

HOUSE BILL 447

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

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; 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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