

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 471

89TH GENERAL ASSEMBLY

Reported from the Committee on Labor and Industrial Relations, February 26, 1998, with recommendation that the Senate Committee Substitute do pass.

S2147.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 1994, and to enact in lieu thereof eight new sections relating to good faith employee negotiations.

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

Section A. Sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 1994, are repealed and eight new sections enacted in lieu thereof, to be known as sections 105.500, 105.510, 105.520, 105.525, 105.530, 1, 2 and 3, to read as follows:

105.500. Unless the context otherwise requires, the following words and phrases mean:

(1) "Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;

(2) **"Confidential employee", any public 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 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;**

(3) "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)] (4) "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.

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

105.510. **1.** 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.

2. The following public employees shall be excluded from the provisions of this act:

(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 thereof as well as his or her deputy, first assistant and any supervisory employees, provided that nothing in this act shall be construed to prohibit a public body from recognizing, bargaining with and entering into a contract with an exclusive bargaining representative of an appropriate unit comprised solely of supervisors;

(3) Confidential employees;

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

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

(6) Judges of the supreme court, judges of the court of appeals, circuit judges and associate circuit judges;

(7) Employees of any legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;

(8) Patients and inmates employed, sentenced or committed to any state or local institution.

105.520. Whenever such proposals are presented by the exclusive bargaining representative 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 employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit

appropriate. Upon the completion [of discussions] **good faith negotiations**, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

105.525. **1.** Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the state board of mediation, an appeal may be had to the circuit court of the county where the administrative body is located or in the circuit court of Cole County. The state board of mediation shall use the services of the state hearing officer in all contested cases.

2. The board shall make a determination as to the designation of an appropriate unit according to procedures established under the National Labor Relations Act, 29 U.S.C. Section 151, et seq.

3. 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 the 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.

4. 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.

5. 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.

6. 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.

7. A new petition for certification shall not be considered for a period of one year from the date of certification or noncertification or during the duration of a collective bargaining agreement not to exceed three years. If a petition for decertification is filed, the board shall order an election not more than one hundred eighty days and not less than one hundred fifty days prior to the expiration of the collective bargaining agreement.

8. Professional and nonprofessional employees shall not be included in the same exclusive bargaining representative unless a majority of both agree. As used in this subsection, professional employee shall mean as such term applies pursuant to the Fair

Labor Standards Act, 29 U.S.C. 201-219.

9. Bargaining by a coalition of exclusive bargaining representatives concerning wages, fringe benefits and those matters which have uniform applicability to employees of public bodies may be conducted by the parties. Nothing in this act shall be construed to prohibit supplementary bargaining on behalf of public employees in an appropriate unit or part of an appropriate unit concerning matters uniquely affecting those public employees, or coordinated or consolidated bargaining between two or more appropriate units concerning matters uniquely affecting those public employees.

10. When a petition of a public employee is filed containing at least thirty percent of the signatures that allege that a certified 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.

11. The board of mediation shall adopt rules and regulations 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; and**
- (8) Such other matters necessary to implement the provisions of this act.**

12. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in this chapter shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to the effective date of this section is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule adopted and published prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay

the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

105.530. [Nothing contained in sections 105.500 to 105.530 shall be construed as granting a right to employees covered in sections 105.500 to 105.530 to strike.] **1. It shall be unlawful for public employees to 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. It shall be unlawful for any public body to authorize, consent to or condone an illegal strike; or to pay or agree to pay any public 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 employee in response to or as a result of any illegal strike or any act which violates this act. It shall be unlawful for any official, director or representative of any public body to authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by this act, 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; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted pursuant to this subsection shall constitute criminal contempt. The punishment for such contempt shall consist of a fine not to exceed five hundred dollars for an individual, or ten thousand dollars for an employee organization or public employer, for each day during which the failure to comply continues, or confinement in a county jail not exceeding six months, or both such fine and confinement.

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 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 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 thereof, be deemed guilty of a class A misdemeanor.

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

Section 1. For purposes of this act the following words and phrases mean:

(1) "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;

(2) "Impasse", the failure of a public body and the exclusive bargaining representative to reach agreement in the course of negotiations;

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

(4) "Strike", a public 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 this act shall be construed to limit, impair or affect the right of any public 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.

Section 2. 1. A request for negotiations shall be filed in writing by an exclusive bargaining representative no later than September first for collective bargaining agreements effective on July 1 of the following year. Negotiations shall begin no later than October first in the year the request was filed.

2. If an impasse occurs during negotiations, and if no agreement is reached by the parties by January 1 of the following year, 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.

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 January 21, whichever occurs first. If the mediator determines that mediation services are no longer helpful or if the January 21 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 arbitration panel shall not amend the offer of either party on any issue.

5. The arbitrator shall begin his hearings no later than February 15 in accordance with procedures prescribed by the board and the provisions of sections 435.350 to 435.470, RSMo, except section 435.460, RSMo, shall be applicable to the proceedings of the arbitrator. The arbitrator shall render a decision in writing no later than March 15. The costs of such arbitrations shall be borne equally by 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 local public bodies provided that local public bodies and 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 under 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 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 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 shall contain a grievance resolution procedure which shall apply to all disputes arising under the collective bargaining agreement and which shall culminate in final and binding arbitration.

Section 3. 1. After a negotiated agreement has been agreed to by a public body and the exclusive bargaining representative of an appropriate unit of employees of that public body, that portion of the final agreement which requires the public body to appropriate public funds, and any portion of the final agreement found to be in conflict with state statute, ordinance or order of the public body shall take effect only upon approval of the legislative body of the public body of the appropriation of such funds or enactment of a state statute, an order or ordinance intended to remove any conflict with any state statute, ordinance or order as a result of the final agreement. That portion of the final agreement which does not require funds to be expended by the public body or does not conflict with any state statute, ordinance or order of the public body shall take effect immediately upon the agreement being reduced to writing and signed by the parties to the agreement.

2. In case of any conflict between the provisions of this act and any other law, executive order or administrative regulation, the provisions of this act shall prevail and control.

3. Failure of a legislative body to approve any portion of a collective bargaining agreement submitted to it shall not be in conflict with the good faith bargaining requirements of this act.

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

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