

SECOND REGULAR SESSION

SENATE BILL NO. 471

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2147.011

AN ACT

To repeal sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 1994, relating to collective bargaining for public employees, and to enact in lieu thereof twenty-two new sections relating to the same subject, with an emergency clause.

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Section A. Sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 1994, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 105.500, 105.501, 105.503, 105.506, 105.510, 105.511, 105.513, 105.515, 105.520, 105.522, 105.524, 105.525, 105.526, 105.527, 105.528, 105.529, 105.530, 105.535, 105.537, 105.539, 105.540 and 105.545, to read as follows:

105.500. As used in sections 105.500 to 105.545, the following terms 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 binding decision or as otherwise provided in sections 105.500 to 105.545;

(2) "Board", the public employees relations board established pursuant to section 105.503;

(3) "Confidential employee", any public employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close, continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer;

(4) "Collective bargaining", to "bargain collectively", or to "negotiate", to perform the mutual obligation of the public employer, by its representatives, and the

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

representatives of its 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, notification, 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 nor does it require the making of a concession;

(5) "Employee organization", an organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment;

(6) "Exclusive bargaining representative", an employee organization certified as the exclusive bargaining representative by the board pursuant to the provisions of sections 105.500 to 105.545 or voluntarily recognized by the public employer upon proof that a majority of the employees in an appropriate bargaining unit have authorized said employee organization to represent them for purposes of bargaining under sections 105.500 to 105.545;

(7) "Governing body", the legislative body of the state, the board, council or commission, whether elected or appointed, of a political subdivision of the state, including school districts and other special purpose districts, which determines the policies for operation of the political subdivision;

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

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

(10) "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 courses 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;

(11) "Public employee", any individual employed by a public employer, except individuals exempted under the provisions of section 105.501;

(12) "Public employer", the state of Missouri, its boards, commissions, agencies, departments, and its political subdivisions, including public educational employers. A public educational employer includes the governing body of a public school district, combination of public school districts, including the governing body of joint agreements of any type formed by two or more school districts, public community college district, or state college or university, and any state agency whose major function is providing educational services;

(13) "Strike", in concerted action with others, a public employee's refusal to report to duty, or willful absence from his or her position, or stoppage of work, or 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, compensation, rights, privileges, or obligations of public employment;

(14) "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 employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively but does not include 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 does not include lead employees, employees who participate in peer review, employee involvement programs or occasional employee evaluation programs;

(15) "Temporary", foreseeable for a short period of time or for a fixed duration, rather than indefinite or indeterminate; and

(16) "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.

105.501. The following public employees shall be excluded from the provisions of sections 105.500 to 105.545:

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

(2) Representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer, or major division thereof as well as his or her deputy, first assistant, and any non-bargaining unit supervisory

employees; provided, however, that nothing shall be construed to prohibit a public employer from bargaining with, and entering into a contract with a labor organization certified to represent a separate unit comprised solely of supervisors;

(3) Confidential employees;

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

(5) Employees serving as commissioned and enlisted personnel of the Missouri national guard;

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

(7) Patients and inmates employed, sentenced or committed to any state or local institution;

(8) Missouri state highway patrol;

(9) Employees working directly for the general assembly of the state of Missouri.

105.503. 1. There is created a "public employee relations board" composed of three members of which one member shall be representative of management, one member shall be representative of labor, and the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor with the advice and consent of the senate.

2. The chairperson of the board shall receive a salary in an amount to be determined by the governor. Each of the other members of the public employee relations board shall receive per diem pay for the time spent in the performance of their duties. All members shall receive traveling and other expenses incurred in the performance of their duties.

3. The public employee relations board shall:

(1) Administer the provisions of sections 105.500 to 105.545;

(2) Collect data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to public employers, employee organizations, and any other interested person or organization;

(3) Maintain, after consulting with exclusive bargaining representatives and public employers, a list of qualified persons representative of the public to be available to serve as mediators, and arbitrators and establish their compensation rates;

(4) Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing officers for the performances of its functions. In cases of refusal to obey a subpoena issued by the board, the circuit court of Cole County or any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an

order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof;

(5) Adopt rules and regulations as it may deem necessary to carry out the purposes of sections 105.500 to 105.545.

4. Effective sixty days after appointment of a public employee relations board pursuant to this section, the functions, duties, powers and responsibilities of the state board of mediation under chapter 295, RSMo, shall be transferred to the public employee relations board. Chapter 295, RSMo, shall thereafter be deemed to have been amended to substitute the public employee relations board for the state board of mediation as may be necessary to carry out the purposes of this subsection.

105.506. Unless limited by the provisions of a collective bargaining agreement or by other statutory provisions, a public employer may:

(1) Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

(2) Determine qualifications for employment and the nature and content of personnel examinations; and

(3) Take actions as may be necessary to carry out the mission of the public employer in emergencies.

105.510. Public employees may:

(1) Organize, or form, join, or assist any employee organization;

(2) Negotiate collectively through representatives of their own choosing;

(3) Engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by sections 105.500 to 105.545 or any other law of the state; and

(4) Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type except to the extent that such right may be affected by agreements between the public employer and an employee organization which is the exclusive bargaining representative requiring, 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 labor organization to cover the cost of negotiation, contract administration and other activities of the labor organization which are germane to its functions as exclusive bargaining representative. The exclusive representative shall, as a condition of receiving such service fees, establish a procedure which provides the following protections to nonmembers of the exclusive representative who are required to pay such fees and 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 exclusive representative has determined such fee;

(b) An opportunity to challenge such determination and receive a prompt decision from an impartial arbitrator, provided, however, that the selection of such arbitrator may not represent the unrestricted choice of the exclusive representative; and

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

Such agreement may require the payment of a service fee commencing thirty days after the beginning of employment or the effective date of such agreement, whichever is later.

105.511. The public employer and an employee organization which is the exclusive bargaining representative shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget making process, to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. The collective bargaining agreement negotiated between the employer and the exclusive bargaining representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement including questions of arbitrability. The collective bargaining agreement negotiated between the employer and the exclusive bargaining representative may also include a provision for the checkoff of initiation fees and dues to such labor organization or the payment of a service fee in lieu thereof as authorized by section 105.510. The public employer shall negotiate only with the exclusive bargaining representative on matters contained in sections 105.500 to 105.545. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

105.513. 1. It shall be a prohibited practice for any public employer or exclusive bargaining representative to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 105.511.

2. It shall be a prohibited practice for a public employer or its designated representative to:

(1) Interfere with, restrain or coerce public employees in the exercise of rights granted by sections 105.500 to 105.545;

(2) Dominate or interfere in the administration of any employee organization;

(3) Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment, except that nothing in sections 105.500 to 105.545 shall

prohibit the discharge of any employee for failure to comply with the terms of an agreement authorized by section 105.510;

(4) Discharge or discriminate against any public employee because he or she has filed an affidavit, petition, or complaint or given any information or testimony under sections 105.500 to 105.545, or because he or she has formed, joined, or chosen to be represented by any exclusive bargaining representative;

(5) Refuse to negotiate collectively with representatives of any employee organization which is an exclusive bargaining representative as required in sections 105.500 to 105.545;

(6) Deny the rights accompanying certification or exclusive recognition granted in sections 105.500 to 105.545;

(7) Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in sections 105.500 to 105.545; or

(8) Refuse to reduce a collective bargaining agreement to writing and sign such agreement.

3. It shall be a prohibited practice for an employee organization or its agents wilfully to:

(1) Interfere with, restrain, or coerce any public employee with respect to any of the rights under sections 105.500 to 105.545 or in order to prevent or discourage his or her exercise of any such right, including, without limitation, all rights under section 105.510;

(2) Interfere, restrain, or coerce a public employee with respect to rights granted in sections 105.500 to 105.545 or with respect to selecting a representative for purposes of negotiating collectively on the adjustment of grievances;

(3) Refuse to bargain collectively with the public employer as required in sections 105.500 to 105.545;

(4) Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in sections 105.500 to 105.545; or

(5) Violate the impasse provisions of sections 105.500 to 105.545, which hereby are made applicable to public employers, public employees and exclusive representatives.

4. The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of any unfair labor practice under any provisions of sections 105.500 to 105.545 if such expression contains no threat of reprisal or force or promise of benefit.

105.515. 1. Proceedings against a party alleging a violation of section 105.513 shall be commenced by filing a charge with the board within six months of the alleged violation, or knowledge thereof, causing a copy of the charge to be served upon the

accused party in the manner of an original notice as provided in section 105.537. The accused party shall have ten days within which to file a written answer to the charge. The board may conduct a preliminary investigation of the alleged violation, and if the board determines that the charge has no legal or factual basis it may dismiss the charge. If it does not dismiss the charge, the board shall promptly thereafter set a time and place for a hearing in the county where the alleged violation occurred or in the county where the board maintains its principal office. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the board to subpoena witnesses on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate a hearing officer to conduct the hearing. The hearing officer shall have such powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the hearing officer may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the hearing officer.

3. The board shall provide for an official written transcript to report the proceedings and the board shall affix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law. If the board finds that the party accused has committed a prohibited practice, the board may issue an order directing the party to cease and desist engaging in the prohibited practice and may order such other affirmative relief as is necessary to remedy the prohibited practice. The board may petition the circuit court for enforcement of its orders.

5. Any party aggrieved by any decision or order of the board may, within ten days from the date such decision or order is filed, apply for and obtain judicial review of an order of the board entered under sections 105.500 to 105.545, in accordance with the provisions of chapter 536, RSMo, except that such judicial review shall be afforded directly in the appellate court of the judicial district in which the board maintains its principal office, the judicial district in which the public employer maintains its principal office, or the judicial district in which the charge arose. The board and all parties of record in the proceedings before the board shall be named as parties to the appeal. In any judicial review proceeding, the employee organization may sue or be sued as an entity and in behalf of the employees whom it represents. The service of legal process, summons or subpoena upon an officer or agent of the employee organization in his or her capacity as such shall constitute service upon such employee organization.

6. Within thirty days after a notice of appeal is filed with the board it shall make, certify, and file in the office of the clerk of the court to which the appeal is taken, a full and complete transcript of all documents in the case, including any depositions and a transcript or certificate of the evidence together with the notice of appeal.

7. The transcript as certified and filed by the board shall be the record on which the appeal shall be heard and no additional evidence shall be heard in the absence of fraud the findings of fact made by the board shall be conclusive if supported by substantial evidence on the record considered as a whole.

8. Any order or decision of the board may be modified, reversed, or set aside on one or more of the following grounds and on no other:

- (1) If the board acts without or in excess of its power;**
- (2) If the order was procured by fraud or is contrary to law;**
- (3) If the facts found by the board do not support the order; or**
- (4) If the order is not supported by substantial evidence on the record considered as a whole.**

9. When the appellate court, on appeal, reverses or sets aside an order or decision of the board, it may remand the case to the board for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in such court. The assessment of costs in such appeals shall be in the discretion of the court.

105.520. 1. Bargaining units and exclusive representatives recognized prior to January 1, 1998, shall continue to be recognized as appropriate for purposes of sections 105.500 to 105.545. Bargaining units established between January 1, 1998, and the effective date of the rules of the public employee relations board shall continue to be recognized only if the exclusive representative was recognized through a union representation election.

2. Nothing in sections 105.500 to 105.545 shall be construed to annul or modify any collective bargaining agreement entered into between an employer and exclusive representative prior to the effective date of sections 105.500 to 105.545.

3. The board determination of an appropriate bargaining unit shall be upon petition filed by an employee organization or upon its own initiative.

4. Within thirty days of receipt of a petition or notice to all interested parties if on its own initiative, 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 desires of the employees, the community of interest, wages, hours, and other working conditions of the public employees, the effect of over-fragmentation,

the efficiency of operations of the public employer, the administrative structure of the public employer, the recommendation of the parties, and the history of collective bargaining. The board determination of an appropriate unit shall not be subject to judicial review.

5. There may be statewide bargaining by a coalition of all exclusive representatives, irrespective of state bargaining unit, concerning wages, fringe benefits and those matters which have uniform applicability to all state employees. Nothing in sections 105.500 to 105.545 shall be construed to prohibit supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit concerning matters uniquely affecting those public employees, or coordinated or consolidated bargaining between two or more bargaining units concerning matters uniquely affecting those public employees.

105.522. 1. Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employer, public employee, or an employee organization and an election pursuant to section 105.524.

2. The petition of an employee organization shall allege that the employee organization has submitted a request to a public employer to bargain collectively with a designated group of public employees. The petition will be accompanied by written evidence that thirty percent of such public employees are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining.

3. For the purpose of decertification, the petition of a public employee shall allege that an employee organization which has been certified or recognized as the exclusive bargaining representative of an appropriate unit does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of a different employee organization. Such petition shall be accompanied by written evidence that thirty percent of such employees do not want to be represented by an employee organization or seek certification of a different employee organization.

4. The petition of a public employer shall allege that it has received a request to bargain from an employee organization which has not been certified as the exclusive representative of the public employees in an appropriate bargaining unit.

5. The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such petition to all public employees, employee organizations, and public employers named or described in such petitions or interested in the representation question. The board shall call an election under section 105.524 within thirty days of receipt of a petition unless it finds that less than thirty percent

of the public employees in the unit appropriate for collective bargaining support the petition for decertification or for certification, or the appropriate bargaining unit has not been determined pursuant to section 105.520.

6. The hearing and appeal procedures shall be the same as provided for in section 105.515.

105.524. 1. Whenever a petition is filed by an employee or employee organization continuing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board shall conduct a secret ballot representation election to determine whether the public employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative. The ballot shall contain the names of the petitioning employee organization, any employee organization submitting within ten days of the initial petition a petition containing signatures of at least ten percent of the public employees within the appropriate bargaining unit, and any incumbent labor organization. The ballot shall also contain a choice of no representation.

2. If none of the choices on the ballot receives the vote of a majority of the public employees voting, the board shall, within thirty days, conduct a run-off election among the two choices receiving the greatest number of votes.

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

4. Upon completion of a valid election in which the majority choice of the bargaining unit employees voting is determined, the board shall certify the results of the election, and shall give reasonable notice of the order to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit. An employee organization which is the majority choice of the bargaining unit employees voting in a valid election under this section shall be certified by the board as the exclusive bargaining representative for the bargaining unit employees.

5. 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 not to exceed three years. A petition for decertification will not be considered 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.

105.525. 1. The employee organization certified as the bargaining representative or voluntarily recognized by the public employer upon proof that a majority of the employees in an appropriate bargaining unit have authorized such employee organization to represent them for purposes of collective bargaining under sections 105.500 to 105.545 shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly, except that any individual employee or a group of employees shall have the right at any time to present grievances to their public employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect and the exclusive bargaining representative has been given the opportunity to be present at such adjustment.

2. The employee organization which is an exclusive bargaining representative and the public employer may designate any individual or individuals as its representatives to engage in collective bargaining negotiations. Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within sixty days of the date of certification of the representative by the board or in the case of an existing exclusive bargaining representative, within sixty days of the receipt by a party of a demand issued by the other party.

3. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining representatives, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 610, RSMo. The exclusive bargaining representative shall present his or her initial bargaining position to the public employer at the first bargaining session. The public employer shall present his or her initial bargaining position to the exclusive bargaining representative at the second bargaining session, which shall be held no later than two weeks following the first bargaining session.

105.526. 1. The following negotiations and impasse procedures shall be followed by the state of Missouri and exclusive representatives of state employees:

(1) A request for negotiations shall be filed in writing by the exclusive representative to the state no later than September thirtieth for collective bargaining agreements that are to become effective on July first of the following year;

(2) Negotiations shall begin no later than November first in the year the request was filed;

(3) If an impasse occurs during negotiations, and if no agreement is reached by

the parties by February first of the following year, either party may submit a request for mediation to the public employee relations board. The parties involved shall mutually agree upon a mediator or request the public employee relations board to appoint an impartial mediator;

(4) The mediator shall provide services to the parties until the parties reach agreement, the mediator believes that mediation services are no longer helpful or February twenty-first, whichever occurs first. If the mediator determines that mediation services are no longer helpful or if the February twenty-first deadline occurs, the parties shall jointly submit the unresolved issues to final and binding arbitration. The parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of seven arbitrators from the board. Each party in turn shall strike a name from the list until only one name remains. Negotiations may continue throughout the impasse procedures;

(5) 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 employee representative on each separate issue shall be incorporated into the final collective bargaining agreement; provided, that the arbitrator shall not amend the offer of either party on any issue;

(6) The arbitrator shall begin hearings no later than March fifteenth in accordance with procedures prescribed by the public employee relations board. The arbitrator shall render a decision in writing no later than April tenth;

(7) All time limits in this subsection may be extended by mutual agreement of the parties.

2. A request for negotiations shall be filed in writing by an exclusive representative of employees of a public employer other than the state of Missouri in a timely fashion reasonably in advance of that employer's budget making process.

3. A public employer other than the state of Missouri and the exclusive representative may enter into a written agreement setting forth an impasse resolution procedure. The procedure may culminate with binding arbitration.

4. If the non-state public employer and the exclusive representative have not agreed to an impasse resolution procedure, negotiation impasses shall be subject to:

(1) At the request of either party, mediation in accordance with procedures prescribed by the public employee relations board shall take place. The parties involved shall mutually agree upon a mediator or request the public employee relations board to appoint an impartial mediator;

(2) At the request of either party, all impasses not resolved through mediation shall jointly be submitted to final and binding arbitration. The parties shall jointly

select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of seven arbitrators from the board. Each party in turn shall strike a name from the list until only one name remains. Negotiations may continue throughout the impasse procedures.

5. In making any decision under the impasse procedures authorized by this section for either the state of Missouri or other public employers as defined in subsection 12 of section 105.500, the panel shall give weight to the following factors:

- (1) The lawful authority of the public employer;**
- (2) Stipulations of the parties;**
- (3) The interests and welfare of the public;**
- (4) The financial ability of the employer to meet the costs of any items to be included in the contract;**
- (5) 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 sectors;**
- (6) The average consumer prices for goods and services, commonly known as the cost of living;**
- (7) 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;**
- (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and**
- (9) 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.**

6. The expenses of the arbitrator shall be borne equally by the parties.

105.527. 1. After a negotiated agreement has been agreed to by both parties, or a final and binding arbitration decision has been rendered in accordance with section 105.526, the public employer shall submit a request for funds necessary to implement the agreement and for approval of any other matter requiring the approval of the appropriate legislative body within fourteen days after the date on which the parties finalize the agreement, or the date on which the arbitration decision is issued, unless otherwise specified in this section. If the appropriate legislative body is not in session at the time, then the submission shall be within fourteen days after it next convenes.

2. The legislative body shall approve or reject the submission as a whole, and the

submission shall be deemed approved if the legislative body fails to act within twenty-one days of the submission.

3. If the legislative body rejects the submission of the public employer, either party may reopen negotiations.

4. The parties shall specify that those provisions of the agreement not requiring action by a legislative body shall be effective and operative in accordance with the terms of the agreement.

5. Upon the expiration of an agreement, the terms of such agreement shall remain in effect until superseded by a new agreement.

105.528. The district court for the district in which a dispute arose or in which a majority of the affected employees reside may review an award of the interest arbitrator or an award of an arbitrator in a grievance arbitration, but only for reasons that the arbitrator was without or exceeded his or her jurisdiction; the order is not supported by competent, material and substantial evidence on the whole record; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of a proceeding for review shall not automatically stay the order of the arbitration panel.

105.529. Notwithstanding any other provisions of law to the contrary, the following shall be exempt from the provisions of sections 610.010 to 610.030, RSMo:

(1) All discussions between the chief executive officers of the public employer, or its representative, and the legislative body of the public employer relative to collective bargaining;

(2) The collective bargaining negotiations between the chief executive officer, or his or her representative, and an exclusive bargaining representative; and

(3) All work products developed by the public employer in preparation for negotiations, and during negotiations.

105.530. 1. It shall be unlawful for public employees to strike. If a strike occurs, the public employer 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 employer to authorize consent to, or condone any illegal strikes; or to pay or agree to pay a 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 sections 105.500 to 105.545. It shall be unlawful for any official, director, or representative of any public employer to authorize, ratify, or participate in any violation of this section. Nothing in this section shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by sections 105.500 to 105.545, at any time after a violation of

this section has ceased.

105.535. Any employee organization and public employer may sue or be sued as an entity under the provisions of sections 105.500 to 105.545. Service upon the public employer or upon the exclusive bargaining representative shall be in accordance with law or the rules of civil procedure, except that for purposes of actions and proceedings by or against exclusive bargaining representatives under sections 105.500 to 105.545, 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 105.500 to 105.545 shall be construed to make any individual or his assets liable for any judgment against a public employer or an exclusive bargaining representative.

105.537. Any notice required under the provisions of sections 105.500 to 105.545 shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last known address of the parties, unless otherwise provided in sections 105.500 to 105.545. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

105.539. Every employee organization which is certified as a representative of public employees under the provisions of sections 105.500 to 105.545 shall file with the board two copies of the employee organization's constitution and bylaws. Filing by a national or international employee organization of its constitution and bylaws shall be accepted in lieu of filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the board.

105.540. In case of any conflict between the provisions of sections 105.500 to 105.545 and any other law, executive order or administrative regulation, the provisions of sections 105.500 to 105.545 shall prevail and control. Nothing in sections 105.500 to 105.545 shall be construed to diminish the rights of employees established by sections 168.102 to 168.130, RSMo, and section 168.221, RSMo.

105.545. The provisions of sections 105.500 to 105.545 are hereby declared to be severable. Should any of the provisions of sections 105.500 to 105.545 be declared unconstitutional or in conflict with some other provisions of law, the remaining provisions of sections 105.500 to 105.545 shall continue to be the law of the state relative to public employment relations.

[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) "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.]

[105.520. 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 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, 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. 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.]

[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.]

Section B. Because of the immediate need to allow public employees to bargain collectively, sections 105.500 to 105.545 are deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and sections 105.500 to 105.545 shall be in full force and effect upon its passage and approval.

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