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HOUSE BILL 721

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ben Lujan

AN ACT

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

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**

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1 subdivisions.

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

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

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

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

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1 negotiating between a public employer and an exclusive
2 representative for the purpose of entering into a written
3 agreement regarding wages, hours and other terms and
4 conditions of employment;

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

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

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

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

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

25 K. "lockout" means an act by a public employer to

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1 prevent its employees from going to work for the purpose of
2 resisting the demands of the employees' exclusive
3 representative or for the purpose of gaining a concession from
4 the exclusive representative;

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

12 M. "mediation" means assistance by an impartial
13 third party to resolve an impasse between a public employer
14 and an exclusive representative regarding employment relations
15 through interpretation, suggestion and advice;

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

25 O. "public employee" means a regular,

1 nonprobationary employee of a public employer; provided that
2 in the public schools, "public employee" includes any regular
3 probationary employee;

4 P. "public employer" means the state or any
5 political subdivision of the state, including municipalities
6 having adopted home rule charters, and not including any
7 government of a tribe or pueblo;

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

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

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1 occasional employee evaluation programs.

2 Section 5. RIGHTS OF PUBLIC EMPLOYEES. --Public
3 employees, other than management employees, supervisors and
4 confidential employees, may form, join or assist any labor
5 organization for the purpose of collective bargaining
6 through representatives chosen by public employees without
7 interference, restraint or coercion and shall have the right
8 to refuse any such activities.

9 Section 6. RIGHTS OF PUBLIC EMPLOYERS. --Unless limited
10 by the provisions of a collective bargaining agreement or by
11 other statutory provision, a public employer may:

12 A. direct the work of, hire, promote, assign,
13 transfer, demote, suspend, discharge or terminate public
14 employees;

15 B. determine qualifications for employment and
16 the nature and content of personnel examinations;

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

19 D. retain all rights not specifically limited by
20 a collective bargaining agreement or by the Public Employee
21 Bargaining Act.

22 Section 7. APPROPRIATE GOVERNING BODY--PUBLIC
23 EMPLOYER. --The appropriate governing body of any public
24 employer shall be the policymaking individual or body
25 representing the public employer. In the case of the state,

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1 the appropriate governing body shall be the governor or his
2 designee or, in the case of a constitutionally created body,
3 the constitutionally designated head of that body. At the
4 local level, the appropriate governing body shall be the
5 elected or appointed representative body or individual
6 charged with management of the local public body. In the
7 event of dispute, the board shall determine the appropriate
8 governing body.

9 Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD--
10 CREATED--TERMS--QUALIFICATIONS. --

11 A. The "public employee labor relations board"
12 is created. The board shall consist of three members
13 appointed by the governor. The governor shall appoint one
14 member recommended by organized labor representatives
15 actively involved in representing public employees, one
16 member recommended by public employers actively involved in
17 collective bargaining and one member jointly recommended by
18 the other two appointees.

19 B. Board members shall serve for a period of one
20 year with terms commencing on July 1. Vacancies shall be
21 filled by appointment by the governor in the same manner as
22 the original appointment, and such appointments shall only
23 be made for the remainder of the unexpired term. A board
24 member may serve an unlimited number of terms.

25 C. During the term for which he is appointed, no

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1 board member shall hold or seek any other political office
2 or public employment or be an employee of a union or an
3 organization representing public employees or public
4 employers.

5 D. Each board member shall be paid per diem and
6 mileage in accordance with the provisions of the Per Diem
7 and Mileage Act.

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

9 A. The board shall promulgate rules necessary to
10 accomplish and perform its functions and duties as
11 established in the Public Employee Bargaining Act, including
12 the establishment of procedures for:

13 (1) the designation of appropriate
14 bargaining units;

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

17 (3) the filing of, hearing on and
18 determination of complaints of prohibited practices.

19 B. The board shall:

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

22 (2) conduct studies on problems pertaining
23 to employee-employer relations; and

24 (3) request from public employers and labor
25 organizations the information and data necessary to carry

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1 out the board's functions and responsibilities.

2 C. The board may issue subpoenas requiring, upon
3 reasonable notice, the attendance and testimony of witnesses
4 and the production of any evidence, including books,
5 records, correspondence or documents relating to any matter
6 in question. The board may prescribe the form of subpoena,
7 but it shall adhere insofar as practicable to the form used
8 in civil actions in the district court. The board may
9 administer oaths and affirmations, examine witnesses and
10 receive evidence.

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

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

17 F. The board has the power to enforce provisions
18 of the Public Employee Bargaining Act through the imposition
19 of appropriate administrative remedies.

20 G. No rule promulgated by the board or a local
21 board shall require, directly or indirectly, as a condition
22 of continuous employment, any public employee covered by the
23 Public Employee Bargaining Act to pay money to any labor
24 organization that is certified as an exclusive
25 representative. This issue shall be left to voluntary

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1 bargaining by the parties.

2 Section 10. LOCAL BOARD--CREATED.--

3 A. With the approval of the board, a public
4 employer other than the state may, by ordinance, resolution
5 or charter amendment, create a local board similar to the
6 public employee labor relations board. Once created and
7 approved, the local board shall assume the duties and
8 responsibilities of the public employee labor relations
9 board. A local board shall follow all procedures and
10 provisions of the Public Employee Bargaining Act that apply
11 to the board unless otherwise approved by the board.

12 B. The local board shall be composed of three
13 members appointed by the public employer. One member shall
14 be appointed on the recommendation of individuals
15 representing labor, one member shall be appointed on the
16 recommendation of individuals representing management and
17 one member shall be appointed on the recommendation of the
18 first two appointees.

19 C. Local board members shall serve one-year
20 terms. Local board members may serve an unlimited number of
21 terms. Vacancies shall be filled in the same manner as the
22 original appointment, and such appointments shall only be
23 made for the remainder of the unexpired term.

24 D. During the term for which he is appointed, no
25 local board member shall hold or seek any other political

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1 office or public employment or be an employee of a union or
2 an organization representing public employees or public
3 employers.

4 E. Each local board member shall be paid per
5 diem and mileage in accordance with the provisions of the
6 Per Diem and Mileage Act.

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

8 A. A local board shall promulgate rules
9 necessary to accomplish and perform its functions and duties
10 as established in the Public Employee Bargaining Act,
11 including the establishment of procedures for:

12 (1) the designation of appropriate
13 bargaining units;

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

16 (3) the filing of, hearing on and
17 determination of complaints of prohibited practices.

18 B. A local board shall:

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

21 (2) request information and data from
22 public employers and labor organizations to carry out the
23 local board's functions and responsibilities; and

24 (3) hire such personnel or contract with
25 such third parties as the appropriate governing body deems

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1 necessary to assist the local board in carrying out its
2 functions.

3 C. A local board may issue subpoenas requiring,
4 upon reasonable notice, the attendance and testimony of
5 witnesses and the production of any evidence, including
6 books, records, correspondence or documents relating to any
7 matter in question. The local board may prescribe the form
8 of subpoena, but it shall adhere insofar as practicable to
9 the form used in civil actions in the district court. The
10 local board may administer oaths and affirmations, examine
11 witnesses and receive evidence.

12 D. A local board shall decide all issues by
13 majority vote and shall issue its decisions in the form of
14 written orders and opinions.

15 E. A local board has the power to enforce
16 provisions of the Public Employee Bargaining Act or a local
17 collective bargaining ordinance, resolution or charter
18 amendment through the imposition of appropriate
19 administrative remedies.

20 Section 12. HEARING PROCEDURES. --

21 A. The board or a local board may hold hearings
22 for the purposes of:

- 23 (1) information gathering and inquiry;
24 (2) adopting rules; and
25 (3) adjudicating disputes and enforcing the

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1 provisions of the Public Employee Bargaining Act and rules
2 adopted pursuant to that act.

3 B. The board or a local board shall adopt rules
4 setting forth procedures to be followed during hearings of
5 the board or local board. The procedures adopted for
6 conducting adjudicatory hearings shall meet all minimal due
7 process requirements of the state and federal constitutions.

8 C. The board or a local board may appoint a
9 hearing examiner to conduct any adjudicatory hearing
10 authorized by the board or local board. At the conclusion
11 of the hearing, the examiner shall prepare a written report,
12 including findings and recommendations, all of which shall
13 be submitted to the board or local board for its decision.

14 D. No rule proposed to be adopted by the board
15 or a local board that affects any person or governmental
16 entity outside of the board or local board and its staff
17 shall be adopted, amended or repealed without public hearing
18 and comment on the proposed action before the board or local
19 board. The public hearing shall be held after notice of the
20 subject matter of the rule, the action proposed to be taken,
21 the time and place of the hearing, the manner in which
22 interested persons may present their views and the method by
23 which copies of the proposed rule, proposed amendment or
24 repeal of an existing rule may be obtained. All meetings of
25 the board shall be held in Santa Fe. All meetings of local

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1 boards shall be held in the county of residence of the local
2 public employer. Notice shall be published once at least
3 thirty days prior to the hearing date in a newspaper of
4 general circulation in the state or, in the case of a local
5 board hearing, in a newspaper of general circulation in the
6 county, and notice shall be mailed at least thirty days
7 prior to the hearing date to all persons who have made a
8 written request for advance notice of hearings.

9 E. All adopted rules shall be filed in
10 accordance with applicable state statutes.

11 F. A verbatim record made by electronic or other
12 suitable means shall be made of every rulemaking and
13 adjudicatory hearing. The record shall not be transcribed
14 unless required for judicial review or unless ordered by the
15 board or local board.

16 Section 13. APPROPRIATE BARGAINING UNITS. --

17 A. The board or a local board shall, upon
18 receipt of a petition for a representation election filed by
19 a labor organization, designate the appropriate bargaining
20 units for collective bargaining. Appropriate bargaining
21 units shall be established on the basis of "occupational
22 groups", a clear and identifiable community of interest in
23 employment terms and conditions and related personnel
24 matters among the public employees involved. Occupational
25 groups shall generally be identified as blue collar,

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1 secretarial-clerical, technical, professional,
2 paraprofessional, police, fire and corrections. The
3 parties, by mutual agreement, may further consolidate
4 occupational groups. Essential factors in determining
5 appropriate bargaining units shall include the principles of
6 efficient administration of government, the history of
7 collective bargaining and the assurance to public employees
8 of the fullest freedom in exercising the rights guaranteed
9 by the Public Employee Bargaining Act.

10 B. Within thirty days of a disagreement arising
11 between a public employer and a labor organization
12 concerning the composition of an appropriate bargaining
13 unit, the board or a local board shall hold a hearing
14 concerning the composition of the bargaining unit before
15 designating an appropriate bargaining unit.

16 C. The board or a local board shall not include
17 in any appropriate bargaining unit supervisors, management
18 employees or confidential employees.

19 Section 14. ELECTIONS. --

20 A. Whenever, in accordance with rules prescribed
21 by the board or a local board, a petition is filed by a
22 labor organization containing the signatures of at least
23 thirty percent of the public employees in an appropriate
24 bargaining unit, the board or local board shall conduct a
25 secret ballot representation election to determine whether

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1 and by which labor organization the public employees in the
2 appropriate bargaining unit shall be represented. The
3 ballot shall contain the names of any labor organization
4 submitting a petition containing signatures of at least ten
5 percent of the public employees within the appropriate
6 bargaining unit. The ballot shall also contain a provision
7 allowing the public employee to indicate whether he desires
8 to be represented by a labor organization.

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

20 C. As an alternative to the provisions of
21 Subsection A of this section, the board or a local board may
22 establish an alternative appropriate procedure for
23 determining majority status. The board or local board shall
24 not certify any appropriate bargaining unit if the public
25 employer objects to the certification without an election.

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

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

16 Section 15. EXCLUSIVE REPRESENTATION. --

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

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1 represent the interests of all public employees in the
2 appropriate bargaining unit without discrimination or regard
3 to membership in the labor organization.

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

14 Section 16. DECERTIFICATION OF EXCLUSIVE
15 REPRESENTATIVE. --

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

24 B. When there is a collective bargaining
25 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 before
3 the expiration of the collective bargaining agreement;
4 provided, however, that a request for an election may be
5 filed at any time after the expiration of the third year of
6 a collective bargaining agreement with a term of more than
7 three years.

8 C. When, within the time period prescribed in
9 Subsection B of this section, a competing labor organization
10 files a petition containing signatures of at least thirty
11 percent of the public employees in the appropriate
12 bargaining unit, a representation election rather than a
13 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 as
19 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,

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1 hours and other terms and conditions of employment and other
2 issues agreed to by the parties. However, neither the
3 public employer nor the exclusive representative shall be
4 required to agree to a proposal or to make a concession; and

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

7 B. The obligation to collectively bargain
8 imposed by the Public Employee Bargaining Act shall not be
9 construed as authorizing public employers and exclusive
10 representatives to enter into any agreement that is in
11 conflict with the provisions of any other statute of this
12 state. In the event of conflict between the provisions of
13 any other statute of this state and any agreement entered
14 into by the public employer and the exclusive representative
15 in collective bargaining, the former shall 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 writing
20 by an official of the labor organization and shall not
21 include special assessments, penalties or fines of any type.
22 The duty of the public employer to honor payroll deductions
23 shall continue until the authorization is revoked in writing
24 by the public employee in accordance with the negotiated
25 agreement and for so long as the labor organization is

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1 certified as the exclusive representative. During the time
2 that a board certification is in effect for a particular
3 appropriate bargaining unit, the public employer shall not
4 deduct dues for any other labor organization.

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

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

21 F. Every agreement shall include a grievance
22 procedure to be used for the settlement of disputes
23 pertaining to employment terms and conditions and related
24 personnel matters. The grievance procedure shall provide
25 for a final and binding determination. The final

1 determination shall constitute an arbitration award within
2 the meaning of the Uniform Arbitration Act; provided that,
3 in any judicial review of the award, the court shall
4 determine whether the award is arbitrary, unlawful,
5 unreasonable, capricious or not based on substantial
6 evidence. The costs of any arbitration proceeding conducted
7 pursuant to this section shall be shared equally by the
8 parties.

9 G. The following meetings shall be closed:

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

15 (2) collective bargaining sessions; and

16 (3) consultations and impasse resolution
17 procedures at which the public employer and the exclusive
18 representative of the appropriate bargaining unit are
19 present.

20 Section 18. IMPASSE RESOLUTION. --

21 A. The following negotiations and impasse
22 procedures shall be followed by the state and exclusive
23 representatives for state employees.

24 (1) A request for the commencement of
25 initial negotiations shall be filed in writing by the

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1 exclusive representative to the state no later than June 1
2 of the year in which negotiations are to take place.

3 Negotiations shall begin no later than July 1 of that year.

4 (2) In subsequent years, negotiations
5 agreed to by the parties shall begin no later than August 1
6 following the submission of written notice to the state by
7 the exclusive representative no later than July 1 of the
8 year in which negotiations are to take place.

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

16 (4) The mediator shall provide services to
17 the parties until the parties reach agreement or the
18 mediator believes that mediation services are no longer
19 helpful or until December 1, whichever occurs first.

20 (5) If the impasse continues after December
21 1, either party may request the formation of an arbitration
22 panel. Upon the request for an arbitration panel, the
23 unresolved issues shall be resolved pursuant to the Uniform
24 Arbitration Act by an arbitration panel consisting of one
25 member appointed by the exclusive representative, one member

1 appointed by the state and a third member appointed by the
2 other two members; provided that, in any judicial review of
3 the decision of the arbitration panel, the court shall
4 determine whether the decision is arbitrary, unlawful,
5 unreasonable, capricious or not based on substantial
6 evidence.

7 B. The following impasse procedure shall be
8 followed by all public employers and exclusive
9 representatives, except the state and the state's exclusive
10 representatives.

11 (1) If an impasse occurs, either party may
12 request from the board or local board that a mediator be
13 assigned to the negotiations unless the parties can agree on
14 a mediator. A mediator with the federal mediation and
15 conciliation service shall be assigned by the board or local
16 board to assist negotiations unless the parties agree to
17 another mediator.

18 (2) If the impasse continues after a
19 sixty-day mediation period, either party may request the
20 formation of an arbitration panel. Upon the request for an
21 arbitration panel, the unresolved issues shall be resolved
22 pursuant to the Uniform Arbitration Act by an arbitration
23 panel consisting of one member appointed by the exclusive
24 representative, one member appointed by the public employer
25 and a third member appointed by the other two members;

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1 provided that, in any judicial review of the decision of the
2 arbitration panel, the court shall determine whether the
3 decision is arbitrary, unlawful, unreasonable, capricious or
4 not based on substantial evidence.

5 C. A public employer other than the state may
6 enter into a written agreement with the exclusive
7 representative setting forth an alternative impasse
8 resolution procedure.

9 Section 19. PUBLIC EMPLOYERS--PROHIBITED
10 PRACTICES.--No public employer or his representative shall:

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

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

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

19 D. discriminate in regard to hiring, tenure or
20 any term or condition of employment in order to encourage or
21 discourage membership in a labor organization;

22 E. discharge or otherwise discriminate against a
23 public employee because he has signed or filed an affidavit,
24 petition, grievance or complaint or given any information or
25 testimony pursuant to the provisions of the Public Employee

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1 Bargaining Act or because a public employee is forming,
2 joining or choosing to be represented by a labor
3 organization;

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

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

8 H. refuse or fail to comply with any collective
9 bargaining agreement.

10 Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
11 PROHIBITED PRACTICES.--No public employee or labor
12 organization or its representative shall:

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

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

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

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

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

25 F. picket homes or private businesses of elected

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1 officials or public employees.

2 Section 21. STRIKES AND LOCKOUTS PROHIBITED. --

3 A. No public employee or labor organization
4 shall engage in a strike. No labor organization shall
5 cause, instigate, encourage or support a public employee
6 strike. No public employer shall cause, instigate or engage
7 in any public employee lockout.

8 B. A public employer may apply to the district
9 court for injunctive relief to end a strike, and an
10 exclusive representative of public employees affected by a
11 lockout may apply to the district court for injunctive
12 relief to end a lockout.

13 C. Any labor organization that causes,
14 instigates, encourages or supports a public employee strike,
15 walkout or slowdown may be decertified as the exclusive
16 representative for that appropriate bargaining unit by
17 either the board or a local board and shall be barred from
18 serving as the exclusive representative of any bargaining
19 unit of public employees for a period of not more than one
20 year.

21 Section 22. AGREEMENTS VALID-- ENFORCEMENT. -- All
22 collective bargaining agreements and other agreements
23 between public employers and exclusive representatives are
24 valid and enforceable according to their terms when entered
25 into in accordance with the provisions of the Public

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1 Employee Bargaining Act.

2 Section 23. JUDICIAL ENFORCEMENT--STANDARD OF
3 REVIEW. --

4 A. The board or a local board may request the
5 district court to enforce an order issued pursuant to the
6 Public Employee Bargaining Act, including those for
7 appropriate temporary relief and restraining orders. The
8 court shall consider the request for enforcement on the
9 record made before the board or local board. It shall
10 uphold the action of the board or local board and take
11 appropriate action to enforce it unless it concludes that
12 the order is:

13 (1) arbitrary, capricious or an abuse of
14 discretion;

15 (2) not supported by substantial evidence
16 on the record considered as a whole; or

17 (3) otherwise not in accordance with law.

18 B. Any person or party, including any labor
19 organization affected by a final rule, order or decision of
20 the board or a local board, may appeal to the district court
21 for further relief. All such appeals shall be based upon
22 the record made at the board or local board hearing. All
23 such appeals to the district court shall be taken within
24 thirty days of the date of the final rule, order or decision
25 of the board or local board. Actions taken by the board or

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1 local board shall be affirmed unless the court concludes
2 that the action is:

3 (1) arbitrary, capricious or an abuse of
4 discretion;

5 (2) not supported by substantial evidence
6 on the record taken as a whole; or

7 (3) otherwise not in accordance with law.

8 Section 24. EXISTING COLLECTIVE BARGAINING UNITS. --
9 Bargaining units established prior to July 1, 2000 shall
10 continue to be recognized as appropriate bargaining units
11 for the purposes of the Public Employee Bargaining Act.
12 Bargaining units established between July 1, 2000 and the
13 effective date of that act shall continue in effect only if
14 the unit was established through a representation election.

15 Section 25. EXISTING COLLECTIVE BARGAINING
16 AGREEMENTS. -- Nothing in the Public Employee Bargaining Act
17 shall be construed to annul or modify a collective
18 bargaining agreement entered into between a public employer
19 and an exclusive representative prior to the effective date
20 of the Public Employee Bargaining Act.

21 Section 26. ORDINANCES EXISTING BEFORE OCTOBER 1,
22 1991. -- A public employer other than the state that prior to
23 October 1, 1991 adopted by ordinance, resolution or charter
24 amendment a system of provisions and procedures permitting
25 employees to form, join or assist a labor organization for

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1 the purpose of bargaining collectively through exclusive
2 representatives may continue to operate under those
3 provisions and procedures provided the board has determined
4 that the system of provisions and procedures and the
5 continuing implementation thereof are substantially
6 equivalent to the provisions and procedures set forth in the
7 Public Employee Bargaining Act.

8 Section 27. EXISTING ORDINANCES PROVIDING FOR PUBLIC
9 EMPLOYEE BARGAINING.--A public employer other than the state
10 that subsequent to October 1, 1991 adopts by ordinance,
11 resolution or charter amendment a system of provisions and
12 procedures permitting employees to form, join or assist any
13 labor organization for the purpose of collective bargaining
14 through exclusive representatives freely chosen by its
15 employees may operate under those provisions and procedures
16 rather than those set forth in the Public Employee
17 Bargaining Act; provided that the employer shall comply with
18 the provisions of Sections 8, 9, 10, 11 and 12 of that act
19 and provided the following provisions and procedures are
20 included in each ordinance, resolution or charter amendment:

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

24 B. procedures for the identification of
25 appropriate bargaining units, certification elections and

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1 decertification elections equivalent to those set forth in
2 the Public Employee Bargaining Act;

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

5 D. the right of an exclusive representative to
6 negotiate all wages, hours and other terms and conditions of
7 employment for public employees in the appropriate
8 bargaining unit;

9 E. the obligation to incorporate agreements
10 reached by the public employer and the exclusive
11 representative into a collective bargaining agreement;

12 F. a requirement that grievance procedures
13 culminating with binding arbitration be negotiated;

14 G. a requirement that payroll deduction for the
15 exclusive representative's membership dues be negotiated if
16 requested by the exclusive representative;

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

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

24 Section 28. SEVERABILITY. -- If any part or application
25 of the Public Employee Bargaining Act is held invalid, the

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1 remainder or its application to other situations or persons
2 shall not be affected.

3 Section 29. EFFECTIVE DATE. -- The effective date of the
4 provisions of this act is July 1, 2001.

5 - 32 -