varied in character and
11 whose work involves the consistent exercise of discretion and
12 judgment in its performance and requires knowledge of an
13 advanced nature in a field of learning customarily requiring
14 specialized study at an institution of higher education or its
15 equivalent. The work of a professional employee is of such
16 character that the output or result accomplished cannot be
17 standardized in relation to a given period of time;

18 R. "public employee" means a regular
19 nonprobationary employee of a public employer; provided that,
20 in the public schools, "public employee" shall also include a
21 regular probationary employee;

22 S. "public employer" means the state or a political
23 subdivision thereof, including a municipality that has adopted
24 a home rule charter, and does not include a government of an
25 Indian nation, tribe or pueblo, provided that state educational

1 institutions as provided in Article 12, Section 11 of the
2 constitution of New Mexico shall be considered public employers
3 other than state for collective bargaining purposes only;

4 T. "strike" means a public employee's refusal, in
5 concerted action with other public employees, to report for
6 duty or his willful absence in whole or in part from the full,
7 faithful and proper performance of the duties of employment for
8 the purpose of inducing, influencing or coercing a change in
9 the conditions, compensation, rights, privileges or obligations
10 of public employment; and

11 U. "supervisor" means an employee who devotes a
12 majority of work time to supervisory duties, who customarily
13 and regularly directs the work of two or more other employees
14 and who has the authority in the interest of the employer to
15 hire, promote or discipline other employees or to recommend
16 such actions effectively, but "supervisor" does not include an
17 individual who performs merely routine, incidental or clerical
18 duties or who occasionally assumes a supervisory or directory
19 role or whose duties are substantially similar to those of his
20 subordinates and does not include a lead employee or an
21 employee who participates in peer review or occasional employee
22 evaluation programs.

23 Section 5. RIGHTS OF PUBLIC EMPLOYEES. -- Public employees,
24 other than management employees and confidential employees, may
25 form, join or assist a labor organization for the purpose of

1 collective bargaining through representatives chosen by public
 2 employees without interference, restraint or coercion and shall
 3 have the right to refuse any such activities.

4 Section 6. RIGHTS OF PUBLIC EMPLOYERS. -- Unless limited by
 5 the provisions of a collective bargaining agreement or by other
 6 statutory provision, a public employer may:

7 A. direct the work of, hire, promote, assign,
 8 transfer, demote, suspend, discharge or terminate public
 9 employees;

10 B. determine qualifications for employment and the
 11 nature and content of personnel examinations;

12 C. take actions as may be necessary to carry out
 13 the mission of the public employer in emergencies; and

14 D. retain all rights not specifically limited by a
 15 collective bargaining agreement or by the Public Employee
 16 Bargaining Act.

17 Section 7. APPROPRIATE GOVERNING BODY--PUBLIC EMPLOYER. --
 18 The appropriate governing body of a public employer is the
 19 policymaking individual or body representing the public
 20 employer. In the case of the state, the appropriate governing
 21 body is the governor or his designee or, in the case of a
 22 constitutionally created body, the constitutionally designated
 23 head of that body. At the local level, the appropriate
 24 governing body is the elected or appointed representative body
 25 or individual charged with management of the local public body.

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1 In the event of dispute, the board shall determine the
2 appropriate governing body.

3 Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD--
4 CREATED--TERMS--QUALIFICATIONS.--

5 A. The "public employee labor relations board" is
6 created. The board consists of three members appointed by the
7 governor. The governor shall appoint one member recommended by
8 organized labor representatives actively involved in
9 representing public employees, one member recommended by public
10 employers actively involved in collective bargaining and one
11 member jointly recommended by the other two appointees.

12 B. Except for appointments made in 2003, board
13 members shall serve for a period of three years with terms
14 commencing on July 1. Vacancies shall be filled by appointment
15 by the governor in the same manner as the original appointment,
16 and such appointments shall only be made for the remainder of
17 the unexpired term. A board member may serve an unlimited
18 number of terms.

19 C. During the term for which he is appointed, a
20 board member shall not hold or seek any other political office
21 or public employment or be an employee of a labor organization
22 or an organization representing public employees or public
23 employers.

24 D. Each board member shall be paid per diem and
25 mileage in accordance with the provisions of the Per Diem and

1 Mileage Act.

2 E. For the purpose of making initial appointments
3 to the board in 2003, the governor shall designate one member
4 to serve a one-year term, one member to serve a two-year term
5 and one member to serve a three-year term. Thereafter, all
6 members shall be appointed for three-year terms.

7 Section 9. BOARD--POWERS AND DUTIES.--

8 A. The board shall promulgate rules necessary to
9 accomplish and perform its functions and duties as established
10 in the Public Employee Bargaining Act, including the
11 establishment of procedures for:

12 (1) the designation of appropriate bargaining
13 units;

14 (2) the selection, certification and
15 decertification of exclusive representatives; and

16 (3) the filing of, hearing on and
17 determination of complaints of prohibited practices.

18 B. The board shall:

19 (1) hold hearings and make inquiries necessary
20 to carry out its functions and duties;

21 (2) conduct studies on problems pertaining to
22 employee-employer relations; and

23 (3) request from public employers and labor
24 organizations the information and data necessary to carry out
25 the board's functions and responsibilities.

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underscored material = new
[bracketed material] = delete

1 C. The board may issue subpoenas requiring, upon
2 reasonable notice, the attendance and testimony of witnesses
3 and the production of evidence, including books, records,
4 correspondence or documents relating to the matter in question.
5 The board may prescribe the form of subpoena, but it shall
6 adhere insofar as practicable to the form used in civil actions
7 in the district court. The board may administer oaths and
8 affirmations, examine witnesses and receive evidence.

9 D. The board shall decide issues by majority vote
10 and shall issue its decisions in the form of written orders and
11 opinions.

12 E. The board may hire personnel or contract with
13 third parties as it deems necessary to assist it in carrying
14 out its functions.

15 F. The board has the power to enforce provisions of
16 the Public Employee Bargaining Act through the imposition of
17 appropriate administrative remedies.

18 G. A rule promulgated by the board or a local board
19 shall not require, directly or indirectly, as a condition of
20 continuous employment, a public employee covered by the Public
21 Employee Bargaining Act to pay money to a labor organization
22 that is certified as an exclusive representative. The issue of
23 fair share shall be left a permissive subject of bargaining by
24 the public employer and the exclusive representative of each
25 bargaining unit.

1 Section 10. LOCAL BOARD--CREATED.--

2 A. With the approval of the board, a public
3 employer other than the state may, by ordinance, resolution or
4 charter amendment, create a local board similar to the public
5 employee labor relations board. Once created and approved, the
6 local board shall assume the duties and responsibilities of the
7 public employee labor relations board. A local board shall
8 follow all procedures and provisions of the Public Employee
9 Bargaining Act unless otherwise approved by the board.

10 B. The local board shall be composed of three
11 members appointed by the public employer. One member shall be
12 appointed on the recommendation of individuals representing
13 labor, one member shall be appointed on the recommendation of
14 individuals representing management and one member shall be
15 appointed on the recommendation of the first two appointees.

16 C. Local board members shall serve one-year terms.
17 Local board members may serve an unlimited number of terms.
18 Vacancies shall be filled in the same manner as the original
19 appointment, and such appointments shall only be made for the
20 remainder of the unexpired term.

21 D. During the term for which he is appointed, a
22 local board member shall not hold or seek any other political
23 office or public employment or be an employee of a union or an
24 organization representing public employees or public employers.

25 E. Each local board member shall be paid per diem

1 and mileage in accordance with the provisions of the Per Diem
2 and Mileage Act.

3 Section 11. LOCAL BOARD-- POWERS AND DUTIES. --

4 A. The local board shall promulgate rules necessary
5 to accomplish and perform its functions and duties as
6 established in the Public Employee Bargaining Act, including
7 the establishment of procedures for:

8 (1) the designation of appropriate bargaining
9 units;

10 (2) the selection, certification and
11 decertification of exclusive representatives; and

12 (3) the filing of, hearing on and
13 determination of complaints of prohibited practices.

14 B. The local board shall:

15 (1) hold hearings and make inquiries necessary
16 to carry out its functions and duties;

17 (2) request information and data from public
18 employers and labor organizations to carry out the local
19 board's functions and responsibilities; and

20 (3) hire personnel or contract with third
21 parties as the appropriate governing body deems necessary to
22 assist the local board in carrying out its functions.

23 C. The local board may issue subpoenas requiring,
24 upon reasonable notice, the attendance and testimony of
25 witnesses and the production of evidence, including books,

1 records, correspondence or documents relating to the matter in
 2 question. The local board may prescribe the form of subpoena,
 3 but it shall adhere insofar as practicable to the form used in
 4 civil actions in the district court. The local board may
 5 administer oaths and affirmations, examine witnesses and
 6 receive evidence.

7 D. The local board shall decide all issues by
 8 majority vote and shall issue its decisions in the form of
 9 written orders and opinions.

10 E. The local board has the power to enforce
 11 provisions of the Public Employee Bargaining Act or a local
 12 collective bargaining ordinance, resolution or charter
 13 amendment through the imposition of appropriate administrative
 14 remedies.

15 Section 12. HEARING PROCEDURES. --

16 A. The board or local board may hold hearings for
 17 the purposes of:

18 (1) information gathering and inquiry;
 19 (2) adopting rules; and
 20 (3) adjudicating disputes and enforcing the
 21 provisions of the Public Employee Bargaining Act and rules
 22 adopted pursuant to that act.

23 B. The board or local board shall adopt rules
 24 setting forth procedures to be followed during hearings of the
 25 board or local board. The procedures adopted for conducting

1 adjudicatory hearings shall meet all minimal due process
2 requirements of the state and federal constitutions.

3 C. The board or local board may appoint a hearing
4 examiner to conduct any adjudicatory hearing authorized by the
5 board or local board. At the conclusion of the hearing, the
6 examiner shall prepare a written report, including findings and
7 recommendations, all of which shall be submitted to the board
8 or local board for its decision.

9 D. A rule proposed to be adopted by the board or
10 local board that affects a person or governmental entity
11 outside of the board or local board and its staff shall not be
12 adopted, amended or repealed without public hearing and comment
13 on the proposed action before the board or local board. The
14 public hearing shall be held after notice of the subject matter
15 of the rule, the action proposed to be taken, the time and
16 place of the hearing, the manner in which interested persons
17 may present their views and the method by which copies of the
18 proposed rule, proposed amendment or repeal of an existing rule
19 may be obtained. All meetings of the board shall be held in
20 Santa Fe. All meetings of local boards shall be held in the
21 county of residence of the local public employer. Notice shall
22 be published once at least thirty days prior to the hearing
23 date in a newspaper of general circulation in the state or, in
24 the case of a local board hearing, in a newspaper of general
25 circulation in the county, and notice shall be mailed at least

1 thirty days prior to the hearing date to all persons who have
2 made a written request for advance notice of hearings.

3 E. All adopted rules shall be filed in accordance
4 with applicable state statutes.

5 F. A verbatim record made by electronic or other
6 suitable means shall be made of every rulemaking and
7 adjudicatory hearing. The record shall not be transcribed
8 unless required for judicial review or unless ordered by the
9 board or local board.

10 Section 13. APPROPRIATE BARGAINING UNITS. --

11 A. The board or local board shall, upon receipt of
12 a petition for a representation election filed by a labor
13 organization, designate the appropriate bargaining units for
14 collective bargaining. Appropriate bargaining units shall be
15 established on the basis of occupational groups or clear and
16 identifiable communities of interest in employment terms and
17 conditions and related personnel matters among the public
18 employees involved. Occupational groups shall generally be
19 identified as blue-collar, secretarial clerical, technical,
20 professional, paraprofessional, police, fire, corrections and
21 supervisory employees. The parties, by mutual agreement, may
22 further consolidate occupational groups. Essential factors in
23 determining appropriate bargaining units shall include the
24 principles of efficient administration of government, the
25 history of collective bargaining and the assurance to public

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1 employees of the fullest freedom in exercising the rights
2 guaranteed by the Public Employee Bargaining Act; provided,
3 however, that no supervisory employee may be consolidated or
4 otherwise included in a bargaining unit with non-supervisory
5 employees. Public employers other than the state shall not be
6 required to include supervisors in any appropriate bargaining
7 unit.

8 B. Within thirty days of a disagreement arising
9 between a public employer and a labor organization concerning
10 the composition of an appropriate bargaining unit, the board or
11 local board shall hold a hearing concerning the composition of
12 the bargaining unit before designating an appropriate
13 bargaining unit.

14 C. The board or local board shall not include in an
15 appropriate bargaining unit managers or confidential employees.

16 Section 14. ELECTIONS. --

17 A. Whenever, in accordance with rules prescribed by
18 the board or local board, a petition is filed by a labor
19 organization containing the signatures of at least thirty
20 percent of the public employees in an appropriate bargaining
21 unit, the board or local board shall conduct a secret ballot
22 representation election to determine whether and by which labor
23 organization the public employees in the appropriate bargaining
24 unit shall be represented. The ballot shall contain the name
25 of any labor organization submitting a petition containing

1 signatures of at least thirty percent of the public employees
2 in the appropriate bargaining unit. The ballot shall also
3 contain a provision allowing public employees to indicate
4 whether they do not desire to be represented by a labor
5 organization. An election shall only be valid if forty percent
6 of the eligible employees in the bargaining unit vote in the
7 election.

8 B. Once a labor organization has filed a valid
9 petition with the board or local board calling for a
10 representation election, other labor organizations may seek to
11 be placed on the ballot. Such an organization shall file a
12 petition containing the signatures of not less than thirty
13 percent of the public employees in the appropriate bargaining
14 unit no later than ten days after the board or the local board
15 and the public employer post a written notice that the petition
16 in Subsection A of this section has been filed by a labor
17 organization.

18 C. As an alternative to the provisions of
19 Subsection A of this section, a public employer and a labor
20 organization with a reasonable basis for claiming to represent
21 a majority of the employees in an appropriate bargaining unit
22 may establish an alternative appropriate procedure for
23 determining majority status. The procedure may include a labor
24 organization's submission of authorization cards from a
25 majority of the employees in an appropriate bargaining unit.

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1 The board or local board shall not certify an appropriate
2 bargaining unit if the public employer objects to the
3 certification without an election.

4 D. If a labor organization receives a majority of
5 votes cast, it shall be certified as the exclusive
6 representative of all public employees in the appropriate
7 bargaining unit. Within fifteen days of an election in which
8 no labor organization receives a majority of the votes cast, a
9 runoff election between the two choices receiving the largest
10 number of votes cast shall be conducted. The board or local
11 board shall certify the results of the election, and, when a
12 labor organization receives a majority of the votes cast, the
13 board or local board shall certify the labor organization as
14 the exclusive representative of all public employees in the
15 appropriate bargaining unit.

16 E. An election shall not be conducted if an
17 election or runoff election has been conducted in the twelve-
18 month period immediately preceding the proposed representation
19 election. An election shall not be held during the term of an
20 existing collective bargaining agreement, except as provided in
21 Section 16 of the Public Employee Bargaining Act.

22 Section 15. EXCLUSIVE REPRESENTATION. --

23 A. A labor organization that has been certified by
24 the board or local board as representing the public employees
25 in the appropriate bargaining unit shall be the exclusive

1 representative of all public employees in the appropriate
 2 bargaining unit. The exclusive representative shall act for
 3 all public employees in the appropriate bargaining unit and
 4 negotiate a collective bargaining agreement covering all public
 5 employees in the appropriate bargaining unit. The exclusive
 6 representative shall represent the interests of all public
 7 employees in the appropriate bargaining unit without
 8 discrimination or regard to membership in the labor
 9 organization.

10 B. This section does not prevent a public employee,
 11 acting individually, from presenting a grievance without the
 12 intervention of the exclusive representative. At a hearing on
 13 a grievance brought by a public employee individually, the
 14 exclusive representative shall be afforded the opportunity to
 15 be present and make its views known. An adjustment made shall
 16 not be inconsistent with or in violation of the collective
 17 bargaining agreement then in effect between the public employer
 18 and the exclusive representative.

19 Section 16. DECERTIFICATION OF EXCLUSIVE
 20 REPRESENTATIVE. --

21 A. A member of a labor organization or the labor
 22 organization itself may initiate decertification of a labor
 23 organization as the exclusive representative if thirty percent
 24 of the public employees in the appropriate bargaining unit make
 25 a written request to the board or local board for a

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1 decertification election. Decertification elections shall be
2 held in a manner prescribed by rule of the board. An election
3 shall only be valid if forty percent of the eligible employees
4 in the bargaining unit vote in the election.

5 B. When there is a collective bargaining agreement
6 in effect, a request for a decertification election shall be
7 made to the board or local board no earlier than ninety days
8 and no later than sixty days before the expiration of the
9 collective bargaining agreement; provided, however, a request
10 for an election may be filed at any time after the expiration
11 of the third year of a collective bargaining agreement with a
12 term of more than three years.

13 C. When, within the time period prescribed in
14 Subsection B of this section, a competing labor organization
15 files a petition containing signatures of at least thirty
16 percent of the public employees in the appropriate bargaining
17 unit, a representation election rather than a decertification
18 election shall be conducted.

19 D. When an exclusive representative has been
20 certified but no collective bargaining agreement is in effect,
21 the board or local board shall not accept a request for a
22 decertification election earlier than twelve months subsequent
23 to a labor organization's certification as the exclusive
24 representative.

25 Section 17. SCOPE OF BARGAINING. --

1 A. Except for retirement programs provided pursuant
2 to the Public Employees Retirement Act or the Educational
3 Retirement Act, public employers and exclusive representatives:

4 (1) shall bargain in good faith on wages,
5 hours and all other terms and conditions of employment and
6 other issues agreed to by the parties. However, neither the
7 public employer nor the exclusive representative shall be
8 required to agree to a proposal or to make a concession; and

9 (2) shall enter into written collective
10 bargaining agreements covering employment relations.

11 B. The obligation to bargain collectively imposed
12 by the Public Employee Bargaining Act shall not be construed as
13 authorizing a public employer and an exclusive representative
14 to enter into an agreement that is in conflict with the
15 provisions of any other statute of this state. In the event of
16 conflict between the provisions of any other statute of this
17 state and an agreement entered into by the public employer and
18 the exclusive representative in collective bargaining, the
19 statutes of this state shall prevail.

20 C. Payroll deduction of the exclusive
21 representative's membership dues shall be a mandatory subject
22 of bargaining if either party chooses to negotiate the issue.
23 The amount of dues shall be certified in writing by an official
24 of the labor organization and shall not include special
25 assessments, penalties or fines of any type. The public

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1 employer shall honor payroll deductions until the authorization
2 is revoked in writing by the public employee in accordance with
3 the negotiated agreement and for so long as the labor
4 organization is certified as the exclusive representative.

5 During the time that a board certification is in effect for a
6 particular appropriate bargaining unit, the public employer
7 shall not deduct dues for any other labor organization.

8 D. The scope of bargaining for representatives of
9 public schools as well as educational employees in state
10 agencies shall include, as a mandatory subject of bargaining,
11 the impact of professional and instructional decisions made by
12 the employer.

13 E. An impasse resolution or an agreement provision
14 by the state and an exclusive representative that requires the
15 expenditure of funds shall be contingent upon the specific
16 appropriation of funds by the legislature and the availability
17 of funds. An impasse resolution or an agreement provision by a
18 public employer other than the state or the public schools and
19 an exclusive representative that requires the expenditure of
20 funds shall be contingent upon the specific appropriation of
21 funds by the appropriate governing body and the availability of
22 funds. An agreement provision by a local school board and an
23 exclusive representative that requires the expenditure of funds
24 shall be contingent upon ratification by the appropriate
25 governing body. An arbitration decision shall not require the

1 reappropriation of funds.

2 F. An agreement shall include a grievance procedure
 3 to be used for the settlement of disputes pertaining to
 4 employment terms and conditions and related personnel matters.
 5 The grievance procedure shall provide for a final and binding
 6 determination. The final determination shall constitute an
 7 arbitration award within the meaning of the Uniform Arbitration
 8 Act; such award shall be subject to judicial review pursuant to
 9 the standard set forth in the Uniform Arbitration Act. The
 10 costs of an arbitration proceeding conducted pursuant to this
 11 subsection shall be shared equally by the parties.

12 G. The following meetings shall be closed:

13 (1) meetings for the discussion of bargaining
 14 strategy preliminary to collective bargaining negotiations
 15 between the public employer and the exclusive representative of
 16 the public employees of the public employer;

17 (2) collective bargaining sessions; and

18 (3) consultations and impasse resolution
 19 procedures at which the public employer and the exclusive
 20 representative of the appropriate bargaining unit are present.

21 Section 18. IMPASSE RESOLUTION. --

22 A. The following negotiations and impasse
 23 procedures shall be followed by the state and exclusive
 24 representatives for state employees:

25 (1) a request to the state for the

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1 commencement of initial negotiations shall be filed in writing
2 by the exclusive representative no later than June 1 of the
3 year in which negotiations are to take place. Negotiations
4 shall begin no later than July 1 of that year;

5 (2) in subsequent years, negotiations agreed
6 to by the parties shall begin no later than August 1 following
7 the submission of written notice to the state by the exclusive
8 representative no later than July 1 of the year in which
9 negotiations are to take place;

10 (3) if an impasse occurs during negotiations
11 between the parties, and if an agreement is not reached by the
12 parties by October 1, either party may request mediation
13 services from the board. A mediator from the federal mediation
14 and conciliation service shall be assigned by the board to
15 assist in negotiations unless the parties agree to another
16 mediator;

17 (4) the mediator shall provide services to the
18 parties until the parties reach agreement or the mediator
19 believes that mediation services are no longer helpful or until
20 November 1, whichever occurs first; and

21 (5) if the impasse continues after November 1,
22 either party may request a list of seven arbitrators from the
23 federal mediation and conciliation service. One arbitrator
24 shall be chosen by the parties by alternately striking names
25 from such list. Who strikes first shall be determined by coin

1 toss. The arbitrator shall render a final, binding, written
 2 decision resolving unresolved issues pursuant to Subsection E
 3 of Section 17 of the Public Employee Bargaining Act and the
 4 Uniform Arbitration Act no later than thirty days after the
 5 arbitrator has been notified of his or her selection by the
 6 parties. The arbitrator's decision shall be limited to a
 7 selection of one of the two parties' complete, last, best
 8 offer. The costs of an arbitrator and the arbitrator's related
 9 costs conducted pursuant to this subsection shall be shared
 10 equally by the parties. Each party shall be responsible for
 11 bearing the cost of presenting its case. The decision shall be
 12 subject to judicial review pursuant to the standard set forth
 13 in the Uniform Arbitration Act.

14 B. The following impasse procedures shall be
 15 followed by all public employers and exclusive representatives,
 16 except the state and the state's exclusive representatives:

17 (1) if an impasse occurs, either party may
 18 request from the board or local board that a mediator be
 19 assigned to the negotiations unless the parties can agree on a
 20 mediator. A mediator with the federal mediation and
 21 conciliation service shall be assigned by the board or local
 22 board to assist negotiations unless the parties agree to
 23 another mediator; and

24 (2) if the impasse continues after a thirty-
 25 day mediation period, either party may request a list of seven

1 arbitrators from the federal mediation and conciliation
2 service. One arbitrator shall be chosen by the parties by
3 alternately striking names from such list. Who strikes first
4 shall be determined by coin toss. The arbitrator shall render
5 a final, binding, written decision resolving unresolved issues
6 pursuant to Subsection E of Section 17 of the Public Employee
7 Bargaining Act and the Uniform Arbitration Act no later than
8 thirty days after the arbitrator has been notified of his or
9 her selection by the parties. The arbitrator's decision shall
10 be limited to a selection of one of the two parties' complete,
11 last, best offer. The costs of an arbitrator and the
12 arbitrator's related costs conducted pursuant to this
13 subsection shall be shared equally by the parties. Each party
14 shall be responsible for bearing the cost of presenting its
15 case. The decision shall be subject to judicial review
16 pursuant to the standard set forth in the Uniform Arbitration
17 Act.

18 C. A public employer other than the state may enter
19 into a written agreement with the exclusive representative
20 setting forth an alternative impasse resolution procedure.

21 D. In the event that an impasse continues after the
22 expiration of a contract, the existing contract will continue
23 in full force and effect until it is replaced by a subsequent
24 written agreement. However, this shall not require the public
25 employer to increase any employees' levels, steps or grades of

1 compensation contained in the existing contract.

2 Section 19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
3 public employer or his representative shall not:

4 A. discriminate against a public employee with
5 regard to terms and conditions of employment because of the
6 employee's membership in a labor organization;

7 B. interfere with, restrain or coerce a public
8 employee in the exercise of a right guaranteed pursuant to the
9 Public Employee Bargaining Act;

10 C. dominate or interfere in the formation,
11 existence or administration of a labor organization;

12 D. discriminate in regard to hiring, tenure or a
13 term or condition of employment in order to encourage or
14 discourage membership in a labor organization;

15 E. discharge or otherwise discriminate against a
16 public employee because he has signed or filed an affidavit,
17 petition, grievance or complaint or given information or
18 testimony pursuant to the provisions of the Public Employee
19 Bargaining Act or because a public employee is forming, joining
20 or choosing to be represented by a labor organization;

21 F. refuse to bargain collectively in good faith
22 with the exclusive representative;

23 G. refuse or fail to comply with a provision of the
24 Public Employee Bargaining Act or board rule; or

25 H. refuse or fail to comply with a collective

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1 bargaining agreement.

2 Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
3 PROHIBITED PRACTICES.--A public employee or labor organization
4 or its representative shall not:

5 A. discriminate against a public employee with
6 regard to labor organization membership because of race, color,
7 religion, creed, age, sex or national origin;

8 B. interfere with, restrain or coerce any public
9 employee in the exercise of a right guaranteed pursuant to the
10 provisions of the Public Employee Bargaining Act;

11 C. refuse to bargain collectively in good faith
12 with a public employer;

13 D. refuse or fail to comply with a collective
14 bargaining or other agreement with the public employer;

15 E. refuse or fail to comply with a provision of the
16 Public Employee Bargaining Act; or

17 F. picket homes or private businesses of elected
18 officials or public employees.

19 Section 21. STRIKES AND LOCKOUTS PROHIBITED.--

20 A. A public employee or labor organization shall
21 not engage in a strike. A labor organization shall not cause,
22 instigate, encourage or support a public employee strike. A
23 public employer shall not cause, instigate or engage in a
24 public employee lockout.

25 B. A public employer may apply to the district

1 court for injunctive relief to end a strike, and an exclusive
 2 representative of public employees affected by a lockout may
 3 apply to the district court for injunctive relief to end a
 4 lockout.

5 C. The board or local board, upon a clear and
 6 convincing showing of proof at a hearing that a labor
 7 organization directly caused or instigated a public employee
 8 strike, may impose appropriate penalties on that labor
 9 organization, up to and including decertification of the labor
 10 organization with respect to any of its bargaining units which
 11 struck as a result of such causation or instigation.

12 Section 22. AGREEMENTS VALID-- ENFORCEMENT. -- Collective
 13 bargaining agreements and other agreements between public
 14 employers and exclusive representatives shall be valid and
 15 enforceable according to their terms when entered into in
 16 accordance with the provisions of the Public Employee
 17 Bargaining Act.

18 Section 23. JUDICIAL ENFORCEMENT-- STANDARD OF REVIEW. --

19 A. The board or local board may request the
 20 district court to enforce orders issued pursuant to the Public
 21 Employee Bargaining Act, including those for appropriate
 22 temporary relief and restraining orders. The court shall
 23 consider the request for enforcement on the record made before
 24 the board or local board. It shall uphold the action of the
 25 board or local board and take appropriate action to enforce it

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1 unless it concludes that the order is:

2 (1) arbitrary, capricious or an abuse of
3 discretion;

4 (2) not supported by substantial evidence on
5 the record considered as a whole; or

6 (3) otherwise not in accordance with law.

7 B. A person or party, including a labor
8 organization affected by a final rule, order or decision of the
9 board or local board, may appeal to the district court for
10 further relief. All such appeals shall be based upon the
11 record made at the board or local board hearing. All such
12 appeals to the district court shall be taken within thirty days
13 of the date of the final rule, order or decision of the board
14 or local board. Actions taken by the board or local board
15 shall be affirmed unless the court concludes that the action
16 is:

17 (1) arbitrary, capricious or an abuse of
18 discretion;

19 (2) not supported by substantial evidence on
20 the record considered as a whole; or

21 (3) otherwise not in accordance with law.

22 Section 24. EXISTING COLLECTIVE BARGAINING UNITS. --

23 A. Bargaining units established prior to July 1,
24 1999 shall continue to be recognized as appropriate bargaining
25 units for the purposes of the Public Employee Bargaining Act.

1 Bargaining units established between July 1, 1999 and the
 2 effective date of that act shall continue in effect only if the
 3 unit is covered by a collective bargaining agreement on the
 4 date of this act.

5 B. A labor organization that was recognized by a
 6 public employer as the exclusive representative of an
 7 appropriate bargaining unit on June 30, 1999 shall be
 8 recognized as the exclusive representative of the unit on the
 9 effective date of the Public Employee Bargaining Act; provided,
 10 however, that the public employer shall not enter into a new
 11 collective bargaining agreement pursuant to this subsection
 12 unless the labor organization demonstrates majority support to
 13 the public employer pursuant to Section 14 of the Public
 14 Employee Bargaining Act. A labor organization which attempts
 15 and fails to show majority support shall no longer be
 16 recognized as the exclusive bargaining representative of that
 17 unit.

18 Section 25. EXISTING COLLECTIVE BARGAINING AGREEMENTS. --
 19 Nothing in the Public Employee Bargaining Act shall be
 20 construed to annul or modify a collective bargaining agreement
 21 entered into between a public employer and an exclusive
 22 representative prior to the effective date of the Public
 23 Employee Bargaining Act. Nor shall anything in the Public
 24 Employee Bargaining Act be construed to annul or modify the
 25 status of an existing or recognized exclusive representative.

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1 Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
2 EMPLOYEE BARGAINING. --

3 A. A public employer other than the state that
4 prior to October 1, 1991 adopted by ordinance, resolution or
5 charter amendment a system of provisions and procedures
6 permitting employees to form, join or assist a labor
7 organization for the purpose of bargaining collectively through
8 exclusive representatives may continue to operate under those
9 provisions and procedures. Any substantial change after
10 January 1, 2003 to any ordinance, resolution or charter
11 amendment shall subject the public employer to full compliance
12 with the provisions of Subsection B of Section 26 of the Public
13 Employee Bargaining Act.

14 B. A public employer other than the state that
15 subsequent to October 1, 1991 adopts by ordinance, resolution
16 or charter amendment a system of provisions and procedures
17 permitting employees to form, join or assist a labor
18 organization for the purpose of bargaining collectively through
19 exclusive representatives freely chosen by its employees may
20 operate under those provisions and procedures rather than those
21 set forth in the Public Employee Bargaining Act; provided that
22 the employer shall comply with the provisions of Sections 8
23 through 12 and Subsection D of Section 17 of that act and
24 provided the following provisions and procedures are included
25 in each ordinance, resolution or charter amendment:

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underscored material = new
[bracketed material] = deleted

1 (1) the right of public employees to form,
2 join or assist employee organizations for the purpose of
3 achieving collective bargaining;

4 (2) procedures for the identification of
5 appropriate bargaining units, certification elections and
6 decertification elections equivalent to those set forth in the
7 Public Employee Bargaining Act;

8 (3) the right of a labor organization to be
9 certified as an exclusive representative;

10 (4) the right of an exclusive representative
11 to negotiate all wages, hours and other terms and conditions of
12 employment for public employees in the appropriate bargaining
13 unit;

14 (5) the obligation to incorporate agreements
15 reached by the public employer and the exclusive representative
16 into a collective bargaining agreement;

17 (6) a requirement that grievance procedures
18 culminating with binding arbitration be negotiated;

19 (7) a requirement that payroll deductions for
20 the exclusive representative's membership dues be negotiated if
21 requested by the exclusive representative;

22 (8) impasse resolution procedures equivalent
23 to those set forth in Section 18 of the Public Employee
24 Bargaining Act; and

25 (9) prohibited practices for the public

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1 employer, public employees and labor organizations that promote
2 the principles established in Sections 19 through 21 of the
3 Public Employee Bargaining Act.

4 Section 27. SEVERABILITY. --If any part or application of
5 the Public Employee Bargaining Act is held invalid, the
6 remainder or its application to other situations or persons
7 shall not be affected.

8 Section 28. APPROPRIATION. --Three hundred twenty-seven
9 thousand dollars (\$327,000) is appropriated from the general
10 fund to the public employee labor relations board for
11 expenditure in fiscal year 2004 to carry out the provisions of
12 the Public Employee Bargaining Act. Any unexpended or
13 unencumbered balance remaining at the end of fiscal year 2004
14 shall revert to the general fund.

15 Section 29. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 2003.