

SECOND REGULAR SESSION

SENATE BILL NO. 939

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CLAY, BLAND AND HOUSE.

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TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 105.500 and 105.510, RSMo 1994, and to enact in lieu thereof ten new sections relating to good faith employee negotiations, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 105.500 and 105.510, RSMo 1994, are repealed and ten new sections enacted in lieu thereof, to be known as sections 37.040, 105.500, 105.510, 105.555, 105.560, 105.565, 105.570, 105.575, 105.580 and 105.585, to read as follows:

37.040. 1. The commissioner of administration shall appoint a chief negotiator to serve within the office of administration to represent the state in any negotiations and the administration of all labor contracts entered into by the state pursuant to sections 105.500 to 105.585, RSMo. The commissioner of the office of administration may employ personnel to assist the chief negotiator.

2. The chief negotiator shall:

(1) Negotiate or supervise the negotiations of labor contracts on a statewide basis;

(2) Be responsible for administration of collective bargaining agreements;

(3) Be vested with authority on all mandatory topics of bargaining to negotiate the contracts; and

(4) Prepare an annual report, including recommendations, to the governor and the general assembly regarding wages, hours, and conditions of employment.

105.500. Unless the context otherwise requires, **for the purposes of sections 105.500 to 105.530**, the following words and phrases mean:

(1) "Appropriate unit" [means], a unit of employees at any plant or installation or in a craft

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;

(2) "Exclusive bargaining representative" [means], an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining;

(3) "Public body" [means], the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state.

105.510. Employees, except [police, deputy sheriffs, Missouri state highway patrolmen,] Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization, except that the above excepted employees have the right to form benevolent, social, or fraternal associations. Membership in such associations may not be restricted on the basis of race, creed, color, religion or ancestry.

105.555. Unless the context otherwise requires, for the purposes of sections 105.550 to 105.585, the following words and phrases mean:

(1) "Appropriate unit", a unit of public safety employees at any political subdivision or installation thereof or in a function of a public body which establishes a clear and identifiable community of interest among the public safety employees concerned;

(2) "Arbitration", the procedure whereby the parties involved in an impasse or grievance dispute submit their differences to a third party for a final and determinative decision;

(3) "Board", the state board of mediation;

(4) "Collective bargaining", "to negotiate in good faith", or "good faith negotiations", to perform the mutual obligation of the public body, by its representatives, and the representatives of its public safety employees to negotiate in good faith at reasonable times and places with respect to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. This includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal and does not require the making of a concession;

(5) "Confidential employee", any public safety employee who works in the personnel offices of a public body and deals with information to be used by the public body in collective bargaining, or any public safety employee who works in a close, continuing relationship with public officers or representatives personally participating in employee negotiations on behalf of the employer, including their personal secretaries;

(6) "Exclusive bargaining representative", an organization which has been designated or selected by a majority of public safety employees in an appropriate unit as the representative of such public safety employees in such unit for purposes of collective bargaining;

(7) "Impasse", the failure of a public body and the exclusive bargaining representative of that public body's public safety employees to reach agreement in the course of negotiations;

(8) "Mediation", assistance by an impartial third party to reconcile an impasse between the public body and the exclusive bargaining representative of that public body's public safety employees regarding wages, hours and other terms and conditions of employment through interpretation, suggestion and advice to resolve the impasse;

(9) "Professional employee", any employee engaged in work predominantly intellectual and varied in character rather than routine mental, manual, mechanical, or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or any employee who has completed the course of specialized intellectual instruction and study described above and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined above;

(10) "Public body", the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state, which employs public safety employees as defined in subdivision (11) of this subsection;

(11) "Public safety employee", "public employee", or "employee", any employee of a public body employed as or performing the duties of a law enforcement officer, deputy sheriff, highway patrolman, water patrolman, conservation agent or state park ranger, including public safety radio dispatchers or telecommunicators for such public

bodies;

(12) "Strike", a public safety employee's refusal in concerted action with others, to report to duty, or the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions or compensations or the rights, privileges or obligations of public employment. Nothing contained in sections 105.555 to 105.585 shall be construed to limit, impair or affect the right of any public safety employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment;

(13) "Supervisor", an employee who devotes a substantial amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other public safety employees and who has the authority in the interest of the employer to hire, promote or discipline other public safety employees or to recommend such actions effectively; not including individuals who perform merely routine, incidental or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and also not including lead employees, employees who participate in peer review, employee involvement programs or occasional employee evaluation programs.

105.560. 1. Public safety employees of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing as provided in sections 105.555 to 105.585. No such employee shall be discharged or discriminated against because of his or her exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization. Membership in any labor organization shall not be restricted on the basis of race, creed, color, sex, religion or ancestry.

2. (1) Public safety employees may refuse to join or participate in the activities of an employee organization, including the payment of any dues, fees or assessments or service fees of any type, except to the extent that agreements between the public body and the representative require, as a condition of employment, the payment of a service fee in lieu of, and in an amount not greater than, dues which are payable by members of the employee organization to cover the cost of negotiation, contract administration and other activities of the employee organization which are germane to its functions as the representative. The representative shall, as a condition of

receiving such service fees, provide the following protections to persons required to pay such fees who object to paying all or a portion thereof:

(a) Notice, in writing, of the fee which will be payable, which may be expressed in a dollar amount or a percentage of the dues payable by members, and the basis upon which the representative has determined such fee;

(b) An opportunity to challenge such determination; and

(c) Escrowing of any portion of the service fee paid by a challenging employee which is reasonably in dispute pending the determination.

(2) An agreement pursuant to this subsection may require the payment of a service fee in lieu of fees and dues commencing thirty days after the beginning of employment or the effective date of such agreement, whichever is later.

(3) The agreement entered into between the public body and the representative shall include a provision for the checkoff of initiation fees and dues to the representative or the payment of a service fee in lieu of fees and dues, as authorized by this section.

3. The following public employees shall be excluded from the provisions of sections 105.555 to 105.585:

(1) Elected officials and persons appointed to fill vacancies in elected offices, and members of any board or commission with respect to service on such board or commission;

(2) Representatives of a public body, including the administrative officer, director or chief executive officer of a public body, or major division of a public body, as well as his or her deputy, first assistant and any supervisory employees;

(3) Confidential employees;

(4) Students working as part-time public employees twenty hours per week or less who are engaged in academically related employment;

(5) Temporary public employees employed for a fixed period of four months or less;

(6) Volunteers or those employees serving without pay or salary.

105.565. 1. Whenever proposals are presented by the exclusive bargaining representative of a public safety employee to a public body, the public body or its designated representative or representatives shall meet, confer and, discuss and negotiate in good faith such proposals relative to salaries and other conditions of employment of the public safety employees of the public body with the labor organization which is the exclusive bargaining representative of its public safety employees in an appropriate unit. Upon the completion of good faith negotiations, the results shall be reduced to writing and be presented to the executive branch of the state or the administrative or governing body of a political subdivision for adoption,

modification or rejection in the form of a contract, ordinance, resolution or other form as required for adoption, modification or rejection.

2. Any bargaining unit or exclusive representative of an appropriate unit of a public body other than the state which was recognized prior to January 1, 2000, shall continue to be recognized as appropriate for purposes of sections 105.555 to 105.585. Bargaining units of public bodies other than the state which are established between January 1, 2000, and the effective date of the rules of the board of mediation adopted pursuant to sections 105.555 to 105.585 shall continue to be recognized only if the exclusive representative was recognized through a union representation election conducted by the board of mediation. Exclusive representatives of state bargaining units certified prior to the effective date of the rules of the board shall continue to be recognized until board certification of an employee organization as the exclusive representative of a majority of public safety employees in the preexisting bargaining unit pursuant to sections 105.555 to 105.585. A state public safety employee included in a bargaining unit established pursuant to this section shall no longer be in an appropriate preexisting bargaining unit upon the certification of an election by the board pursuant to section 105.570.

3. Nothing in sections 105.555 to 105.585 shall be construed to annul or modify any collective bargaining agreement entered into between a public body other than the state and the exclusive representative of an appropriate unit of that public body prior to August 28, 2000. Collective bargaining agreements entered into between the state and exclusive representative shall continue to apply to an employee until the public safety employee is no longer in a preexisting bargaining unit represented by the exclusive representative.

4. The board determination of an appropriate bargaining unit of a public body other than the state shall be upon petition filed by an employee organization.

5. Within thirty days of receipt of a petition, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the following:

- (1) The desires of the employees;**
- (2) The community of interest;**
- (3) Wages, hours, and other working conditions of the public employees;**
- (4) The effect of over-fragmentation;**
- (5) The efficiency of operations of the public employer;**
- (6) The administrative structure of the public employer;**
- (7) The recommendation of the parties; and**
- (8) The history of collective bargaining.**

Any bargaining unit of a public body other than the state consisting solely of uniformed police officers shall be presumptively appropriate. The board determination of an appropriate unit shall not be subject to judicial review.

6. It is the intent of the legislature that, in order to foster meaningful collective bargaining, appropriate units shall be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, appropriate units for employees in state service shall be structured on a statewide basis with one appropriate collective bargaining unit for each of the following occupational groups:

- (1) Members of the Missouri state highway patrol;**
- (2) State conservation agents;**
- (3) Water patrol officers;**
- (4) All other sworn law enforcement officers;**
- (5) State park rangers; and**
- (6) Radio dispatcher and telecommunications personnel.**

7. The board shall determine the appropriate placement of occupational classifications in the statewide bargaining units.

105.570. 1. Issues with respect to majority representative status shall be resolved by the state board of mediation.

2. When a petition is filed by an employee or employee organization containing the signatures of at least thirty percent of the employees in an appropriate unit, the board shall conduct a secret ballot representation election. The ballot shall contain the name of any employee organization proposed in the petition containing signatures of at least ten percent of the public employees within the appropriate unit and a choice of no representation.

3. If none of the choices receive a majority of the employees voting, the board shall conduct a runoff election among the two choices receiving the greatest number of votes within fifteen days unless objections are timely filed pursuant to this section in which case the runoff election shall be conducted within fifteen days of the board's determination of the validity of such objections.

4. Upon written objections filed by any party within ten days after notice of the results of the election, the board may invalidate the election and hold a subsequent election if the board finds that misconduct or other circumstances prevented the employees from freely expressing their preferences.

5. Upon completion of a valid election, the board shall certify an exclusive bargaining representative which is the majority choice of the employees voting and give notice to all interested parties.

6. A petition for decertification or certification of an exclusive bargaining representative shall not be considered by the board for a period of one year from the

date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement unless the collective bargaining agreement has been in effect for more than three years or the petition for decertification is filed not more than two hundred ten days and not less than one hundred eighty days prior to the expiration of the collective bargaining agreement.

7. When a petition of a public employee is filed containing at least thirty percent of the signatures that allege that a certified or recognized employee organization does not represent a majority of such public employees, and that the petitioners do not want to be represented by any employee organization, or seek certification of a different employee organization, the board shall give notice to interested parties and call an election within thirty days of receipt of a petition unless it finds that less than thirty percent of the public employees in the appropriate unit support the petition for decertification.

8. The board of mediation shall promulgate rules pertaining to the following:

- (1) The certification and decertification of exclusive bargaining representatives;**
- (2) Impasse procedures;**
- (3) Grievance procedures;**
- (4) The payment of fees and assessments;**
- (5) The holding of hearings, administering of oaths, receiving of evidence and examining of witnesses;**
- (6) The collection of data relating to wages, hours and benefits of public employees;**
- (7) The maintenance of a list of qualified mediators and arbitrators and respective compensation rates of such persons;**
- (8) The enforcement of good faith negotiation rights pursuant to sections 105.555 to 105.585; and**
- (9) Such other matters necessary to implement the provisions of sections 105.555 to 105.585.**

9. No rule or portion of a rule promulgated pursuant to this section shall take effect unless such rule has been promulgated pursuant to chapter 536, RSMo. If any agreement or decision made pursuant to sections 105.555 to 105.585 requires a change in any rule applicable to an agency, such agency shall promptly initiate procedures necessary to modify such rule in a manner consistent with sections 105.555 to 105.585 and with all rules promulgated pursuant to sections 105.555 to 105.585.

105.575. 1. Public safety employees shall not strike. If a strike occurs, the public body may initiate, in the circuit court of jurisdiction where the strike occurs, an action for injunctive relief.

2. No public body shall authorize, consent to or condone an illegal strike; or to

pay or agree to pay any public safety employee for any day in which the employee participates in an illegal strike; or to pay or agree to pay any increase in compensation or benefits to any public safety employee in response to or as a result of any illegal strike or any act which violates sections 105.555 to 105.585. No official, director or representative of any public body shall authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining or agreement within the scope of negotiations as defined by sections 105.555 to 105.585 at any time after a violation of this subsection has ceased.

3. In the event of any violation or imminently threatened violation of subsection 1 of this section, any citizen domiciled within the jurisdictional boundaries of the public body may petition the circuit court of the county in which the violation occurs for an injunction restraining such violation or imminently threatened violation. The court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened but the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest.

4. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction issued pursuant to this section, the employee organization shall be immediately decertified as the exclusive bargaining representative and shall cease to receive any dues by payroll deduction. The penalties provided in this section may be suspended or modified by the court, but only upon the joint request of the public employer and the employee organization and only if the court determines the suspension or modification is in the public interest.

5. If a public safety employee is held to be in criminal contempt of court for failure to comply with an injunction issued pursuant to this section, or is convicted of violating any provision of this section, notwithstanding the provisions of chapter 168, RSMo, the court may order that the employee be immediately discharged from his or her employment, or that notwithstanding the provisions of chapter 36, RSMo, the employee forfeit all seniority rights or any tenure acquired pursuant to sections 168.102 to 168.130, RSMo, or that the employee be ineligible for any employment by the same employer for a period of twelve months, or any combination of such sanctions.

6. Any person who violates any provision of subsection 1 of this section shall, upon conviction of such violation, be guilty of a class D felony and be criminally liable for a fine of up to one thousand dollars for each day of such violation.

7. Each of the remedies and penalties provided by this section is separate and severable, and is in addition to any other legal or equitable remedy or penalty.

105.580. 1. A request for negotiations shall be filed in writing by an exclusive

bargaining representative no later than the first day of July for collective bargaining agreements effective on the first day of July of the following year. Negotiations shall begin no later than the first day of August in the year the request was filed.

2. If an impasse occurs during negotiations, and if no agreement is reached by the parties by the first day of September, either party may submit a request for mediation to the state board of mediation. The parties involved shall mutually agree upon a mediator or request the board to appoint an impartial mediator and such appointment shall occur within ten days of such request.

3. The mediator shall provide services to the parties until the parties reach agreement, the mediator believes that mediation services are no longer helpful or after the passage of thirty days, whichever occurs first. If the mediator determines that mediation services are no longer helpful or if the thirty-day deadline occurs, either party may submit the unresolved issues to arbitration by an arbitrator. The board shall provide the parties with a list of seven qualified arbitrators. Each party shall alternately strike one name from the list with the party submitting the impasse to arbitration making the first strike until one name remains who shall be the arbitrator for the parties involved in the dispute.

4. Each party shall submit a final offer on each separate item remaining at impasse to the arbitrator and the other party. The arbitrator shall determine that either the final offer of the employer or the final offer of the exclusive representative on each separate issue shall be incorporated into the agreement, provided that the arbitrator shall not amend the offer of either party on any issue.

5. The arbitrator shall begin his hearings no later than thirty days after the request for arbitration pursuant to procedures prescribed by the board and pursuant to sections 435.350 to 435.470, RSMo; except that, section 435.460, RSMo, shall be applicable to the proceedings of the arbitrator. The arbitrator shall render a decision in writing no later than sixty days after initiation of arbitration. The costs of such arbitrations shall be borne equally by the parties. All time limits in this section may be extended by mutual agreement of the parties.

6. The procedures set forth in this section for collective bargaining and the resolutions of impasses reached in collective bargaining shall be followed by state and local public bodies and exclusive bargaining representatives of employees of state and local government bodies provided that local public bodies and such exclusive bargaining representatives shall determine collective bargaining time tables by mutual agreement of the parties, depending upon the fiscal year of the local public body.

7. In making any decision pursuant to the impasse procedures authorized by this section, the arbitrator shall consider the following factors:

(1) The effect of an agreement on the ability of the public body to provide public

services at current levels;

(2) The lawful authority of the public body;

(3) Stipulations of the parties;

(4) The interests and welfare of the public;

(5) The financial ability of the public body to meet the costs of any items to be included in the contract;

(6) Comparison of wages, hours and terms and conditions of employment of the public safety employees involved in the arbitration proceedings with the wages, hours and terms and conditions of employment of other persons performing similar services in the public and private sector;

(7) The average consumer prices for goods and services, commonly known as the "cost of living" or the consumer price index;

(8) The overall compensation presently received by the public safety employees involved in the arbitration, including, but not limited to, wages, health and life insurance, vacations, holidays and similar benefits;

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(10) Such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and terms and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

8. A collective bargaining agreement negotiated between the public body and the exclusive bargaining representative of that public body's public safety employees shall contain a grievance resolution procedure which shall apply to all disputes arising under the collective bargaining agreement and which shall provide for final and binding arbitration for issues that cannot be otherwise resolved. Any grievance of a state employee pursuant to a bargaining agreement shall be subject to the provisions of chapter 36, RSMo, except where an alternative grievance procedure has been adopted.

105.585. 1. Any portion of a final agreement which requires the public body to appropriate funds shall be subject to constitutional and statutory law and in the case of the state, be addressed in the budget submitted by the governor to the general assembly where it shall proceed through the formal appropriations process. Any political subdivision may adopt reasonable procedures which reflect the nature of such political subdivision's budget process and fiscal year.

2. In case of any conflict between the provisions of sections 105.555 to 105.585 and any other law, the particular provisions of sections 105.555 to 105.585 in conflict

which cannot be harmonized shall prevail over general provisions in any other law, and where those particular provisions of sections 105.555 to 105.585 are in conflict with the particular provisions in any other law, the law later enacted shall prevail.

3. The agreement shall remain in effect for the term specified in the agreement. Upon the expiration of an agreement, the terms of such agreement shall remain in effect until superseded by a new agreement.

4. Any employee organization and public employer may sue or be sued as an entity pursuant to sections 105.555 to 105.585. Service upon the public employer or upon the exclusive bargaining representative of that public employer's public safety employees shall be pursuant to law and pursuant to the rules of civil procedure, except that for purposes of actions and proceedings by or against exclusive bargaining representatives pursuant to sections 105.555 to 105.585, the circuit courts shall be deemed to have jurisdiction of an exclusive bargaining representative in the circuit in which such organization maintains its principal office, or in any circuit in which its duly authorized officers or agents are engaged in representing or acting for employee members. Nothing in sections 105.555 to 105.585 shall be construed to make any individual or his or her assets liable for any judgment against a public employer or an exclusive bargaining representative.

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