

**SENATE BILL NO. 2293**

Introduced by

Senators Berg, O'Connell, Wogsland

Representatives Aarsvold, Rose

1 A BILL for an Act relating to organization and representation of political subdivision employees,  
2 collective bargaining negotiations between political subdivision employers and their employees,  
3 and the establishment of an employment relations board.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

- 6 1. "Appropriate bargaining unit" or "bargaining unit" means a group of employees  
7 designated by the board as appropriate for representation by an employee  
8 organization for purposes of collective bargaining.
- 9 2. "Arbitration" means the procedure by which the parties involved in a labor dispute  
10 over the interpretation of the application of an existing collective bargaining  
11 agreement submit their differences to a third party for a final and binding decision.
- 12 3. "Board" means the political subdivision employment relations board.
- 13 4. "Collective bargaining" means the performance of the mutual obligation of an  
14 employer through its designated representatives and the exclusive representative  
15 to confer and negotiate in good faith with respect to wages, hours, terms, and other  
16 conditions of employment, and to execute a contract incorporating any agreements  
17 reached.
- 18 5. "Confidential employee" means an employee who in the regular course of that  
19 employee's duties assists and acts in a confidential capacity to persons who  
20 formulate, determine, and effectuate management policies with regard to labor  
21 relations or who in the regular course of the employee's duties has authorized  
22 access to information relating to the effectuation or review of the employer's  
23 collective bargaining policies.

- 1           6. "Decertification" means the withdrawal by the board of an employee organization's  
2           official designation as exclusive representative following a decertification election  
3           which shows that the exclusive representative no longer has the support of a  
4           majority of the members in an appropriate bargaining unit.
- 5           7. "Employee" means any individual employed by an employer including a supervisor,  
6           but excluding an elected official; an executive head of a department; an appointed  
7           member of a board or commission; an employee of any agency, board, or  
8           commission created by this Act; a teacher and administrator as defined in section  
9           15-38.1-02; a managerial employee; and a confidential employee.
- 10          8. "Employee organization" means any organization that admits employees to  
11          membership and which has as a primary purpose the representation of those  
12          employees in collective bargaining. The term includes any person acting as an  
13          officer, representative, or agent of the organization.
- 14          9. "Exclusive representative" means the employee organization that has been  
15          designated by the board as the representative of a majority of employees in an  
16          appropriate bargaining unit in accordance with the procedures set out in this Act.
- 17          10. "Governing body" means the authority of the local government employer  
18          possessing legislative or policymaking responsibilities under state law.
- 19          11. "Impasse" means the failure of an employer and an exclusive representative to  
20          reach agreement in the course of collective bargaining.
- 21          12. "Managerial employee" means an individual who formulates policy on behalf of the  
22          employer, who responsibly directs the implementation of policy, who may  
23          reasonably be required on behalf of the employer to assist in the preparation for  
24          the conduct of collective negotiations and to administer collectively negotiated  
25          agreements, or who has a major role in personnel administration.
- 26          13. "Mediation" means an effort by an impartial third party to assist confidentially in  
27          reconciling an impasse between the employer and the exclusive representative  
28          regarding wages, hours, terms, and conditions of employment.
- 29          14. "Professional employee" means any employee engaged in work: (a)  
30          predominantly intellectual and varied in character rather than routine mental,  
31          manual, mechanical, or physical work; (b) involving the consistent exercise of

1 discretion and adjustment in performance; (c) of such a character that the output  
2 produced or result accomplished cannot be standardized in relation to a given  
3 period of time; (d) requiring advanced knowledge in a field of science or learning  
4 customarily acquired by a prolonged course of specialized intellectual instruction  
5 and study in an institution of higher learning or a hospital, as distinguished from a  
6 general academic education or from apprenticeship or from training in the  
7 performance of routine mental, manual, mechanical, or physical processes; or (e)  
8 under the supervision of a professional person upon completion of a course of  
9 specialized intellectual instruction and study to qualify to become a professional  
10 employee.

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

18 16. "Supervisory employee" means any employee, regardless of job description,  
19 having the authority to hire, transfer, suspend, lay off, recall, promote, discharge,  
20 assign, evaluate, reward, or discipline other employees, or having the responsibility  
21 to direct them or adjust their grievances, or effectively to recommend action if, in  
22 connection with the foregoing, the exercise of authority is not of a merely routine or  
23 clerical nature but requires the use of independent judgment. The term includes  
24 only those individuals who devote a preponderance of their employment time to  
25 exercising the described authority.

26 **SECTION 2. Employee rights - Exclusive representation.**

27 1. Employees are protected in the exercise of the right of self-organization and may  
28 form, join, or assist any employee organization to bargain collectively through  
29 representatives of their own choosing on questions of wages, hours, terms, and  
30 other conditions of employment, not excluded by section 4 of this Act, and to  
31 engage in other concerted activities not otherwise prohibited by law for the

- 1 purposes of collective bargaining or other mutual aid or protection, free from  
2 interference, restraint, or coercion. Employees also have, and are protected in the  
3 exercise of, the right to refrain from participating in any such concerted activities.
- 4 2. An employee organization designated by the board as the representative of the  
5 majority of employees in an appropriate unit in accordance with the procedures  
6 herein or recognized by an employer as the representative of the majority of  
7 employees in an appropriate unit is the exclusive representative for the employees  
8 of that unit for the purpose of collective bargaining with respect to wages, hours,  
9 terms, and other conditions of employment not excluded by section 4 of this Act.
- 10 3. An employee organization designated as an exclusive representative is  
11 responsible for representing the interests of all employees in the unit.
- 12 4. The collective bargaining agreement must contain a provision that authorizes the  
13 employer to deduct the periodic dues of members of the exclusive representative  
14 upon presentation of a written deduction authorization by the employee.
- 15 5. Only the exclusive representative may negotiate provisions in a collective  
16 bargaining agreement providing for the payroll deduction of employee organization  
17 dues. These payments must be paid to the exclusive representative. Any  
18 deductions may only be made upon an employee's written authorization and must  
19 be continued until revoked in writing or until the termination date of an applicable  
20 collective bargaining agreement. The authorization is irrevocable unless written  
21 notice of termination by the employee is given to the employer and the employee  
22 organization within thirty days before the expiration of the collective bargaining  
23 agreement.
- 24 6. Nothing in this Act prevents an employee from presenting a grievance to the  
25 employer and having the grievance heard and settled without the intervention of an  
26 employee organization, if the exclusive bargaining representative is afforded the  
27 opportunity to be present at that conference and if any settlement made is not  
28 inconsistent with the terms of any agreement in effect between the employer and  
29 the exclusive bargaining representative. With respect to processing of any  
30 grievance, an employee who maintains membership in the employee organization

1 designated as the exclusive representative for the employee's appropriate unit is  
2 eligible for representation by the exclusive representative at no charge.

3 **SECTION 3. Duty to bargain.** An employer and the exclusive representative shall  
4 bargain collectively. Collective bargaining may take place through meeting at reasonable times,  
5 including meetings in advance of the budgetmaking process, to negotiate an agreement with  
6 respect to wages, hours, terms, and other conditions of employment, to resolve questions  
7 arising from the negotiations, or to execute a written contract incorporating any agreement  
8 reached if requested by either party. The obligation to collectively bargain does not compel  
9 either party to agree to a proposal and does not require the making of a concession. If any  
10 other law pertains, in part, to a matter affecting the wages, hours, terms, and other conditions of  
11 employment, the other law may not be construed as limiting the duty to bargain collectively and  
12 to enter into collective bargaining agreements containing clauses that either supplement,  
13 implement, or relate to the effect of the provisions in other laws.

14 **SECTION 4. Management rights.** An employer may not be required to bargain over  
15 matters of inherent managerial policy, including areas of discretion or policies such as the  
16 functions of the employer, standards of service, its overall budget, the organizational structure  
17 and selection of new employees, and direction of employees. An employer, however, is  
18 required to collectively bargain with regard to policy matters directly affecting wages, hours,  
19 terms, and other conditions of employment upon request by employee representatives.

20 **SECTION 5. Political subdivision employment relations board.** The board has  
21 jurisdiction over collective bargaining matters between employee organizations and employers.  
22 The governor shall appoint the three members to the board. Only persons who have  
23 experience in public sector labor relations, in teaching labor or employment relations, or in  
24 administering executive orders or regulations applicable to labor or employment relations may  
25 be appointed to the board. The governor shall designate one member to serve as chairman of  
26 the board. The chairman initially must be appointed for a term of two years, one member shall  
27 serve a term of three years, and one member shall serve a term of four years. Upon expiration  
28 of the term of office of any member, that member shall continue to serve until a successor is  
29 appointed and available. In case of vacancy, the governor shall appoint a successor to serve  
30 for the unexpired portion of the term. The terms of members commence on the fourth Monday

1 in January of the year they are appointed. A vacancy does not impair the rights of the  
2 remaining members to exercise the powers of the board.

3 **SECTION 6. Duties of the board.**

- 4 1. A member of the board may not hold any other public office or be employed as a  
5 labor or management representative by the state or any political subdivision of the  
6 state or of any department or agency of the state, or actively represent or act on  
7 behalf of any employer or an employee organization on an employer and labor  
8 relations matter. A member of the board may be removed from office by the  
9 governor only for inefficiency, neglect of duty, misconduct, or malfeasance in office  
10 and must be given notice and opportunity for hearing.
- 11 2. The board, at the end of every fiscal year, shall make a biennial report to the  
12 governor and the office of management and budget in the manner prescribed in  
13 section 54-06-04, stating in detail the work it has done, including hearing and  
14 deciding cases.
- 15 3. The board or its authorized designees shall investigate and attempt to resolve or  
16 settle charges of unfair labor practices; determine bargaining units; maintain an  
17 employees' mediation and arbitration roster; hold hearings in order to carry out its  
18 functions; and issue orders as necessary to effectuate the rulings of the board.  
19 The board shall sign and report in full an opinion in every case decided by the  
20 board.
- 21 4. The board may appoint or employ a director, attorneys, hearing officers, mediators,  
22 arbitrators, and other employees as may be necessary to perform its functions.  
23 The board shall prescribe the duties and qualifications of persons appointed, fix  
24 their compensation, and provide for reimbursement of actual and necessary  
25 expenses incurred in the performance of their duties or provide for reimbursement  
26 pursuant to established state rates, whichever is less. The board shall exercise  
27 general supervision over all its employees.
- 28 5. The board has final authority with respect to complaints brought pursuant to this  
29 Act.

30 **SECTION 7. Elections - Recognition.**

- 1           1.    When a petition has been properly filed by an employee or group of employees, or  
2                    any employee organization acting in their behalf, the employee organization that is  
3                    currently recognized by the employer as the exclusive representative is no longer  
4                    the representative of the majority of the employees in the unit; or by an employer  
5                    alleging that one or more employee organizations have presented to the employer  
6                    a claim that they be recognized as the representative of a majority of the  
7                    employees in an appropriate unit, the board shall investigate the petition or claim,  
8                    and if it has reasonable cause to believe that a question of representation exists,  
9                    the board shall provide for an appropriate hearing upon due notice. The hearing  
10                   must be held at the offices of the board or at another location as appropriate. If the  
11                   board finds upon the record of the hearing that a question of representation exists,  
12                   it shall direct that an election be held not later than one hundred twenty days after  
13                   the date the petition was filed.
- 14           2.    When the employer does not voluntarily recognize an employee organization as  
15                    the exclusive representative for a unit of employees, within seven days after the  
16                    board issues its bargaining unit determination and direction of election, or the  
17                    execution of a stipulation for the purpose of a consent election, the employer shall  
18                    submit to the employee organization the complete names and addresses of those  
19                    employees determined by the board to be eligible to participate in the election.  
20                    When the board has determined that an employee organization has been fairly and  
21                    freely chosen by a majority of employees voting in an appropriate unit, it shall  
22                    certify that organization as the exclusive representative.
- 23           3.    The board, upon receipt of information from an employer, shall determine who may  
24                    vote in an election and shall establish rules governing the conduct of the election or  
25                    conduct affecting the results of the election. An employee organization that  
26                    receives a majority of the votes cast in an election must be certified by the board  
27                    as exclusive representative of all employees in the unit.
- 28           4.    Any employee organization that is designated or selected by the majority of  
29                    employees in a unit of the employer having no other recognized or certified  
30                    representative for purposes of collective bargaining may request recognition by the  
31                    employer in writing. The employer shall post the request for a period of at least

1           twenty days following its receipt on bulletin boards or other places used or  
2           reserved for employee notices.

3           5. Within the twenty-day period, any other interested employee organization may  
4           petition the board in the manner specified by the rules of the board, if the interested  
5           employee organization has been designated by at least ten percent of the  
6           employees in an appropriate bargaining unit that includes all or some of the  
7           employees in the unit recognized by the employer. In that event, the board shall  
8           proceed with the petition in the same manner as provided by subsection 1. An  
9           election may not be directed by the board in any bargaining unit where there is in  
10          force a valid collective bargaining agreement. The board, however, may process  
11          an election petition filed between ninety days and sixty days before the expiration  
12          of the date of a valid collective bargaining agreement, or its extension, and may  
13          further refine, by rule or decision, the implementation of this subsection. No  
14          collective bargaining agreement bars an election upon the petition of persons not  
15          parties to the election where more than three years have elapsed since the  
16          effective date of the agreement.

17          **SECTION 8. Unit determination.**

18          1. The board shall adopt rules and establish procedures and hearings for the  
19          determination of appropriate bargaining units, to assure employees the fullest  
20          freedom in exercising the rights guaranteed by this Act.  
21          2. Bargaining units may be as large as is reasonable and may be interdepartmental.  
22          3. The board may determine a unit to be the appropriate bargaining unit in a particular  
23          case even though another unit might also be appropriate.  
24          4. A single bargaining unit determined by the board may not include both supervisors  
25          and nonsupervisors.  
26          5. The board may not decide that any unit is appropriate if the unit includes both  
27          professional and nonprofessional employees, unless a majority of the professionals  
28          vote for inclusion in the unit.

29          **SECTION 9. Grievance procedure.** The collective bargaining agreement negotiated  
30          between the employer and the exclusive representative must contain a grievance resolution  
31          procedure that applies to all employees in the bargaining unit.



1           **SECTION 10. Unfair labor practices.**

2           1. It is an unfair labor practice for an employer or its agents:

3           a. To interfere with, restrain, or coerce employees in the exercise of the rights  
4           guaranteed by this Act, or to dominate or interfere with the formation,  
5           existence, or administration of any employee organization or contribute  
6           financial or other support to it; provided, an employer may not be prohibited  
7           from permitting employees to confer with the employer during working hours  
8           without loss of time or pay.

9           b. To discriminate in regard to hire or tenure of employment or any term or  
10          condition of employment in order to encourage or discourage membership in  
11          any employee organization.

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

15          d. To refuse to bargain collectively in good faith with the employee organization  
16          that is the exclusive representative of employees in an appropriate unit.

17          e. To violate any of the rules adopted by the board with jurisdiction over them  
18          relating to the conduct of representation elections or conduct affecting the  
19          representation elections.

20          f. To expend public funds to any external agent, individual, firm, agency,  
21          partnership, or association in any attempt to influence the outcome of a  
22          representational election held pursuant to this Act; provided, that this  
23          subsection does not limit an employer's right to internally communicate with  
24          its employees, to be represented on any manner pertaining to unit  
25          determinations, unfair labor practice charges, or preelection conferences in  
26          any formal or informal proceeding before the board, or to seek or obtain  
27          advice from legal counsel.

28          g. To lock out employees.

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

30          a. To restrain or coerce employees in the exercise of the rights guaranteed by  
31          this Act, but this subdivision does not impair the right of an employee

- 1 organization to prescribe its own rules with respect to the acquisition or  
2 retention of membership within that organization.
- 3 b. To restrain or coerce an employer in the selection of its representative for the  
4 purpose of collective bargaining or the settlement of a grievance.
- 5 c. To cause, or attempt to cause, an employer to discriminate against an  
6 employee.
- 7 d. To refuse to bargain collectively in good faith with an employer if the  
8 employee organization has been designated as the exclusive representative  
9 of employees in an appropriate unit.
- 10 e. To violate any of the rules adopted by the board relating to the conduct of  
11 representation election or the conduct affecting the representation election.
- 12 f. To discriminate against any employee because the employee has signed or  
13 filed an affidavit, petition, or charge, or provided any information or testimony  
14 under this Act.
- 15 g. To picket, cause to be picketed, or threaten to picket any employer where the  
16 objective is to force or require an employer to recognize or bargain with an  
17 employee organization or the representative of its employees, or to force or to  
18 require the employees of the employer to accept or select the employee  
19 organization as its collective bargaining representative, unless the employee  
20 organization is currently certified as the representative of such employees:
- 21 (1) Where the employer has lawfully recognized in accordance with this Act  
22 any employee organization and a question concerning representation  
23 may not appropriately be raised under this Act; or
- 24 (2) Where within the preceding twelve months a valid representation  
25 election has been conducted under section 7 of this Act.
- 26 3. The expression of a view, argument, or opinion, or the dissemination thereof by the  
27 employer, employee, or employee organization, whether in written, printed,  
28 graphic, or visual form, may not constitute or be evidence of an unfair labor  
29 practice under this Act, if that expression contains no threat of reprisal or force, or  
30 promise of benefit.

1           **SECTION 11. Unfair labor practices procedures.** The board shall deal with unfair  
2 labor practices in the following manner:

- 3           1. Whenever it is charged that any person has engaged in or is engaging in any unfair  
4 labor practice, the board or any agent designated by the board for such purposes,  
5 shall conduct an investigation of the charge. If, after such investigation the board  
6 finds that an unfair labor practice has occurred, the board shall issue a complaint  
7 and cause to be served upon the person a complaint stating the charges,  
8 accompanied by a notice of hearing before the board or a member or qualified  
9 hearing officer designated by the board at the offices of the board or at a location  
10 as the board requires, not less than five days after serving the complaint; provided,  
11 that no complaint may be issued based upon any unfair labor practice occurring  
12 more than six months prior to the filing of a charge with the board in the service  
13 and a copy of that complaint upon the person against whom the charge is made,  
14 unless the person aggrieved did not reasonably have knowledge of the alleged  
15 unfair labor practice, or was prevented from filing a charge by reason of service in  
16 the armed forces, in which case the six months shall be computed from the date of  
17 the person's discharge. Any complaint may be amended by the member or  
18 hearing officer conducting the hearing for the board members or hearing officers at  
19 any time prior to the issuance of any order based thereon. The person who is the  
20 subject of the complaint has the right to file an answer to the original or amended  
21 complaint and to appear in person, or by a representative, and give testimony at  
22 the place and time fixed in the complaint. In the discretion of the member or  
23 hearing officer conducting the hearing for the board, any person may be allowed to  
24 intervene in the proceeding and to present testimony. In any hearing conducted by  
25 the board, neither the board nor the member or agent conducting the hearing is  
26 bound by the rules of evidence applicable to courts, except as to the rules of  
27 privilege recognized by law.
- 28           2. Any testimony taken by the board or a member or a hearing officer designated by  
29 the board must be reduced to writing and filed with the board. A full and complete  
30 record must be kept of all proceedings before the board and all proceedings must  
31 be transcribed by a reporter appointed by the board. The party on whom the

1           burden of proof rests is required to sustain the burden by a preponderance of the  
2           evidence. If, upon a preponderance of the evidence taken, the board is of the  
3           opinion that any person named in the charge has engaged in or is engaging in an  
4           unfair labor practice, then it shall state its findings of fact and shall issue and cause  
5           to be served upon the person an order requiring the person to cease and desist  
6           from the unfair labor practice, and to take such affirmative action, including  
7           reinstatement of employees with or without backpay, as will effectuate the policies  
8           of this Act. The order may further require the person to make reports from time to  
9           time, and demonstrate the extent to which the person has complied with the order.  
10          If the preponderance of the evidence does not indicate to the board that the person  
11          named in the charge has engaged in or is engaging in the unfair labor practice,  
12          then the board shall state its findings of fact and shall issue an order dismissing the  
13          complaint.

- 14          3. Until the record in a case has been filed in court the board at any time, upon  
15          reasonable notice and in such manner as it deems proper, may modify or set  
16          aside, in whole or in part, any finding or order made or issued by it.
- 17          4. Judicial review is not available for the purpose of challenging the final order issued  
18          by the board pursuant to section 7 of this Act.
- 19          5. Whenever it appears that any person has violated a final order of the board issued  
20          pursuant to this section, the board must commence an action in the name of the  
21          state of North Dakota by petition, alleging the violation, attaching a copy of the  
22          order to the board, and requesting the issuance of an order directing the person,  
23          and the person's officers, agents, servants, successors, and assigns to comply  
24          with the order of the board. The court may grant or refuse, in whole or in part, the  
25          relief sought, provided that the court may stay an order of the board pending  
26          disposition of the proceedings. The court may punish a violation of its order as civil  
27          contempt.
- 28          6. The board, upon issuance of an unfair labor practice complaint alleging that a  
29          person has engaged in or is engaging in an unfair labor practice, may petition a  
30          district court for appropriate temporary relief or a restraining order. Upon the filing  
31          of a petition, the court shall cause notice of filing to be served upon the affected

1 persons and shall have jurisdiction to grant to the board temporary relief or a  
2 restraining order as the court determines just.

3 7. If an unfair labor practice charge involves the interpretation or application of a  
4 collective bargaining agreement, the board may defer the resolution of the dispute  
5 to the grievance and arbitration procedure contained in the agreement.

6 **SECTION 12. Negotiations.**

7 1. To begin negotiations, either party may serve notice upon the board and the other  
8 parties setting forth the names and addresses of the parties and offering to meet.  
9 Negotiations for collective bargaining agreements must commence at least ninety  
10 days prior to the beginning of the fiscal year for the employer.

11 2. Parties may mutually agree to extend the time limits provided in sections 12  
12 through 14 of this Act.

13 3. Any agreement reached between the employer and the exclusive representative  
14 must be in writing. The agreement must be executed by the employer and the  
15 exclusive representative, in accordance with the terms of the agreement between  
16 the parties, and in accordance with any arbitration order entered under this Act. If  
17 there is a conflict between a written agreement and any rule previously adopted by  
18 the employer, the terms of the agreement prevail. An agreement is valid and  
19 enforceable in district court.

20 **SECTION 13. Mediation.**

21 1. At least forty-five days prior to the beginning of the fiscal year, the parties to the  
22 negotiations shall notify the board of the status of negotiations. At that time the  
23 board shall assign a mediator upon the request of either party or upon its own  
24 motion. Alternatively, the parties may select their own mediator.

25 2. The board shall establish an employees' mediation arbitration roster, the services  
26 of which must be available to employers and to employee organizations upon  
27 request of the parties. The members of the roster must be appointed by the board.  
28 Members must be impartial and competent, and shall qualify by taking and  
29 subscribing to an oath or affirmation of office. The board may set compensation  
30 levels for members of the roster in establishing procedures for suspension or  
31 dismissal of mediators for good cause.

- 1           3.    The board shall select a mediator for a labor dispute from among the members of  
2                    the roster.
- 3           4.    This Act does not prohibit the use of other mediators selected by the parties for the  
4                    resolution of disputes over interpretation or application of the terms or conditions of  
5                    the collective bargaining agreements between an employer and an employee  
6                    organization.

7           **SECTION 14. Arbitration.**

- 8           1.    Arbitration is appropriate if a dispute has not been resolved within fifteen days after  
9                    the first meeting of the parties and the mediator, or within such other time limit as  
10                   may be mutually agreed upon by the parties.
- 11          2.    Within seven days of the request of either party, the board shall select from the  
12                   employees' mediation and arbitration roster five persons as nominees for arbitrator.  
13                   Within five days after the selection, each party may preemptively strike the names  
14                   of two of the nominees. The remaining nominee is the arbitrator.
- 15          3.    The arbitrator shall call a hearing to begin within fifteen days and give reasonable  
16                   notice of the time and place of the hearing. The hearing must be held at the offices  
17                   of the board or at another location as appropriate. The arbitrator shall preside over  
18                   the hearing and shall take testimony. Any oral or documentary evidence and other  
19                   data deemed relevant by the arbitrator may be received in evidence. A verbatim  
20                   record of the proceedings must be made and the arbitrator shall arrange for the  
21                   necessary recording services, but the transcripts are not necessary for a decision  
22                   by the arbitrator. The hearing conducted by the arbitrator may be adjourned from  
23                   time to time, but unless otherwise agreed by the parties, must be concluded within  
24                   thirty days of the time of its commencement. Majority actions and rulings constitute  
25                   the actions and rulings of the arbitrator. Arbitration proceedings under this section  
26                   may not be interacted or terminated by reason of any unfair labor practice charge  
27                   filed by either party at any time.
- 28          4.    The arbitrator may administer oaths, require the attendance of witnesses, and the  
29                   production of any books, papers, contracts, agreements, and documents that are  
30                   determined to be material to a determination of the issues in dispute and may issue  
31                   subpoenas to achieve that purpose. If any person refuses to obey a subpoena, or

- 1 refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any  
2 contempt while in attendance at any hearing, the arbitrator may invoke the aid of  
3 any district court. The court shall issue an appropriate order. Failure to obey the  
4 order may be punished by the court as contempt.
- 5 5. At any time before the rendering of an award, the arbitrator may remand the  
6 dispute to the parties for further collective bargaining for a period not to exceed two  
7 weeks. If the dispute is remanded for further collective bargaining, the time  
8 provisions of this Act must be extended for a time period equal to that of the  
9 remand. The arbitrator shall notify the board of the remand.
- 10 6. The arbitrator, within thirty days after the conclusion of the hearing, or for additional  
11 periods to which the parties agree, shall prepare a written opinion and shall mail or  
12 otherwise deliver a copy of the opinion to the parties and their representatives and  
13 to the board. Findings, opinions, and orders on all issues must be based upon the  
14 applicable factors prescribed in subsection 7.
- 15 7. Where there is no agreement between the parties, or where there is an agreement  
16 that the parties have begun negotiations or discussions looking to a new  
17 agreement or amendment of the existing agreement, and wage rates or other  
18 conditions of employment under the proposed new or amended agreement are in  
19 dispute, the arbitrator shall base the findings, opinions, and order upon the  
20 following factors, as applicable:
- 21 a. The lawful authority of the employer.  
22 b. Stipulations of the parties.  
23 c. The interest and welfare of the public.  
24 d. Comparison of the wages, hours, and conditions of employment of the  
25 employees involved in the arbitration proceeding with the wages, hours, and  
26 conditions of employment of other employees performing similar services and  
27 with other employees in public employment in comparable communities and in  
28 private employment in comparable communities.  
29 e. The change in consumer prices for goods and services, commonly known as  
30 the cost of living.  
31 f. The total compensation presently received by the employees.

- 1           g. Changes in any of the foregoing circumstances during the pendency of the  
2           arbitration proceedings.
- 3           h. Other factors which are normally or traditionally taken into consideration in the  
4           determination of wages, hours, terms, and other conditions of employment  
5           through voluntary collective bargaining, mediation, factfinding, and arbitration  
6           in the public service or in private employment.
- 7           8. Arbitration procedures are initiated by the filing of the letter requesting arbitration.  
8           Increases in rates of compensation awarded by the arbitrator may be effective only  
9           at the start of the fiscal year next commencing after the date of the arbitration  
10          award. If a new fiscal year has commenced either since the initiation of arbitration  
11          procedures under this Act or since any mutually agreed extension of the statutorily  
12          required period of mediation under this Act by the parties to the labor dispute  
13          causing a delay in the initiation of arbitration, the foregoing limitations are  
14          inapplicable, and the awarded increases may be retroactive to the commencement  
15          of the fiscal year, any other statute or charters to the contrary notwithstanding. At  
16          any time the parties, by stipulation, may amend or modify an award of arbitration.
- 17          9. Orders of arbitration are final and binding, except that the orders of the arbitrator  
18          are reviewable by district court only for reasons that the arbitrator was without or  
19          exceeded its statutory authority; the order is arbitrary or capricious; or the order  
20          was procured by fraud, collusion, or other similar and unlawful means. Petitions for  
21          review must be filed with the appropriate district court within ninety days following  
22          the issuance of the arbitration orders. The pendency of proceedings for review  
23          does not automatically stay the order of the arbitrator.
- 24          10. During the pendency of proceedings before the arbitrator existing wages, hours,  
25          terms, and other conditions of employment may not be changed by action of either  
26          party without the consent of the other but a party may consent to a change without  
27          prejudice to that party's rights or position under this Act.
- 28          11. Within ten days of the distribution of an arbitration order, the employer shall submit  
29          the order to its governing body for ratification and adoption by law, ordinance, or  
30          the equivalent appropriate means. The budget appropriating authority of an  
31          employer shall appropriate funds needed to comply with the arbitration order.



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

4           **SECTION 15. Act takes precedence.**

5           1. In case of any conflict between this Act and any other law, executive order, or rule  
6                   relating to wages, hours, terms, and other conditions of employment and  
7                   employment relations, this Act or any collective bargaining agreement negotiated  
8                   under this Act prevails and controls.

9           2. Except as provided in subsection 1, any collective bargaining contract between an  
10                   employer and an employee organization executed pursuant to this Act supersedes  
11                   any contrary statutes, charters, ordinances, rules, or regulations relating to wages,  
12                   hours, and conditions of employment and employment relations adopted by the  
13                   employer or its agents.

14           **SECTION 16. Strike policy.** Strikes, work stoppages, slowdowns, or lockouts are  
15 prohibited.

16           **SECTION 17. Prohibitions.** This Act does not require an individual employee to  
17 render labor or service without consent, nor does this Act make the quitting of an employee's  
18 labor by an individual employee an illegal act; nor may any court issue any process to compel  
19 the performance by an individual employee of the labor or service, without the employee's  
20 consent; nor may the quitting of labor by an employee or employees in good faith because of  
21 abnormally dangerous conditions for work at the place of employment be deemed a strike  
22 under this Act.

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