Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2191

Introduced by

Senators C. Nelson, O'Connell

Representatives Fairfield, S. Kelsh, Maragos

A BILL for an Act to provide for rights of organization and representation of state employees, collective bargaining negotiations between the state of North Dakota and its employees, establishment of a state employment relations board, and public employment relations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Arbitration" means the procedure whereby the parties involved in a labor dispute over the interpretation of application of an existing collective bargaining agreement submit their differences to a third party for a final and binding decision.
2. "Bargaining unit" means a group of state employees designated by the state employment relations board as appropriate for representation by an employee organization for purposes of collective bargaining.
3. "Board" means the state employment relations board established by section 5 of this Act.
4. "Collective bargaining" means the performance of the mutual obligation of an employer through its designated representatives and the exclusive representative to confer and negotiate in good faith with respect to wages, hours, terms, and other conditions of employment, and to execute a written contract incorporating any agreements reached.
5. "Confidential employee" means an employee who, in the regular course of the employee's duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who in the regular course of the employee's duties has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies.

6. "Decertification" means the withdrawal by the board of an employee organization's official designation as exclusive representative following a decertification election that shows that exclusive representative no longer has the support of a majority of the members in a bargaining unit.
7. "Employee" means any individual employed by the state, including supervisors, but excluding elected officials; executive heads of a department; appointed members of boards or commissions; employees of any agency, board, or commission created by this Act; managerial employees; and confidential employees.
8. "Employee organization" means any organization that admits to membership employees and has a primary purpose of representing these employees in collective bargaining. The term includes any person acting as an officer, representative, or agent of the organization.
9. "Employer" means the state of North Dakota or any agency of the state, colleges and universities supported in whole or in part by public funds, and quasi-public corporations.
10. "Exclusive representative" means the employee organization that has been designated by the board as the representative of a majority of employees in a bargaining unit in accordance with the procedures contained in this Act.
11. "Governing body" means the North Dakota legislative assembly or any committee designated by the legislative council.
12. "Impasse" means the failure of the state employer and the exclusive representative to reach agreement in the course of collective bargaining.
13. "Managerial employee" means an individual who formulates labor relations policy on behalf of the employer, who responsibly directs the implementation of the policy, or who may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or who has a major role in personnel administration.
14. "Mediation" means a confidential effort by an impartial third party to assist in reconciling an impasse between the employer and the exclusive representative regarding wages, hours, terms, and conditions of employment.

15. "Professional employee" means any employee engaged in work predominantly intellectual and varied in character rather than routine mental, manual, mechanical, or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the result accomplished cannot be standardized in relation to a given period of time; and requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from apprenticeship or from training in the performance of routine mental, manual, or physical processes; or any employee who has completed the courses of specialized intellectual instruction and study prescribed in this subsection and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in this subsection.

16. "Strike" means concerted action in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. The term does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment which are abnormal to the place of employment.

17. "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, evaluate, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or to effectively recommend that action, if the exercise of that authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes only those individuals who devote a preponderance of their employment time to exercising such authority.

SECTION 2. Employee rights - Exclusive representation.

1. Employees are protected in the exercise of the right of self-organization, and may form, join, or assist any employee organization, to bargain collectively through

representatives of their own choosing on questions of wages, hours, terms, and other conditions of employment, not excluded by section 4 of this Act, and to engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. Employees also have, and are protected in the exercise of, the right to refrain from participating in any of these concerted activities.

2. An employee organization designated by the board as the representative of the majority of employees in a bargaining unit in accordance with this chapter or recognized by an employer as the representative of the majority of employees in a bargaining unit is the exclusive representative for the employees of the unit for the purpose of collective bargaining with respect to rates of wages, hours, terms, and other conditions of employment not excluded by section 4 of this Act.
3. An employee organization designated as the exclusive representative in accordance with this Act is responsible for representing the interests of all employees in the unit.
4. The collective bargaining agreement must contain a provision that authorizes the employer to deduct the periodic dues of members of the exclusive representative upon presentation of a written deduction authorization by the employee.
5. Only the exclusive representative may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of employee organization dues. The payments must be paid to the exclusive representative. The deductions may only be made upon an employee's written authorization and continued until revoked in writing or until the termination date of an applicable collective bargaining agreement. The authorization must be irrevocable unless written notice of termination by the employee is given to the employer and the employee organization within thirty days prior to the expiration of the collective bargaining agreement.

SECTION 3. Duty to bargain.

1. An employer and the exclusive representative shall bargain collectively.

2. For the purpose of this Act, "bargain collectively" means the performance of the mutual obligation of the employer or the employer's designated representative and the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, terms, and other conditions of employment, not excluded by section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but the obligation does not compel either party to agree to a proposal or require the making of a concession.

3. The duty to bargain collectively also includes an obligation to negotiate over any matter with respect to wages, hours, terms, and other conditions of employment. If any other law pertains, in part, to a matter affecting the wages, hours, terms, and other conditions of employment, that law may not be construed as limiting the duty to bargain collectively and to enter into collective bargaining agreements containing clauses that either supplement, implement, or relate to the effect of the provisions in other laws.

SECTION 4. Management rights. Employers may not be required to bargain over matters of inherent managerial policy which include areas of discretion or policy such as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, and direction of employees. Employers, however, shall bargain collectively with regard to policy matters directly affecting wages, hours, terms, and other conditions of employment as well as the impact upon request by employee representatives.

SECTION 5. State employment relations board.

1. The state employment relations board has jurisdiction over collective bargaining matters between employee organizations and state employers.

2. The board consists of three members appointed by the governor, with the advice and consent of the senate. The governor shall appoint to the board only persons who have experience in public sector labor relations, in teaching labor or employment relations, or in administering executive orders or regulations applicable to labor or employment relations. The governor shall designate one

member to serve as the chairman of the board. The chairman must initially be appointed for a term of two years. The second member shall serve for a term of three years, and the third member shall serve a term of four years. Each subsequent member must be appointed for a term of four years. Upon expiration of the term of office of any appointed member, that member continues to serve until a successor is appointed and available. In case of vacancy, a successor must be appointed to serve for the unexpired portion of the term. The terms of members commence on the fourth Monday in January of the year they are appointed except that if the senate is not in session at the time the initial appointments are made, the governor shall make temporary appointments in the manner successors are appointed to fill vacancies. A temporary appointment remains in effect no longer than twenty calendar days after the commencement of the upcoming session of the legislative assembly.

3. Members of the board are entitled to receive a per diem payment for their services equal to that paid to members of the legislative assembly.

4. No member may hold any other public office or be employed as a labor or management representative by the state or any political subdivision of the state or in any state or local government department or agency, or actively represent or act on behalf of an employer or an employee organization or an employer in labor relations matters. Any member of the board may be removed from office by the governor for inefficiency, neglect of duty, misconduct, or malfeasance in office, and for no other cause, and only upon notice and hearing.

6. The board, at the end of each fiscal year, shall make a written report to the governor and the legislative assembly, stating in detail the work it has done in hearing and deciding cases and otherwise.

7. The board or its authorized designees shall conduct elections to determine whether an employee organization has majority status; investigate and attempt to resolve or settle charges of unfair labor practices; determine bargaining units; and maintain a state employees mediation and arbitration roster. The board members shall sign and report in full an opinion in every case that they decide.

8. The board may appoint or employ employees as it deems necessary to perform its functions. The board shall prescribe the duties and qualifications of persons appointed and, subject to legislative appropriation, fix their compensation and provide for reimbursement of expenses incurred in the performance of their duties at rates authorized state officers and employees. The board shall exercise general supervision over all its employees.
9. The board has final authority in respect to complaints brought pursuant to this Act.

SECTION 6. Elections - Recognition.

1. A petition may be filed with the board by an employee or group of employees or any employee organization acting in their behalf, demonstrating that thirty percent of the employees in a bargaining unit wish to be represented for the purposes of collective bargaining by an employee organization as exclusive representative, or asserting that the employee organization that has been certified or is currently recognized by the employer as the exclusive representative is no longer the representative of the majority of the employees in the unit.
2. A petition may be filed with the board by any employee organization that has presented to an employer a claim that the organization be recognized as the representative for a majority of the employees who have cast their ballots in an election in a bargaining unit.
3. The board shall investigate a petition filed under subsection 1 or 2, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. The hearing must be held at the offices of the board or any other location the board determines appropriate. If the board finds upon the record of the hearing that a question of representation exists, the board shall direct an election in accordance with subsection 5. The election must be held not later than sixty days after the date the petition was filed unless contested matters submitted to the board, which have a material bearing upon the election process, have not yet been resolved.
4. If the employer does not voluntarily recognize an employee organization as the exclusive representative for a unit of employees, the board shall determine the majority representative of the employees in an appropriate collective bargaining

unit by conducting a secret ballot election. Within seven days after the board issues its bargaining unit determination and direction of election or the execution of a stipulation for the purpose of a consent election, the employer shall submit to the employee organization the complete names and addresses of those employees who are determined by the board to be eligible to participate in the election. When the board has determined that an employee organization has been fairly and freely chosen by a majority of employees voting in the bargaining unit, it shall certify the organization as the exclusive representative. If the board determines that a majority of the employees voting in an appropriate unit has fairly and freely chosen not to be represented by an employee organization, it shall so certify. The board may also revoke the certification of an employee organization as exclusive representative which has been found, by a secret ballot election, to be no longer the majority representative.

5. The board may not conduct an election in any bargaining unit or any subdivision of a bargaining unit within which a valid election has been held in the preceding twelve-month period. The board shall determine who is eligible to vote in an election and shall adopt rules governing the conduct of the election or conduct affecting the results of the election. The board shall include on a ballot in a representation election a choice of "no representation". In any election where none of the choices on the ballot receives a majority, a runoff election must be conducted between the two employee organizations receiving the largest number of valid votes cast in the election. An employee organization that receives a majority of the votes cast in an election must be certified by the board as exclusive representative of all employees in the unit.

6. Nothing in this or any other law prohibits recognition of an employee organization as the exclusive representative by an employer by mutual consent of the employer and the employee organization, provided the employee organization represents a majority of the employees in a bargaining unit. Any employee organization that is designated or selected by the majority of employees in a unit of the employer having no other recognized or certified representative as their representative for purposes of collective bargaining may request recognition by the employer in

writing. The employer shall post the request for a period of at least twenty days following its receipt on bulletin boards or other places used or reserved for employee notices.

7. Within the twenty-day period any other interested employee organization may petition the board in the manner specified by rules of the board if the interested employee organization has been designated by at least ten percent of the employees in a bargaining unit that includes all or some of the employees in the unit recognized by the employer. In that event, the board shall proceed with the petition in the manner provided by subsection 1.

8. No election may be directed by the board in any bargaining unit where there is in force a valid collective bargaining agreement. The board, however, may process an election petition filed not earlier than one hundred eighty days and not later than one hundred fifty days before the expiration of a valid collective bargaining agreement, or extension of the agreement, and may further refine by rule or decision, the implementation of this provision. No collective bargaining agreement bars an election upon the petition of persons not parties to the agreement if more than three years have elapsed since the effective date of the agreement.

9. An order of the board dismissing a representation petition, determining and certifying that an employee organization has been fairly and freely chosen by a majority of employees in a bargaining unit, or determining and certifying that an employee organization has not been fairly and freely chosen by a majority of employees in the bargaining unit is a final order.

SECTION 7. Unit determination.

1. The board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon factors including community of interests; the state administrative structure; negative effect of overfragmentation; wages, hours, terms, and other working conditions of the employees; historical pattern of board recognition; and the desires of the employees.

2. Bargaining units may be as large as is reasonable and may be interdepartmental. Care must be exercised by the board to ensure against proliferation of smaller units or overfragmentation of specialized units.
3. The board may determine a unit to be the bargaining unit in a particular case even though another unit might also be appropriate.
4. A single bargaining unit determined by the board may not include both supervisory and nonsupervisory employees.
5. The board may not decide that any unit is appropriate if the unit includes both professional and nonprofessional employees, unless a majority of the professionals vote for inclusion in the unit.
6. Designation of a bargaining unit by the board is a final order. An appeal may be filed only within seven working days after the issuance of the final order.

SECTION 8. Grievance procedure. The collective bargaining agreement negotiated between the employer and the exclusive representative must contain a grievance resolution procedure that applies to all employees in the bargaining unit and provides for final and binding arbitration of disputes concerning the administration or interpretation of the agreement. Nothing in this Act precludes the voluntary use of other impasse resolution mechanisms such as mediation, factfinding, or facilitation, by mutual agreement of the parties. The costs of the procedures must be born equally by the employer and the employee organization, unless the parties agree to the contrary.

SECTION 9. Unfair labor practices.

1. It is an unfair practice for an employer or its agents:
   a. To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in this Act or to dominate or interfere with the formation, existence, or administration of any employee organization or contribute financial or other support to it. An employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
   b. To discriminate in regard to hiring or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any employee organization.

c. To discharge or otherwise discriminate against an employee because that employee has signed or filed an affidavit, petition, or charge or provided any information or testimony under this Act.

d. To refuse to bargain collectively in good faith with an employee organization that is the exclusive representative of employees in a bargaining unit, including the discussing of grievances with the exclusive representative.

e. To violate any rule adopted by the board relating to the conduct of representation elections or the conduct affecting the representation elections.

f. To expend or cause the expenditure of public funds to any external person in any attempt to influence the outcome of representational elections held pursuant to this Act. This subsection does not limit an employer's right to internally communicate with its employees as provided in subsection 3; to be presented on any matter pertaining to unit determinations, unfair labor practice charges, or preelection conferences in any formal or informal proceeding before the board; or to seek or obtain advice from legal counsel.

g. To lockout employees.

2. It is an unfair labor practice for an employee organization or its agents:

a. To restrain or coerce employees in the exercise of the rights guaranteed in this Act. This subdivision does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership.

b. To restrain or coerce an employer in the selection of the employer's representatives for the purpose of collective bargaining or the settlement of grievances.

c. To cause, or attempt to cause, an employer to discriminate against an employee in violation of subdivision b of subsection 1.

d. To refuse to bargain collectively in good faith with an employer if it has been designated in accordance with this Act as the exclusive representative of employees in a bargaining unit.

e. To violate any rule adopted by the board relating to the conduct of representation elections or the conduct affecting the representation elections.

f. To discriminate against any employee because the employee has signed or filed an affidavit, petition, or charge or provided any information or testimony under this Act.

g. To picket or cause to be picketed, or threaten to picket, any employer with the objective of forcing or requiring an employer to recognize or bargain with an employee organization or the representative of its employees, or forcing or requiring the employees of an employer to accept or select the employee organization as their collective bargaining representative, unless the employee organization is currently certified as the representative of the employees:

(1) Where the employer has lawfully recognized in accordance with this Act any employee organization and a question concerning representation may not appropriately be raised under section 7 of this Act.

(2) Where within the preceding twelve months a valid election under this Act has been conducted.

h. To engage in a strike, work stoppage, or slowdown.

3. The expression or dissemination of any views, argument, or opinion by the employer, employee, or employee organization, whether in written, printed, graphic, or visual form, does not constitute and is not evidence of an unfair labor practice under this Act if the expression contains no threat of reprisal or force or promise of benefit.

SECTION 10. Unfair labor practices procedure. The board shall follow this procedure with respect to unfair labor practices:

1. Whenever it is charged that any person has engaged in or is engaging in any unfair labor practice, the board or any agent designated by the board, shall conduct an investigation of the charge. If after the investigation the board finds that an unfair labor practice has occurred, the board shall issue a complaint and cause to be served upon the person a complaint stating the charges, accompanied by a notice of hearing before the board or a board member designated by the board, or before a qualified hearing officer designated by the board at the offices of the board or any other location as the board deems appropriate, not less than five days after serving

of the complaint. No complaint may be issued based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the board and the service of a copy upon the person against whom the charge is made, unless the aggrieved person did not reasonably have knowledge of the alleged unfair labor practice or was prevented from filing the charge by reason of service in the armed forces, in which event the six-month period must be computed from the date of the person's discharge. Any complaint may be amended by the member or hearing officer conducting the hearing for the board members or hearing officers at any time before issuance of any order based on the complaint. The person who is the subject of the complaint has the right to file an answer to the original or amended complaint and to appear in person or by a representative and give testimony at the place and time fixed in the complaint. In the discretion of the member or hearing officer conducting the hearing for the board, any other person may be allowed to intervene in the proceeding and to present testimony. In any hearing conducted by the board, neither the board nor the member or agent conducting the hearing is bound by the formal rules of evidence applicable to courts, except as to the rules of privilege recognized by law.

2. If any party willfully fails or neglects to appear, testify, or produce books, papers, and records pursuant to the issuance of a subpoena by the board, the board may apply to a court of competent jurisdiction to request the party be ordered to appear before the board to testify or produce the requested evidence.

3. Any testimony taken by the board, a member designated by the board, or a hearing officer thereof, must be reduced to writing and filed with the board. A full and complete record must be kept of all proceedings before the board, and all proceedings must be transcribed by a reporter appointed by the board. The party on whom the burden of proof rests is required to sustain such burden by a preponderance of the evidence. If, upon a preponderance of the evidence taken, the board is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served upon the person an order requiring the person to cease and desist from the unfair labor practice, and to take such affirmative

action, including reinstatement of public employees with or without backpay, as will effectuate the policies of this Act. The order may further require the person to make reports from time to time, and demonstrate the extent to which the person has complied with the order. If there is no preponderance of evidence to indicate to the board that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

4. Until the record in a case has been filed in court, the board at any time, upon reasonable notice, and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

5. Judicial review is not available for the purpose of challenging a final order issued by the board pursuant to section 6 of this Act for which review has been petitioned pursuant to subsection 7 of section 6 of this Act. The board in proceedings under this section may obtain an order of the court for the enforcement of its order.

6. Whenever it appears any person has violated a final order of the board issued pursuant to this section, the board shall commence an action in the name of the people of the state by petition alleging the violation, attaching a copy of the order to the board, and requesting the issuance of an order directing the person, the person's officers, agents, servants, successors, and assigns to comply with the order of the board. The court may grant or refuse, in whole or in part, the relief sought; provided, the court may stay an order of the board pending disposition of the proceedings. The court may punish a violation of its order as in civil contempt.

7. The proceedings provided in subsection 6 may be commenced in any district court.

8. The board, upon issuance of an unfair labor practice complaint alleging that a person has engaged in or is engaging in an unfair labor practice, may petition a district court for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice to be served upon any person, and upon service has jurisdiction to grant to the board the temporary relief or restraining order as the court determines proper.

9. If an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and the agreement contains a grievance

procedure with binding arbitration as its terminal step, the board may defer the resolution of the dispute to the grievance and arbitration procedure contained in the agreement. The board may exercise concurrent jurisdiction in those matters where an order of the board is sought in aid of the arbitration process or an interim order is necessary to preserve the status quo pending completion of the grievance arbitration process.

SECTION 11. Negotiations.

1. To begin negotiations, either party may serve notice upon the board and the other party setting forth the names and addresses of the parties and offering to meet. Collective bargaining for an initial contract must commence as soon as practicable following certification. Thereafter, notification for collective bargaining for contracts must be given at least nine months before expiration of the current collective bargaining agreement. The employer and the exclusive representative shall provide for and make every reasonable effort to conclude negotiations, including provisions for an effective date, at a time to coincide as nearly as possible with the period during which the legislative assembly may act on the operating budget of the employers.
2. A request for funds necessary to implement an agreement requiring the approval of the legislative assembly must be submitted by the employer to the governing body, within ten days of agreement. If the legislative assembly is in session, each house of the legislative assembly shall vote to approve or reject the request within thirty legislative days of the date of submission to the legislative assembly. If the legislative assembly is not in session when the request is received, then the matter must be submitted to a committee designated by the legislative council for resolution within thirty calendar days. The request is deemed approved if the governing body fails to vote to approve or reject the request within the time allowed. The period does not begin until receipt by the governing body of the request for funds described above. If the governing body rejects any part of the submission of the employer, either party may reopen all or part of the entire agreement.

3. Parties may mutually agree to extend the time limits provided in sections 11 through 13 of this Act.

4. a. Any agreement reached between the employer and the exclusive representative must be in writing. An agreement must contain a procedure for resolving disputed interpretations and application of agreements; if the parties are unable to agree to such a procedure, the provisions of this Act relating to binding arbitration apply to the resolution of any disputed interpretations and application of agreements.

   b. If an agreement is not ratified by the employer or by a majority vote of the representative organization, the agreement must be returned to the negotiators for further negotiation. Nothing in this section limits the validity of an arbitration order under this Act.

   c. The agreement must be executed by the employer and the exclusive representative in accordance with the terms of the agreement between the parties and in accordance with any arbitration order entered under this Act.

   d. If there is a conflict between a written agreement and any rule previously adopted by the employer, the terms of the agreement prevail.

   e. An agreement is valid and enforceable in district court.

SECTION 12. Mediation.

1. At least one hundred fifty days before the expiration of a current state collective bargaining agreement, the parties shall notify the board of the status of negotiations. At that time the board shall assign a mediator upon request of either party or upon its own motion. Alternatively, the parties may select their own mediator.

2. The board shall establish a state employees mediation and arbitration roster, the services of which must be available to employers and to employee organizations upon request of the parties. The members of the roster must be appointed by majority vote of the members of the board. Members must be impartial, competent, and shall qualify by taking and subscribing to an oath or affirmation of office. The function of the mediator is to communicate with the employer and exclusive representative of their representatives and to endeavor to bring about an

amicable and voluntary settlement. Compensation of roster members for services performed as mediators must be paid by the board. The board may adopt rules setting compensation levels for members of the roster and establishing procedures for suspension or dismissal of mediators for good cause.

3. A mediator in a mediated labor dispute must be selected by the board from among the members of the roster. Alternatively, the parties may select their own mediator.

4. Nothing in this Act or any other law prohibits the use of other mediators selected by the parties for the resolution of disputes over interpretation or application of the terms or conditions of the collective bargaining agreements between an employer and an employee organization.

SECTION 13. Arbitration.

1. If any dispute has not been resolved within fifteen days after the first meeting of the parties and the mediator, or within another time limit as may be mutually agreed upon by the parties, either the employee organization or employer shall make a written request for arbitration, and shall submit a copy of the request to the board.

2. Within seven days of the request of either party, the board shall select from the state employees mediation and arbitration roster five persons as nominees for arbitrator. Within five days after the selection, each party may preemptively strike the names of two of the nominees. The remaining nominee must be the arbitrator. Alternatively, the parties may select their own arbitrator.

3. The arbitrator shall call a hearing to begin within fifteen days of selection of the arbitrator and give reasonable notice of the time and place of the hearing. The hearing must be held at the offices of the board or at any other location as the board deems appropriate. The arbitrator shall preside over the hearing and shall take testimony. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. Unless agreed to by the parties, technical rules of evidence may not be strictly applied, and the arbitrator shall accord appropriate weight to evidence as is mandated by the totality of the circumstances. A verbatim record of the proceedings must be made and the arbitrator shall arrange for the necessary recording services. Transcripts may be ordered at the expense of the party ordering them, but the transcripts are not

necessary for a decision by the arbitrator. The expense of the proceedings, including a fee for the arbitrator established in advance by the board, must be born equally by each party to the dispute. The hearing conducted by the arbitrator may be adjourned from time to time, but unless otherwise agreed by the parties, must be concluded within thirty days of the time of its commencement. Majority actions and rulings constitute the actions and rulings of the arbitrator. Arbitration proceedings under this section may not be interrupted or terminated by reason of any unfair labor practice charge filed by either party at any time, unless it is alleged that said unfair labor practice has resulted in interference with the arbitration process, the presentation or maintenance of evidence, or the availability or integrity of a witness.

4. The arbitrator may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements, and documents as may be deemed material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may invoke the aid of district court. Any failure to obey the order may be punished by the court as contempt.

5. At any time before the rendering of an award, the arbitrator may remand the dispute to the parties for further collective bargaining for a period not to exceed two weeks. If the dispute is remanded for further collective bargaining the time provisions of this Act must be extended for a time period equal to that of the remand. The arbitrator shall notify the board of the remand.

6. The arbitrator, within thirty days after the conclusion of the hearing, or any further additional periods to which the parties agree, shall promulgate a written opinion and shall mail or otherwise deliver a copy to the parties and their representatives and to the board. Findings, opinions, and orders on all issues must be based upon the applicable factors prescribed in subsection 7.

7. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or

amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitrator shall base the findings, opinions, and order upon the following factors, as applicable:

a. The lawful authority of the employer.

b. Stipulations of the parties.

c. The interests and welfare of the employees.

d. Comparison of the wages, hours, terms, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, terms, and conditions of employment of other employees performing similar services in public employment and private employment, and internal and external equity principles.

e. The change in consumer prices for goods and services, commonly known as the cost of living.

f. The total compensation presently received by the employees.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, but may not be based upon evidence or considerations that postdate the close of the evidentiary phase of the proceedings.

h. Any other factors that are normally or traditionally taken into consideration in the determination of wages, hours, terms, and other conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration, or otherwise between the parties, in public service or private employment.

8. Arbitration procedures must be deemed to be initiated by the filing of a letter requesting arbitration as required under subsection 1. Increases in rates of compensation awarded by the arbitrator may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, these limitations are inapplicable, and the awarded

increases may be retroactive to the commencement of the fiscal year, notwithstanding any other statute. At any time the parties, by stipulation, may amend or modify an award of arbitration.

9. Orders of arbitration are final and binding upon the employer and the designated employee organization unless rejected by the governing body as provided in subsection 12, except that the orders of the arbitrator are reviewable only for reasons that the arbitrator was without or exceeded its statutory authority; the order is arbitrary or capricious; or the order was procured by fraud, collusion, or other similar and unlawful means. A petition for review must be filed with the appropriate district court within thirty days following the issuance of the arbitration orders. The pendency of the proceedings for review does not automatically stay the order of the arbitrator.

10. During the pendency of proceedings before the arbitrator, existing wages, hours, terms, and other conditions of employment may not be changed by action of either party without the consent of the other but a party may so consent without prejudice to the party's rights or position under this Act.

11. Within ten working days of the filing of an arbitration order, the bargaining representative of the employer shall submit the order to the governing body with a statement setting forth the amount of funds necessary to implement the order.

12. The governing body shall review the monetary terms decided by the arbitrator. The governing body may return the matter to the parties for further bargaining if it determines by a majority vote, within thirty days of submission of the arbitration order, that there are insufficient funds for full implementation of said order. Failure of the governing body to act within the thirty-day period makes the award binding on all parties.

13. If the governing body of the employer votes to reject the arbitrator's decision, within thirty days the parties shall reconvene to negotiate a supplemental submission or the parties shall return to the arbitrator for further proceedings and issuance of a supplemental decision. All reasonable costs of the supplemental proceeding, including the exclusive representative's reasonable attorney's fees as established by the board, must be paid by the employer.

14. Notwithstanding this section, the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms, and other conditions of employment to an alternative form of impasse resolution.

SECTION 14. Appropriation by governing body. Notwithstanding any other law, the governing body shall appropriate whatever funds are required to comply with an arbitration order that has not been overridden.

SECTION 15. Act takes precedence.

1. In case of any conflict between this Act and any other law, executive order, or administrative rule relating to wages, hours, terms, and other conditions of employment and employment relations, this Act, or any collective bargaining agreement negotiated under this Act, prevails.
2. Except as provided in subsection 1, any collective bargaining contract between an employer and an employee organization executed pursuant to this Act supersedes any contrary laws, charters, ordinances, or rules relating to wages, hours, terms, and conditions of employment and employment relations adopted by the employer or its agents.

SECTION 16. Strikes. Strikes, work stoppages, slowdowns, or lockouts by employees and employers are prohibited.

SECTION 17. Prohibitions. Nothing in this Act may be construed to require an individual employee to render labor or service without the employee's consent, nor may anything in this Act be construed to make the quitting of labor by an individual employee an illegal act; nor may any court issue any process to compel the performance by an individual employee of labor or service without the employee's consent; nor may the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee be deemed a strike under this Act.

SECTION 18. Multiyear agreements. Employers and exclusive representatives may negotiate multiyear collective bargaining agreements pursuant to this Act.