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SENATE BILL 178

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES;
PROVIDING RIGHTS, RESPONSIBILITIES AND PROCEDURES IN THE
EMPLOYMENT RELATIONSHIP BETWEEN PUBLIC EMPLOYEES AND PUBLIC
EMPLOYERS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT.--The purpose of the Public
Employee Bargaining Act is to guarantee public employees the
right to organize and bargain collectively with their
employers, to promote harmonious and cooperative
relationships between public employers and public employees
and to protect the public interest by assuring, at all times,
the orderly operation and functioning of the state and its
political subdivisions.

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1 Section 3. CONFLICTS.--In the event of conflict with
2 other laws, the provisions of the Public Employee Bargaining
3 Act shall supersede other previously enacted legislation;
4 provided that the Public Employee Bargaining Act shall not
5 supersede the provisions of the Bateman Act, the Personnel
6 Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the Group
7 Benefits Act, the Per Diem and Mileage Act, the Retiree
8 Health Care Act, public employee retirement laws or the Tort
9 Claims Act.

10 Section 4. DEFINITIONS.--As used in the Public Employee
11 Bargaining Act:

12 A. "appropriate bargaining unit" means a group of
13 public employees designated by the board or local board for
14 the purpose of collective bargaining;

15 B. "appropriate governing body" means the
16 policymaking body or individual representing a public
17 employer as defined in Section 7 of the Public Employee
18 Bargaining Act;

19 C. "board" means the public employee labor
20 relations board;

21 D. "certification" means the designation by the
22 board or local board of a labor organization as the exclusive
23 representative for all public employees in an appropriate
24 bargaining unit;

25 E. "collective bargaining" means the act of
negotiating between a public employer and an exclusive
representative for the purpose of entering into a written

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1 agreement regarding wages, hours and other terms and
2 conditions of employment;

3 F. "confidential employee" means a person who
4 assists and acts in a confidential capacity with respect to a
5 person who formulates, determines and effectuates management
6 policies;

7 G. "exclusive representative" means a labor
8 organization that, as a result of certification, has the
9 right to represent all public employees in an appropriate
10 bargaining unit for the purposes of collective bargaining;

11 H. "impasse" means failure of a public employer
12 and an exclusive representative, after good-faith bargaining,
13 to reach agreement in the course of negotiating a collective
14 bargaining agreement;

15 I. "labor organization" means any employee
16 organization, one of whose purposes is the representation of
17 public employees in collective bargaining and in otherwise
18 meeting, consulting and conferring with employers on matters
19 pertaining to employment relations;

20 J. "local board" means a local labor relations
21 board established by a public employer, other than the state,
22 through ordinance, resolution or charter amendment;

23 K. "lockout" means an act by a public employer to
24 prevent its employees from going to work for the purpose of
25 resisting the demands of the employees' exclusive
representative or for the purpose of gaining a concession
from the exclusive representative;

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1 L. "management employee" means an employee who is
2 engaged primarily in executive and management functions and
3 is charged with the responsibility of developing,
4 administering or effectuating management policies. An
5 employee shall not be deemed a management employee solely
6 because the employee participates in cooperative decision-
7 making programs on an occasional basis;

8 M. "mediation" means assistance by an impartial
9 third party to resolve an impasse between a public employer
10 and an exclusive representative regarding employment
11 relations through interpretation, suggestion and advice;

12 N. "professional employee" means an employee whose
13 work is predominantly intellectual and varied in character
14 and whose work involves the consistent exercise of discretion
15 and judgment in its performance and requires knowledge of an
16 advanced nature in a field of learning customarily requiring
17 specialized study at an institution of higher education or
18 its equivalent. The work of a professional employee is of
19 such character that the output or result accomplished cannot
20 be standardized in relation to a given period of time;

21 O. "public employee" means a regular,
22 nonprobationary employee of a public employer; provided that
23 in the public schools, "public employee" includes any regular
24 probationary employee;

25 P. "public employer" means the state or any
political subdivision of the state, including municipalities
having adopted home rule charters, and not including any

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1 government of a tribe or pueblo;

2 Q. "strike" means a public employee's refusal, in
3 concerted action with other public employees, to report for
4 duty or his willful absence in whole or in part from the
5 full, faithful and proper performance of the duties of
6 employment for the purpose of inducing, influencing or
7 coercing a change in the conditions, compensation, rights,
8 privileges or obligations of public employment; and

9 R. "supervisor" means an employee who devotes a
10 substantial amount of work time to supervisory duties, who
11 customarily and regularly directs the work of two or more
12 other employees and who has the authority in the interest
13 of the employer to hire, promote or discipline other
14 employees or to recommend such actions effectively, but
15 does not include individuals who perform merely routine,
16 incidental or clerical duties or who occasionally assume
17 supervisory or directory roles or whose duties are
18 substantially similar to those of their subordinates, and
19 does not include lead employees or employees who
20 participate in peer review or occasional employee
21 evaluation programs.

22 Section 5. RIGHTS OF PUBLIC EMPLOYEES.--Public
23 employees, other than management employees, supervisors and
24 confidential employees, may form, join or assist any labor
25 organization for the purpose of collective bargaining
through representatives chosen by public employees without
interference, restraint or coercion and shall have the

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1 right to refuse any or all such activities.

2 Section 6. RIGHTS OF PUBLIC EMPLOYERS.--Unless
3 limited by the provisions of a collective bargaining
4 agreement or by other statutory provision, a public
5 employer may:

6 A. direct the work of, hire, promote, assign,
7 transfer, demote, suspend, discharge or terminate public
8 employees;

9 B. determine qualifications for employment and
10 the nature and content of personnel examinations;

11 C. take actions as may be necessary to carry out
12 the mission of the public employer in emergencies; and

13 D. retain all rights not specifically limited by
14 a collective bargaining agreement or by the Public Employee
15 Bargaining Act.

16 Section 7. APPROPRIATE GOVERNING BODY--PUBLIC
17 EMPLOYER.--The appropriate governing body of any public
18 employer shall be the policymaking individual or body
19 representing the public employer. In the case of the
20 state, the appropriate governing body shall be the governor
21 or his designee or, in the case of a constitutionally
22 created body, the constitutionally designated head of that
23 body. At the local level, the appropriate governing body
24 shall be the elected or appointed representative body or
25 individual charged with management of the local public
body. In the event of dispute, the board shall determine
the appropriate governing body.

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1 Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD--
2 CREATED--TERMS--QUALIFICATIONS.--

3 A. The "public employee labor relations board"
4 is created. The board shall consist of three members
5 appointed by the governor. The governor shall appoint one
6 member recommended by organized labor representatives
7 actively involved in representing public employees, one
8 member recommended by public employers actively involved in
9 collective bargaining and one member jointly recommended by
10 the other two appointees.

11 B. Board members shall serve for a period of one
12 year with terms commencing on July 1. Vacancies shall be
13 filled by appointment by the governor in the same manner as
14 the original appointment, and such appointments shall only
15 be made for the remainder of the unexpired term. A board
16 member may serve an unlimited number of terms.

17 C. During the term for which he is appointed, no
18 board member shall hold or seek any other political office
19 or public employment or be an employee of a union or an
20 organization representing public employees or public
21 employers.

22 D. Each board member shall be paid per diem and
23 mileage in accordance with the provisions of the Per Diem
24 and Mileage Act.

25 Section 9. BOARD--POWERS AND DUTIES.--

 A. The board shall promulgate rules necessary to
 accomplish and perform its functions and duties as

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1 established in the Public Employee Bargaining Act,
2 including the establishment of procedures for:

3 (1) the designation of appropriate
4 bargaining units;

5 (2) the selection, certification and
6 decertification of exclusive representatives; and

7 (3) the filing of, hearing on and
8 determination of complaints of prohibited practices.

9 B. The board shall:

10 (1) hold hearings and make inquiries
11 necessary to carry out its functions and duties;

12 (2) conduct studies on problems pertaining
13 to employee-employer relations; and

14 (3) request from public employers and
15 labor organizations the information and data necessary to
16 carry out the board's functions and responsibilities.

17 C. The board may issue subpoenas requiring, upon
18 reasonable notice, the attendance and testimony of
19 witnesses and the production of any evidence, including
20 books, records, correspondence or documents relating to any
21 matter in question. The board may prescribe the form of
22 subpoena, but it shall adhere insofar as practicable to the
23 form used in civil actions in the district court. The
24 board may administer oaths and affirmations, examine
25 witnesses and receive evidence.

D. The board shall decide all issues by majority
vote and shall issue its decisions in the form of written

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1 orders and opinions.

2 E. The board may hire such personnel or contract
3 with such third parties as it deems necessary to assist it
4 in carrying out its functions.

5 F. The board has the power to enforce provisions
6 of the Public Employee Bargaining Act through the
7 imposition of appropriate administrative remedies.

8 G. No rule promulgated by the board or a local
9 board shall require, directly or indirectly, as a condition
10 of continuous employment, any public employee covered by
11 the Public Employee Bargaining Act to pay money to any
12 labor organization that is certified as an exclusive
13 representative. This issue shall be left to voluntary
14 bargaining by the parties.

15 Section 10. LOCAL BOARD--CREATED.--

16 A. With the approval of the board, a public
17 employer other than the state may, by ordinance, resolution
18 or charter amendment, create a local board similar to the
19 public employee labor relations board. Once created and
20 approved, the local board shall assume the duties and
21 responsibilities of the public employee labor relations
22 board. A local board shall follow all procedures and
23 provisions of the Public Employee Bargaining Act that apply
24 to the board unless otherwise approved by the board.

25 B. The local board shall be composed of three
members appointed by the public employer. One member shall
be appointed on the recommendation of individuals

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1 representing labor, one member shall be appointed on the
2 recommendation of individuals representing management and
3 one member shall be appointed on the recommendation of the
4 first two appointees.

5 C. Local board members shall serve one-year
6 terms. Local board members may serve an unlimited number
7 of terms. Vacancies shall be filled in the same manner as
8 the original appointment, and such appointments shall only
9 be made for the remainder of the unexpired term.

10 D. During the term for which he is appointed, no
11 local board member shall hold or seek any other political
12 office or public employment or be an employee of a union or
13 an organization representing public employees or public
14 employers.

15 E. Each local board member shall be paid per
16 diem and mileage in accordance with the provisions of the
17 Per Diem and Mileage Act.

18 Section 11. LOCAL BOARD--POWERS AND DUTIES.--

19 A. A local board shall promulgate rules
20 necessary to accomplish and perform its functions and
21 duties as established in the Public Employee Bargaining
22 Act, including the establishment of procedures for:

23 (1) the designation of appropriate
24 bargaining units;

25 (2) the selection, certification and
decertification of exclusive representatives; and

(3) the filing of, hearing on and

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1 determination of complaints of prohibited practices.

2 B. A local board shall:

3 (1) hold hearings and make inquiries
4 necessary to carry out its functions and duties;

5 (2) request information and data from
6 public employers and labor organizations to carry out the
7 local board's functions and responsibilities; and

8 (3) hire such personnel or contract with
9 such third parties as the appropriate governing body deems
10 necessary to assist the local board in carrying out its
11 functions.

12 C. A local board may issue subpoenas requiring,
13 upon reasonable notice, the attendance and testimony of
14 witnesses and the production of any evidence, including
15 books, records, correspondence or documents relating to any
16 matter in question. The local board may prescribe the form
17 of subpoena, but it shall adhere insofar as practicable to
18 the form used in civil actions in the district court. The
19 local board may administer oaths and affirmations, examine
20 witnesses and receive evidence.

21 D. A local board shall decide all issues by
22 majority vote and shall issue its decisions in the form of
23 written orders and opinions.

24 E. A local board has the power to enforce
25 provisions of the Public Employee Bargaining Act or a local
collective bargaining ordinance, resolution or charter
amendment through the imposition of appropriate

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1 administrative remedies.

2 Section 12. HEARING PROCEDURES.--

3 A. The board or a local board may hold hearings
4 for the purposes of:

5 (1) information gathering and inquiry;

6 (2) adopting rules; and

7 (3) adjudicating disputes and enforcing

8 the provisions of the Public Employee Bargaining Act and
9 rules adopted pursuant to that act.

10 B. The board or a local board shall adopt rules
11 setting forth procedures to be followed during hearings of
12 the board or local board. The procedures adopted for
13 conducting adjudicatory hearings shall meet all minimal due
14 process requirements of the state and federal
15 constitutions.

16 C. The board or a local board may appoint a
17 hearing examiner to conduct any adjudicatory hearing
18 authorized by the board or local board. At the conclusion
19 of the hearing, the examiner shall prepare a written
20 report, findings and recommendations, all of which shall be
21 submitted to the board or local board for its decision.

22 D. No rule proposed to be adopted by the board
23 or a local board that affects any person or governmental
24 entity outside of the board or local board and its staff
25 shall be adopted, amended or repealed without public
hearing and comment on the proposed action before the board
or local board. The public hearing shall be held after

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1 notice of the subject matter of the rule, the action
2 proposed to be taken, the time and place of the hearing,
3 the manner in which interested persons may present their
4 views and the method by which copies of the proposed rule,
5 proposed amendment or repeal of an existing rule may be
6 obtained. All meetings of the board shall be held in Santa
7 Fe. All meetings of local boards shall be held in the
8 county of residence of the local public employer. Notice
9 shall be published once at least thirty days prior to the
10 hearing date in a newspaper of general circulation in the
11 state or, in the case of a local board hearing, in a
12 newspaper of general circulation in the county, and notice
13 shall be mailed at least thirty days prior to the hearing
14 date to all persons who have made a written request for
15 advance notice of hearings.

16 E. All adopted rules shall be filed in
17 accordance with applicable state statutes.

18 F. A verbatim record made by electronic or other
19 suitable means shall be made of every rulemaking and
20 adjudicatory hearing. The record shall not be transcribed
21 unless required for judicial review or unless ordered by
22 the board or local board.

23 Section 13. APPROPRIATE BARGAINING UNITS.--

24 A. The board or a local board shall, upon
25 receipt of a petition for a representation election filed
by a labor organization, designate the appropriate
bargaining units for collective bargaining. Appropriate

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1 bargaining units shall be established on the basis of
2 "occupational groups", a clear and identifiable community
3 of interest in employment terms and conditions and related
4 personnel matters among the public employees involved.
5 Occupational groups shall generally be identified as blue
6 collar, secretarial-clerical, technical, professional,
7 paraprofessional, police, fire and corrections. The
8 parties, by mutual agreement, may further consolidate
9 occupational groups. Essential factors in determining
10 appropriate bargaining units shall include the principles
11 of efficient administration of government, the history of
12 collective bargaining and the assurance to public employees
13 of the fullest freedom in exercising the rights guaranteed
14 by the Public Employee Bargaining Act.

15 B. Within thirty days of a disagreement arising
16 between a public employer and a labor organization
17 concerning the composition of an appropriate bargaining
18 unit, the board or a local board shall hold a hearing
19 concerning the composition of the bargaining unit before
20 designating an appropriate bargaining unit.

21 C. The board or a local board shall not include
22 in any appropriate bargaining unit supervisors, managers or
23 confidential employees.

24 Section 14. ELECTIONS.--
25

A. Whenever, in accordance with rules prescribed
by the board or a local board, a petition is filed by a
labor organization containing the signatures of at least

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1 thirty percent of the public employees in an appropriate
2 bargaining unit, the board or local board shall conduct a
3 secret ballot representation election to determine whether
4 and by which labor organization the public employees in the
5 appropriate bargaining unit shall be represented. The
6 ballot shall contain the names of any labor organization
7 submitting a petition containing signatures of at least ten
8 percent of the public employees within the appropriate
9 bargaining unit. The ballot shall also contain a provision
10 allowing the public employee to indicate whether he desires
11 to be represented by a labor organization.

12 B. Once a labor organization has filed a valid
13 petition with the board or a local board calling for a
14 representation election, other labor organizations may seek
15 to be placed on the ballot. Such an organization shall
16 file a petition containing the signatures of not less than
17 ten percent of the public employees in the appropriate
18 bargaining unit no later than ten days after the board or
19 local board and the public employer post a written notice
20 that the petition containing the signatures of not less
21 than thirty percent of the public employees has been filed
22 by a labor organization.

23 C. As an alternative to the provisions of
24 Subsection A of this section, the board or a local board
25 may establish an alternative appropriate procedure for
determining majority status. The board or local board
shall not certify any appropriate bargaining unit if the

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1 public employer objects to the certification without an
2 election.

3 D. Within fifteen days of an election in which
4 no labor organization receives a majority of the votes
5 cast, a runoff election between the two choices receiving
6 the largest number of votes cast shall be conducted. The
7 board or a local board shall certify the results of the
8 election, and, where a labor organization receives a
9 majority of the votes cast, the board or local board shall
10 certify the labor organization as the exclusive
11 representative of all public employees in the appropriate
12 bargaining unit.

13 E. No election shall be conducted if an election
14 or runoff election has been conducted in the twelve-month
15 period immediately preceding the proposed representation
16 election. No election shall be held during the term of an
17 existing collective bargaining agreement, except as
18 provided in Section 16 of the Public Employee Bargaining
19 Act.

20 Section 15. EXCLUSIVE REPRESENTATION.--

21 A. A labor organization that has been certified
22 by the board or a local board as representing the public
23 employees in the appropriate bargaining unit shall be the
24 exclusive representative of all public employees in the
25 appropriate bargaining unit. The exclusive representative
shall act for all public employees in the appropriate
bargaining unit and negotiate a collective bargaining

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1 agreement covering all public employees in the appropriate
2 bargaining unit. The exclusive representative shall
3 represent the interests of all public employees in the
4 appropriate bargaining unit without discrimination or
5 regard to membership in the labor organization.

6 B. This section does not prevent a public
7 employee, acting individually, from presenting a grievance
8 without the intervention of the exclusive representative.
9 At any hearing on a grievance brought by a public employee
10 individually, the exclusive representative shall be
11 afforded the opportunity to be present and make its views
12 known. Any adjustment made shall not be inconsistent with
13 or in violation of the collective bargaining agreement then
14 in effect between the public employer and the exclusive
15 representative.

16 Section 16. DECERTIFICATION OF EXCLUSIVE
17 REPRESENTATIVE.--

18 A. Any member of a labor organization or the
19 labor organization itself may initiate decertification of a
20 labor organization as the exclusive representative if
21 thirty percent of the public employees in the appropriate
22 bargaining unit make a written request to the board or a
23 local board for a decertification election.
24 Decertification elections shall be held in a manner
25 prescribed by rule of the board.

B. When there is a collective bargaining
agreement in effect, a request for a decertification

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1 election shall be made to the board or a local board no
2 earlier than ninety days and no later than sixty days
3 before the expiration of the collective bargaining
4 agreement; provided, however, that a request for an
5 election may be filed at any time after the expiration of
6 the third year of a collective bargaining agreement with a
7 term of more than three years.

8 C. When, within the time period prescribed in
9 Subsection B of this section, a competing labor
10 organization files a petition containing signatures of at
11 least thirty percent of the public employees in the
12 appropriate bargaining unit, a representation election
13 rather than a decertification election shall be conducted.

14 D. When an exclusive representative has been
15 certified but no collective bargaining agreement is in
16 effect, the board or a local board shall not accept a
17 request for a decertification election earlier than twelve
18 months subsequent to a labor organization's certification
19 as the exclusive representative.

20 Section 17. SCOPE OF BARGAINING.--

21 A. Except for retirement programs provided
22 pursuant to the Public Employees Retirement Act or the
23 Educational Retirement Act, public employers and exclusive
24 representatives:

25 (1) shall bargain in good faith on wages,
hours and other terms and conditions of employment and
other issues agreed to by the parties. However, neither

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1 the public employer nor the exclusive representative shall
2 be required to agree to a proposal or to make a concession;
3 and

4 (2) may enter into written collective
5 bargaining agreements covering employment relations.

6 B. The obligation to collectively bargain
7 imposed by the Public Employee Bargaining Act shall not be
8 construed as authorizing public employers and exclusive
9 representatives to enter into any agreement that is in
10 conflict with the provisions of any other statute of this
11 state. In the event of conflict between the provisions of
12 any other statute of this state and any agreement entered
13 into by the public employer and the exclusive
14 representative in collective bargaining, the former shall
15 prevail.

16 C. Payroll deduction of the exclusive
17 representative's membership dues shall be a mandatory
18 subject of bargaining if either party chooses to negotiate
19 the issue. The amount of dues shall be certified in
20 writing by an official of the labor organization and shall
21 not include special assessments, penalties or fines of any
22 type. The duty of the public employer to honor payroll
23 deductions shall continue until the authorization is
24 revoked in writing by the public employee in accordance
25 with the negotiated agreement and for so long as the labor
organization is certified as the exclusive representative.
During the time that a board certification is in effect for

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1 a particular appropriate bargaining unit, the public
2 employer shall not deduct dues for any other labor
3 organization.

4 D. Negotiations at the state level shall be
5 conducted by occupational groups on all issues.

6 E. Any impasse resolution or any agreement
7 provision by the state and an exclusive representative that
8 requires the expenditure of funds shall be contingent upon
9 the specific appropriation of funds by the legislature and
10 the availability of funds. Any impasse resolution or any
11 agreement provision by a public employer other than the
12 state or the public schools and an exclusive representative
13 that requires the expenditure of funds shall be contingent
14 upon the specific appropriation for wages by the
15 appropriate governing body and the availability of funds.
16 Any agreement provision by a local school board and an
17 exclusive representative that requires the expenditure of
18 funds shall be contingent upon ratification by the
19 appropriate governing body.

20 F. Every agreement shall include a grievance
21 procedure to be used for the settlement of disputes
22 pertaining to employment terms and conditions and related
23 personnel matters. The grievance procedure shall provide
24 for a final and binding determination. The final
25 determination shall constitute an arbitration award within
the meaning of the Uniform Arbitration Act; provided, that
in any judicial review of the award, the court shall

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1 determine whether the award is arbitrary, unlawful,
2 unreasonable, capricious or not based on substantial
3 evidence. The costs of any arbitration proceeding
4 conducted pursuant to this section shall be shared equally
5 by the parties.

6 G. The following meetings shall be closed:

7 (1) meetings for the discussion of
8 bargaining strategy preliminary to collective bargaining
9 negotiations between a public employer and the exclusive
10 representative of the public employees of the public
11 employer;

12 (2) collective bargaining sessions; and

13 (3) consultations and impasse resolution
14 procedures at which the public employer and the exclusive
15 representative of the appropriate bargaining unit are
16 present.

17 Section 18. IMPASSE RESOLUTION.--

18 A. The following negotiations and impasse
19 procedures shall be followed by the state and exclusive
20 representatives for state employees:

21 (1) A request for the commencement of
22 initial negotiations shall be filed in writing by the
23 exclusive representative to the state no later than June 1
24 of the year in which negotiations are to take place.
25 Negotiations shall begin no later than July 1 of that year.

(2) In subsequent years, negotiations
agreed to by the parties shall begin no later than August 1

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1 following the submission of written notice to the state by
2 the exclusive representative no later than July 1 of the
3 year in which negotiations are to take place.

4 (3) If an impasse occurs during
5 negotiations between the parties and if no agreement is
6 reached by the parties by October 1, either party may
7 request mediation services from the board. A mediator from
8 the federal mediation and conciliation service shall be
9 assigned by the board to assist negotiations unless the
10 parties agree to another mediator.

11 (4) The mediator shall provide services to
12 the parties until the parties reach agreement or the
13 mediator believes that mediation services are no longer
14 helpful or until December 1, whichever occurs first.

15 (5) If the impasse continues after
16 December 1, either party may request the formation of an
17 arbitration panel. Upon the request for an arbitration
18 panel, the unresolved issues shall be resolved pursuant to
19 the Uniform Arbitration Act by an arbitration panel
20 consisting of one member appointed by the exclusive
21 representative, one member appointed by the state and a
22 third member appointed by the other two members; provided,
23 that in any judicial review of the decision of the
24 arbitration panel, the court shall determine whether the
25 decision is arbitrary, unlawful, unreasonable, capricious
or not based on substantial evidence.

B. The following impasse procedure shall be

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1 followed by all public employers and exclusive
2 representatives, except the state and the state's exclusive
3 representatives:

4 (1) If an impasse occurs, either party may
5 request from the board or local board that a mediator be
6 assigned to the negotiations unless the parties can agree
7 on a mediator. A mediator with the federal mediation and
8 conciliation service shall be assigned by the board or
9 local board to assist negotiations unless the parties agree
10 to another mediator.

11 (2) If the impasse continues after a
12 sixty-day mediation period, either party may request the
13 formation of an arbitration panel. Upon the request for an
14 arbitration panel, the unresolved issues shall be resolved
15 pursuant to the Uniform Arbitration Act by an arbitration
16 panel consisting of one member appointed by the exclusive
17 representative, one member appointed by the public employer
18 and a third member appointed by the other two members;
19 provided, that in any judicial review of the decision of
20 the arbitration panel, the court shall determine whether
21 the decision is arbitrary, unlawful, unreasonable,
22 capricious or not based on substantial evidence.

23 C. A public employer other than the state may
24 enter into a written agreement with the exclusive
25 representative setting forth an alternative impasse
resolution procedure.

Section 19. PUBLIC EMPLOYERS--PROHIBITED

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1 PRACTICES.--No public employer or his representative shall:

2 A. discriminate against a public employee with
3 regard to terms and conditions of employment because of the
4 employee's membership in a labor organization;

5 B. interfere with, restrain or coerce any public
6 employee in the exercise of any right guaranteed by the
7 provisions of the Public Employee Bargaining Act;

8 C. dominate or interfere in the formation,
9 existence or administration of any labor organization;

10 D. discriminate in regard to hiring, tenure or
11 any term or condition of employment in order to encourage
12 or discourage membership in a labor organization;

13 E. discharge or otherwise discriminate against a
14 public employee because he has signed or filed an
15 affidavit, petition, grievance or complaint or given any
16 information or testimony pursuant to the provisions of the
17 Public Employee Bargaining Act or because a public employee
18 is forming, joining or choosing to be represented by a
19 labor organization;

20 F. refuse to enter into collective bargaining in
21 good faith with the exclusive representative;

22 G. refuse or fail to comply with any provision
23 of the Public Employee Bargaining Act or board rule; or

24 H. refuse or fail to comply with any collective
25 bargaining agreement.

Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
PROHIBITED PRACTICES.--No public employee or labor

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1 organization or its representative shall:

2 A. discriminate against a public employee with
3 regard to labor organization membership because of race,
4 color, religion, creed, age, sex or national origin;

5 B. interfere with, restrain or coerce any public
6 employee in the exercise of any right guaranteed by the
7 provisions of the Public Employee Bargaining Act;

8 C. refuse to enter into collective bargaining in
9 good faith with a public employer;

10 D. refuse or fail to comply with any collective
11 bargaining or other agreement with the public employer;

12 E. refuse or fail to comply with any provision
13 of the Public Employee Bargaining Act; or

14 F. picket homes or private businesses of elected
15 officials or public employees.

16 Section 21. STRIKES AND LOCKOUTS PROHIBITED.--

17 A. No public employee or labor organization
18 shall engage in a strike. No labor organization shall
19 cause, instigate, encourage or support a public employee
20 strike. No public employer shall cause, instigate or
21 engage in any public employee lockout.

22 B. A public employer may apply to the district
23 court for injunctive relief to end a strike, and an
24 exclusive representative of public employees affected by a
25 lockout may apply to the district court for injunctive
relief to end a lockout.

C. Any labor organization that causes,

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1 instigates, encourages or supports a public employee
2 strike, walkout or slowdown may be decertified as the
3 exclusive representative for that appropriate bargaining
4 unit by either the board or a local board and shall be
5 barred from serving as the exclusive representative of any
6 bargaining unit of public employees for a period of not
7 more than one year.

8 Section 22. AGREEMENTS VALID--ENFORCEMENT.--All
9 collective bargaining agreements and other agreements
10 between public employers and exclusive representatives are
11 valid and enforceable according to their terms when entered
12 into in accordance with the provisions of the Public
13 Employee Bargaining Act.

14 Section 23. JUDICIAL ENFORCEMENT--STANDARD OF
15 REVIEW.--

16 A. The board or a local board may request the
17 district court to enforce an order issued pursuant to the
18 Public Employee Bargaining Act, including those for
19 appropriate temporary relief and restraining orders. The
20 court shall consider the request for enforcement on the
21 record made before the board or local board. It shall
22 uphold the action of the board or local board and take
23 appropriate action to enforce it unless it concludes that
24 the order is:

- 25
- (1) arbitrary, capricious or an abuse of discretion;
 - (2) not supported by substantial evidence

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1 on the record considered as a whole; or
2 (3) otherwise not in accordance with law.
3 B. Any person or party, including any labor
4 organization affected by a final rule, order or decision of
5 the board or a local board, may appeal to the district
6 court for further relief. All such appeals shall be based
7 upon the record made at the board or local board hearing.
8 All such appeals to the district court shall be taken
9 within thirty days of the date of the final rule, order or
10 decision of the board or local board. Actions taken by the
11 board or local board shall be affirmed unless the court
12 concludes that the action is:
13 (1) arbitrary, capricious or an abuse of
14 discretion;
15 (2) not supported by substantial evidence
16 on the record taken as a whole; or
17 (3) otherwise not in accordance with law.

18 Section 24. EXISTING COLLECTIVE BARGAINING
19 UNITS.--Bargaining units established prior to July 1, 1999
20 shall continue to be recognized as appropriate bargaining
21 units for the purposes of the Public Employee Bargaining
22 Act. Bargaining units established between July 1, 1999 and
23 the effective date of that act shall continue in effect
24 only if the unit was established through a representation
25 election.

Section 25. EXISTING COLLECTIVE BARGAINING
AGREEMENTS.--Nothing in the Public Employee Bargaining Act

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1 shall be construed to annul or modify any collective
2 bargaining agreement entered into between any public
3 employer and any exclusive representative prior to the
4 effective date of the Public Employee Bargaining Act.

5 Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
6 EMPLOYEE BARGAINING.--Any public employer other than the
7 state that subsequent to October 1, 1991 adopts by
8 ordinance, resolution or charter amendment a system of
9 provisions and procedures permitting employees to form,
10 join or assist any labor organization for the purpose of
11 collective bargaining through exclusive representatives
12 freely chosen by its employees may operate under those
13 provisions and procedures rather than those set forth in
14 the Public Employee Bargaining Act; provided that the
15 employer shall comply with the provisions of Sections 8, 9,
16 10, 11 and 12 of that act and provided the following
17 provisions and procedures are included in each ordinance,
18 resolution or charter amendment:

19 A. the right of public employees to form, join
20 or assist employee organizations for the purpose of
21 achieving collective bargaining;

22 B. procedures for the identification of
23 appropriate bargaining units, certification elections and
24 decertification elections equivalent to those set forth in
25 the Public Employee Bargaining Act;

C. the right of a labor organization to be
certified as an exclusive representative;

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1 D. the right of an exclusive representative to
2 negotiate all wages, hours and other terms and conditions
3 of employment for public employees in the appropriate
4 bargaining unit;

5 E. the obligation to incorporate agreements
6 reached by the public employer and the exclusive
7 representative into a collective bargaining agreement;

8 F. a requirement that grievance procedures
9 culminating with binding arbitration be negotiated;

10 G. a requirement that payroll deduction for the
11 exclusive representative's membership dues be negotiated if
12 requested by the exclusive representative;

13 H. impasse resolution procedures equivalent to
14 those set forth in Section 18 of the Public Employee
15 Bargaining Act; and

16 I. prohibited practices for the public employer,
17 public employees and labor organizations that promote the
18 principles established in Sections 19, 20 and 21 of the
19 Public Employee Bargaining Act.

20 Section 27. APPROPRIATION.--Three hundred thousand
21 dollars (\$300,000) is appropriated from the general fund to
22 the public employee labor relations board for expenditure
23 in fiscal year 2001 for the purpose of carrying out the
24 provisions of the Public Employee Bargaining Act. Any
25 unexpended or unencumbered balance remaining at the end of
fiscal year 2001 shall revert to the general fund.

 Section 28. SEVERABILITY.--If any part or application

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1 of the Public Employee Bargaining Act is held invalid, the
2 remainder or its application to other situations or persons
3 shall not be affected.

4 Section 29. EFFECTIVE DATE.--The effective date of
5 the provisions of this act is July 1, 2000.

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