

FIRST REGULAR SESSION

# SENATE BILL NO. 185

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 22, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S0637.03I

## AN ACT

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

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

Section A. Sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 1994, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 37.040, 105.500, 105.510, 105.515, 105.520, 105.525, 105.530, 105.533, 105.536, 105.539 and 105.541, to read as follows:

**37.040. 1. The commissioner of administration shall appoint a chief negotiator to serve within the office of administration to represent the state in any negotiations and the administration of all labor contracts entered into by the state pursuant to the provisions of sections 105.500 to 105.541, RSMo. The commissioner of the office of administration may employ personnel to assist the chief negotiator.**

**2. The chief negotiator shall:**

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

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

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

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

**105.500. 1. In consideration of rights guaranteed in section 29 of article I of the**

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

**Missouri constitution, the general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize, meet, confer, discuss and negotiate in good faith regarding salaries and other conditions of employment; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.**

**2. 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 due process employee negotiations, 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) "Due process employee negotiations" means the negotiations by representatives concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for employees of public bodies;**

**[(2)] (4) "Exclusive [bargaining] due process employee negotiations representative" hereinafter termed "representative" means an organization [which has been designated or selected by a majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining;] which has been selected by a majority of employees in an appropriate unit as the sole representative of such employees in such unit for purposes of due process employee negotiations;**

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

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

**[(3)] (7) "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[.];**

**(8) "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.**

105.510. **1.** Employees, except [police,] deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, [all teachers of all Missouri schools, colleges and universities,] **and professional employees of any college or university** of any public body shall have the right to form and join labor organizations, **which for the purposes of this act means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work,** 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. (1) Public employees may refuse to join or participate in the activities of an employee organization, including the payment of any dues, fees or assessments or service fees of any type, except to the extent that agreements between the public body and the representative require, as a condition of employment, the payment of a service fee in lieu of, and in an amount not greater than the portion of the dues which are payable by members of the employee organization to cover the cost of negotiation, contract administration and other activities of the employee organization which are germane to its functions as the representative. The representative shall, as a condition of receiving such service fees, provide the following protections to persons required to pay such fees who object to paying all or a portion thereof:**

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

**(b) An opportunity to challenge such determination; and**

**(c) Escrowing of any portion of the service fee paid by a challenging employee**

which is reasonably in dispute pending the determination.

(2) An agreement 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.

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

**3. Public employees shall have the right to:**

(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 purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state;

(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.

**4. 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) Designees 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;

(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.

**105.515. Public employers shall have, in addition to all powers, duties and rights established by constitutional provisions, statute, ordinance or order charter the**

**exclusive power, duty and the right to:**

- (1) Direct the work of its public employees;**
- (2) Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency;**
- (3) Suspend or discharge public employees for proper cause;**
- (4) Maintain the efficiency of governmental operations;**
- (5) Relieve public employees from duties because of lack of work or for other legitimate reasons;**
- (6) Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted;**
- (7) Take such actions as may be necessary to carry out the mission of the public employer;**
- (8) Initiate, prepare, certify and administer its budget; and**
- (9) Exercise all powers and duties granted to the public employer by law.**

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] **designees** 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] **an** appropriate **unit**. Upon the completion of [discussions] **good faith negotiations**, the results shall be reduced to writing and be presented to the [appropriate] **executive branch of the state or the** administrative[, legislative] or [other] governing body **of a political subdivision for adoption, modification or rejection** in the form of [an] **a contract**, ordinance, resolution, [bill] or other form **as** required for adoption, modification or rejection.

105.525. **1.** Issues with respect to appropriateness of [bargaining] **negotiation** 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] **negotiation** 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. A negotiation unit shall be composed of all employees performing similar duties within a department or agency, except where sufficiently impractical as to present an extraordinary hardship.**

**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 any employee organization proposed in the petition containing signatures of at least ten percent of the public employees within the appropriate unit and a choice of no representation.**

**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, or the board may otherwise issue orders or direct remedies, or both, and enforce the same.**

**6. Upon completion of a valid election, the board shall certify a representative which is the majority choice of the employees voting or no representatives if a majority of the votes cast are for no representation 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 due process employee negotiations 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 due process employee negotiations agreement.**

**8. Negotiating by a coalition of 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 negotiating 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 negotiating between two or more appropriate units concerning matters uniquely affecting those public employees.**

**9. 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.**

**10. The board of mediation shall adopt rules and regulations pertaining to the following:**

**(1) The certification and decertification of 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 other persons trained in dispute resolution procedures and respective compensation rates of such persons; and**
- (8) **Such other matters necessary to implement the provisions of this act.**

**11. 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. 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 negotiating and agreement within the scope of negotiations as defined by this act, at any time after a violation of this subsection has ceased.**

**2. In the event of any violation or imminently threatened violation of subsection 1 of this section, the public body or 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.**

**3. 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 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.**

**4. 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.**

**5. 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.**

**105.533. 1. A request for negotiations shall be filed in writing by a representative no later than July first for due process employee negotiations agreements effective on July first of the following year. Negotiations shall begin no later than August 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 September first, either party may submit a request for mediation to the state board of mediation. The parties involved shall mutually agree upon a mediator or request the board to appoint an impartial mediator and such appointment shall occur within ten days of such request.**

**3. The mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful. If**



the mediator determines that such mediation services are no longer helpful, the mediator shall define the unresolved issues and all items agreed to and those not agreed to shall be submitted to the appropriate legislative body for action as provided according to the legislative and budgetary process.

4. Any political subdivision may adopt a reasonable schedule in lieu of the provisions of subsections 1 and 2 of this section that reflects the nature of such political subdivision's budget and fiscal year.

105.536. 1. With respect to negotiations between the state and an exclusive representative of a unit of state employees, if the impasse persists ten days after the mediator has been appointed, 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 of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators. As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection 5 of this section. The full costs of arbitration under this subsection shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrators shall be limited to those issues in which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board.

4. The panel of arbitrators shall consist of three members appointed in the following manner:

- (1) One member shall be appointed by the public employer;
- (2) One member shall be appointed by the employee organization;
- (3) One member shall be appointed mutually by the members appointed by the public employer and the employee organization. The last member appointed shall be the chairperson of the panel of arbitrators. No member appointed shall be an employee of the parties.

The public employer and employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairperson of the panel and all other costs of arbitration shall be shared equally.

**5. If the third member has not been selected within four days of notification as provided in subsection 2 of this section, a list of three arbitrators shall be submitted to the parties by the board. The two arbitrators selected by the public employer and the employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the board. The arbitrator having the right to remove the first name shall do so within two days and the second arbitrator shall have one additional day to remove one of the two remaining names. The person whose name remains shall become the chairperson of the panel of arbitrators and shall call a meeting within ten days at a location designated by the chairperson.**

**6. If a vacancy should occur on the panel of arbitrators, the selection for replacement of such member shall be in the same manner and within the same time limits as the original member was chosen. No final selection under subsection 9 of this section shall be made by the board until the vacancy has been filled.**

**7. The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.**

**8. From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.**

**9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:**

**(1) The interests and welfare of the public, the ability of the public employer to fund economic adjustments and the effect of such adjustments on the ability of the governmental entity to meet its overall responsibilities and to provide services to the public;**

**(2) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts;**

**(3) Comparison of wages, hours and benefits of the involved public employees with those of other employees with comparable responsibilities of both public employers and private employers of all sizes within the state; and**

**(4) The ability of the public employer to levy taxes and appropriate funds for the conduct of its operations.**

**10. The chairperson of the panel of arbitrators may 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 powers to other members of the panel of arbitrators. The**

chairperson of the panel of arbitrators may petition the circuit court at the seat of government or of the county in which any hearing is held to enforce the order of the chairperson compelling the attendance of witnesses and the production of records.

11. A majority of the panel of arbitrators shall select within fifteen days after its first meeting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

12. The selections by the panel of arbitrators and items agreed upon by the public employer and the employee organization, shall be deemed to be the collective bargaining agreement between the parties.

13. The determination of the panel of arbitrators shall be by majority vote and shall be final and binding. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

14. The determination of the arbitrator or panel of arbitrators, or any agreement reached shall be made no later than December thirty-first.

105.539. Any grievance of a state employee under a bargaining agreement shall be subject to the provisions of chapter 36, RSMo, except where an alternative grievance procedure has been adopted.

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

2. In case of any conflict between the provisions of this act and any other law, the particular provisions of this act in conflict which cannot be harmonized shall prevail over general provisions in any other law, and where those particular provisions of this act are in conflict with the particular provisions in any other law, the law later enacted shall prevail.

3. The agreement shall remain in effect for the term specified 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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