

SECOND REGULAR SESSION

# SENATE BILL NO. 507

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLAY.

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

TERRY L. SPIELER, Secretary.

S2597.011

## AN ACT

Relating to collective bargaining rights for certain public school employees.

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

**Section 1. Sections 1 to 18 of this act shall be known as the "Public School Employment Relations Act".**

**Section 2. As used in sections 1 to 18 of this act, unless the context otherwise requires a different meaning, the following terms mean:**

**(1) "Arbitration", dispute resolution in which a neutral third party renders a binding decision on issues submitted by the parties;**

**(2) "Board", the state board of mediation as identified in chapter 295, RSMo;**

**(3) "Confidential employee", any public school employee who is employed in a close working relationship with any person who is either employed in a district-wide administrative capacity by a public school employer or who serves as a representative associated with negotiations on behalf of the public school employer;**

**(4) "Employee organization", an organization of any kind in which public school employees participate and which has as one of its purposes representing public school employees in their employment relations;**

**(5) "Governing board", a school board of any metropolitan school district as identified in section 160.011, RSMo;**

**(6) "Impasse", the point at which either or both the public school employer or the employee organization determines that no further progress toward an agreement can be made;**

**(7) "Mediation", assistance by an impartial third party to reconcile an impasse**

between the public school employer and the employee organization through interpretation, suggestion and advice;

(8) "Public school employee", any individual employed by a metropolitan school district as defined in section 160.011, RSMo, in a teaching capacity, as a teacher's aide, or who holds a teaching certificate or directly participates in the educational process, except individuals exempted under the provisions of section 3 of this act; other employees of a public school employer as defined in sections 1 to 18 of this act shall not be included in this definition nor shall they be covered by any of the provisions of sections 1 to 18 of this act;

(9) "Public school employer", the governing board as defined in subdivision (5) of this section;

(10) "Strike", the failure with others to report for duty, 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.

**Section 3. The following public school employees shall be excluded from the provisions of sections 1 to 18 of this act:**

(1) **Members of any governing board;**

(2) **Representatives of a public school employer, including school superintendents, assistant superintendents, principals, assistant principals and any supervisory employees. Supervisory employee means any individual having authority in the interest of the public school employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;**

(3) **Confidential employees;**

(4) **Students working as part-time public employees twenty hours per week or less, except graduate or other post-graduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.**

**Section 4. The state board of mediation identified under chapter 295, RSMo, in addition to the powers, duties and functions otherwise provided by law, shall:**

(1) **Administer the provisions of sections 1 to 18 of this act;**

(2) **Maintain a list, after consulting with employee organizations and public school employers, of qualified persons representative of the public and knowledgeable in the areas of school finance, personnel, and school law to be available and duly qualified to serve as mediators and arbitrators and to establish their compensation rates; and**

**(3) 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 performance of its functions. The board may petition the circuit court at the seat of government or of the county wherein any hearing is held to enforce a board order compelling the attendance of witnesses and production of records.**

**Section 5. 1. Public school employees have the right to form, join and participate in activities of employee organizations of their own choosing for the purposes of representation on matters of employer-employee relations, as herein provided, but membership in any specific organization shall not be required as a condition of employment nor shall any employee be required to pay dues or a service fee to a designated representative. Dues shall be deducted by the employer for employee organizations only upon the request of the public school employee in writing.**

**2. In the absence of the designation of an elected representative, each organization seeking to represent public school employees shall be accorded equal treatment with respect to access to teachers, members of the governing boards, including home and school addresses of all of the above, and school mail boxes, as well as participation in discussions with respect to salaries and other conditions of employment.**

**Section 6. The public school employer and the designated representative of the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public school employer's budget-making process, to negotiate in good faith with respect to wages, hours and conditions of employment, including teacher tenure as provided in chapter 168, RSMo. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession, nor does it require either party to negotiate while the other is in violation of any provision of sections 1 to 18 of this act. In any negotiations of teacher tenure as provided in chapter 168, RSMo, impasse shall be resolved by a return to the status quo prior to the commencement of negotiations. However, an employee organization as defined in sections 1 to 18 of this act can, by agreement, remove the public school employees it represents from the provisions of chapter 168, RSMo.**

**Section 7. It shall be a prohibited practice for any public school employer or designated representative to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 6 of this act, or to participate in a strike or lock out.**

**Section 8. 1. Proceedings against a party alleging a violation of section 7 of this act shall be commenced by filing a complaint with the board within ninety days of the**

**alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in sections 1 to 18 of this act. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. If not dismissed, the board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requestor'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, utilizing procedures governing appeals to the appropriate circuit court so far as applicable.**

**3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix 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 the party accused has committed a prohibited practice, the board may, within thirty days of its decision, issue an appropriate order to remedy the violation including the award of back pay if appropriate.**

**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, appeal to the circuit court of the county in which the hearing was held, by filing with the board a written notice of appeal setting forth in general terms the decision appealed from and the grounds of the appeal. The board shall forthwith give notice to the other parties in interest.**

**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 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 appeal shall be triable at any time after the expiration of twenty days from the date of filing the transcript by the board and after twenty days' notice in writing by either party and the board upon the other.**

**8. 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.

9. 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 powers;
- (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;

(4) If the order is not supported by substantial evidence on the record considered as a whole.

10. When the circuit 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 said court. The assessment of costs in such appeals shall be in the discretion of the court.

11. An appeal may be taken to the applicable district court of appeals from any final order, judgment, or decree of the circuit court.

Section 9. 1. Board determination of an appropriate negotiating unit shall be upon petition filed by a public school employer, public school employee, or employee organization.

2. Within thirty days of receipt of a petition, with notice to all interested parties, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate negotiating unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient school administration, the existence of a community of interest among public school employees, the history and extent of public school employee organization, geographical location, craft and departmental structures, and the recommendations of the parties involved.

3. Appeals from such order shall be governed by appeal provisions provided in section 8 of this act.

Section 10. 1. Board certification of an employee organization as the designated representative of a negotiating unit shall be upon a petition filed with the board by a public school employer, public school employee, or an employee organization and an election conducted pursuant to section 11 of this act.

2. The petition of an employee organization shall allege that:

(1) The employee organization has requested the public school employer to negotiate collectively with a designated group of public school employees;

(2) The petition is accompanied by written evidence that thirty percent or more

of such public school employees are members of the employee organization or have authorized it to represent them for the purposes of negotiations.

3. The petition of a public school employer shall allege that it has received a request to negotiate from an employee organization which has not been certified as the designated representative of the public school employees in an appropriate negotiating unit.

4. For initial representation, or at any time when there is no designated representative under sections 1 to 18 of this act, the board may certify a representative organization if the petitioner can document to said board that it has more than fifty percent of the employees in that unit as members. Any public school employer shall have a right to an election if he so requests.

5. The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such a petition to all public school employees, employee organizations and public school employers named or described in such petitions or interested in the representation questioned. The board shall thereafter call an election under section 10 of this act, unless:

(1) It finds that less than thirty percent of the public school employees in the unit appropriate for negotiating support the petition for decertification or for certification; or

(2) It finds that the conditions set forth in subsection 4 of this section are fulfilled; or

(3) The appropriate negotiating unit has not been determined pursuant to section 9 of this act.

6. The hearing and appeal procedures shall be the same as provided in section 8 of this act.

Section 11. 1. Upon finding that an election is necessary for certification of an employee organization, the board shall submit two questions to the public school employees at an election in an appropriate negotiating unit. The first question on the ballot shall permit the public school employees to vote for no representation. The second question on the ballot shall list any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of thirty percent or more of the public school employees in the appropriate unit.

2. If none of the choices on the ballot receive the vote of a majority of the public school employees voting, the board shall 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 school 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 school employees.**

**4. Upon completion of a valid election in which the majority choice of the negotiating 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 school employers and the public school employees in the appropriate negotiating unit.**

**5. A petition for certification as a designated representative shall not be considered by the board for a period of one year from the date of the certification or noncertification of a designated representative or during the duration of a negotiated agreement which shall not exceed two years. However, if a petition for decertification is filed during the duration of a negotiated agreement, the board shall order an election under this section not more than one hundred eighty days nor less than one hundred fifty days prior to the expiration of the negotiated agreement. If an employee organization is decertified, the board may receive petitions under section 10 of this act.**

**Section 12. Upon the receipt by a public school employer of a request from an employee organization to negotiate on behalf of public school employees, the duty to engage in negotiations shall arise if the employee organization has been certified by the board as the designated representative for the public school employees in that negotiating unit.**

**Section 13. 1. The employee organization certified as the designated representative shall be the representative of all public school employees in the negotiating unit and shall represent all public school employees fairly regardless of membership.**

**2. Nothing herein shall prevent the public school employer from giving access to individual employees or groups of employees.**

**3. The designated representative and the public school employer may designate any individual or individuals as its representative to engage in negotiations.**

**4. Any collective bargaining labor agreements hereafter entered into between the public school employer and the designated representative of the employee organization shall be reduced to writing and continue for a period of not less than four years from the date of the expiration of the previous agreement entered into between the public school employer and the designated representative of the employee organization, or if there has been no such previous agreement then for a period of not less than four years from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect for the four-year period after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and**

shall also file a copy of such demands with the state board of mediation, at least ninety days before the original termination date or ninety days before the end of any renewal period, or ninety days before any termination date desired thereafter.

**Section 14.** If the public school employer and the designated representative of the employee organization are unable to reconcile an impasse in negotiations, the board shall, upon the request of either party, appoint an impartial and disinterested person from the list maintained pursuant to section 4 of this act to serve as mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree.

**Section 15. 1.** If the impasse persists ten days after the mediation has begun, the parties may continue to negotiate, or the board shall have the power upon request of either party to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

**2.** Each party shall submit to the board within four days of request a final offer on the impasse items with proof of service upon the other party. Each party shall also submit a copy of a draft of the proposed negotiated agreement to the extent to which agreement has been reached. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the arbitrator. The arbitrator's decision is binding and shall be accepted as the settlement by both parties. Nothing contained herein shall prevent either party from making the arbitrator's decision public nor keep the parties from continuing to negotiate items still in dispute. If the parties cannot agree on an arbitrator or arbitrators within four days after the request for arbitration, the selection shall be made pursuant to subsection 3 of this section. The full costs of arbitration shall be shared equally by the parties to the dispute.

**3.** If the arbitrator has not been selected within four days of notification as provided in subsection 2 of this section, a list of five arbitrators from the list maintained pursuant to section 4 of this act shall be submitted to the parties by the board. Each party in turn shall remove a name from the list until one name remains. The board shall determine by lot which party shall remove the first name from the list submitted by the board. The party having the right to remove the first name shall do so within two days, and each party to remove a name thereafter shall have one additional day to choose from the remaining names. The person whose name remains shall be the arbitrator.

**4.** If the arbitrator chosen under the procedure provided by subsection 3 of this section is unable to serve for any reason, the selection for replacement of the arbitrator shall be in the same manner and within the same time limits as the original arbitrator

was chosen.

**Section 16.** Any employee organization or public school employer may sue or be sued as an entity under the provisions of sections 1 to 18 of this act. Service upon the public school employer shall be in accordance with law or the rules of civil procedure. Nothing in sections 1 to 18 of this act shall be construed to make any individual or his assets liable for any judgment against a public school employer or an employee organization.

**Section 17. 1.** It shall be unlawful for any public school employee to engage in a strike. Any public school employee who violates the provision of this subsection shall forfeit and pay to the state a civil penalty in an amount double his compensation for one day's employment for each day of violation, and shall be obligated to make up without compensation any days missed due to a strike. The penalties provided in this section may not be the subject of bargaining nor can they be waived by the courts.

**2.** If an employee organization designated as the elected representative violates or encourages the violation of any provision of this act, its designation as elected representative shall be revoked by the board after a hearing and upon petition by the employer, and such employee organization shall be ineligible to be designated as elected representative under the provisions of this act for a period of two years thereafter.

**Section 18.** Any notice required under the provisions of sections 1 to 18 of this act shall be in writing, but service thereof shall be sufficient if mailed by certified mail, return receipt requested addressed to the last known address of the parties, unless otherwise provided in sections 1 to 18 of this act. Refusal of 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.