SENATE
GOVERNMENT AFFAIRS COMMITTEE

Minutes of Meeting - April 16, 1977

Present:

Chairman Gibson
Senator Foote
Senator Faiss
Senator Gojack
Senator Hilbrecht
Senator Raggio
Senator Schofield

Also Present: See Attached Guest Register

Chairman Gibson opened the thirty-fifth meeting of the Government Affairs Committee at 2:25 p.m. with all members present.

SB-501
Requires certain cities to participate in metropolitan police department. (BDR 22-1517)

Senator Hernstadt stated that this bill was drafted without the approval or recommendation of the Las Vegas Metropolitan police. Senator Hernstadt felt that it would save tax payers money and give better service. There would be one central file and lab.

Senator Foote did not like this type of legislation. She felt that it may lead to having it cover areas with 100,000 or less which is her concern. Did not feel that it would provide better protection at a lower cost.

Bob Warren, Nevada League of Cities, stated that in a study they performed when consolidation was being considered last session many things were brought to light, one being a centralized police system. The study indicated that there was a loss of personal concern for their community by the police. It also showed that there was no appreciable drop in the costs. He concluded by stating that Henderson and the other cities would share his objection to the bill.

Senator Raggio stated that there are some functions within a police department that could be shared by the counties at a savings to the people, i.e. one communication center.

SB-502
Permits leasing of state lands under specific terms.(BDR 18-1896)

Frank Daykin, Legislative Council Bureau, stated that this bill is the compliment to what was done in SB-153 in grouping the administrative state lands. The question was raised about providing better terms of leasing. For this reason I recommended a separate bill.

Norman Hall, Department of Conservation and Natural Resources, stated that the reason was to change from the net to the gross. Concurred with statements made by Mr. Daykin.

Motion of "Do Pass" by Senator Hilbrecht, seconded by Senator Schofield. Motion carried unanimously.

SB-485
Requires master plans to include areas suited for development (BDR 22-1548)

Pam Wilcox, Lemmen Valley, testified that planning on the local levels in Nevada, Master Plan, consists of drawing up maps but doesn't take into consideration goals and the mechanism for which these goals could be achieved. This bill will help guide the committee towards goals to be achieved. Mrs. Wilcox suggested that the committee consider changing the "shall" to "may" and make it an enabling act.

Chairman referred Mrs. Wilcox to line 6 of page 1. It appears to imply absolute control on the development process.

Senator Raggio stated that this bill would take a great deal of information and work in order to comply with the specifications. The Senator also agreed with Chairman Gibson's statement.

Bill Cozart, Nevada Association of Realtors, stated that they were also concerned that the language on lines 5 and 6 might lead to inverse condemnation. Indicated that on page 3, lines 9 through 12 affects zoning and finds that the bill has many problems of interpretation. They object to the bill in its present form.

Bob Broadbent, representing the Nevada Association of County Commissioners, testified that the bill might have an adverse affect on development. Mr. Broadbent felt that there was not enough time left in the session to make all the changes that were necessary in this bill. Opposed the bill in its present form.

Bob Warren, Nevada League of Cities, concurs with previous testimony from Mr. Broadbent, Cozart and Senator Raggio. Mr. Warren indicate that the bill was not analyzed properly and could have a tremendous fiscal impact if complied with.

Senator Gojack felt that the bill did have some language defects that would need amending but stated that we need this type of legislation in order to have proper planning and goals so we can realize some uniform growth pattern.

Committee discussed the bill and the needs for proper planning. They discussed the 208 planning being used in Clark County at the present.

John Madole, representing Associated General Contractors, testified against the bill in the present language. Stated that they were concerned about goals and objectives with planning growth in any community but felt that this bill would have to be changed before they could support it.

Pam Wilcox stated that with the discussions on the bill and the apprehension testified to, would it be possible to amend the bill to only include Section 1, lines 1 thourgh 4 and through development on line 5, deleting the remainder of the bill.

Bob Broadbent also suggested changing "shall" to "may" on line 3.

Pam Wilcox felt that the main idea was to get the concern for proper growth aligned with goals and objectives for a community to the planners.

Senator Schofield asked if this couldn't be done without the bill.

Mr. Broadbent felt that it could and was being done in the Clark County area.

Senator Gojack felt that we needed something on the books because in Washoe County there doesn't seem to be much planning with growth.

Russ McDonald, Washoe County, stated that at this time they did not have a comment but he would bring back one for the committee at a later date.

There was no action taken at the meeting on this bill.

AB-521
Provides for retention of residence when changing precincts after close of registration for certain purposes.(BDR 24-1394)

Russ McDonald testified to the committee that this is merely clean-up legislation.

Motion of "Do Pass" by Senator Hilbrecht, seconded by Senator Gojack
Motion carried unanimously.

AB-579
Provides criteria for property tax refunds from county treasuries. (BDR 31-1323)

Russ McDonald stated that this bill proposes to allow refunds from the property taxes.

Jim Lien, Tax Commission, concurred and stated that they were in favor of the bill.

Motion of "Do Pass" by Senator Foote, seconded by Senator Faiss.
Motion carried unanimously.

AB-360
Requires county officers and employees to deposit funds belonging to others with county treasurer.(BDR 20-956)

Russ McDonald had some amendment suggestions for the committee. Testimony was given on this in the Assembly Government Affairs and was rejected in the present form because it did not recognize the right of the county to act or enact a central receiving, dispursing system ordinance. In the Senate Senator Raggio suggested an exemption of monies that might be paid over pursuant to court order of Chapter 130 (Uniform Reciprocal Support) and in the discussion monies received by the clerk by order of the court were to be exempted.

The committee went over the proposed amendments that were suggested by Mr. McDonald. Amend Section 1, page 1, delete line 3 and insert (1) except as provided in subsection 2: A. Each county officer or employee who in his official capacity --- then it picks up lines 4, 5, & 6. On Line 7, delete this line and insert B. Money deposited in accordance with this subsection is not part of ----. Then on page 1, line 9. Delete 3 and insert C. On page 1, section 1, line 10, delete "section" and insert "subsection". Amend section 1, page 1 insert following line 14 - new language - "subsection 2 - The provisions of subsection 1 do not apply in (A) in counties where oridnances establishing central receiving and dispursing systems have been enacted pursuant to NRS 244.207 (B) To money collected by a county assessor or agent for the state of Nevada which money shall be remitted to the State at least weekly. (C) To money directed by court order to be deposited by the clerk of the court. (D) To amounts paid to the clerk of the court pursuant to support orders made pursuant to Chapter 130 of NRS.

Motion to Amend and Do Pass by Senator Schofield, seconded by Senator Raggio. Motion carried unanimously

<u>SJR-22</u>
Memorializes Congress of United States to establish national cemetary in Nevada.(BDR 1481)

Senator Schofield stated that this resolution might help to create a national cemetary in Nevada and feels that the state needs a national cemetary.

Motion of "Do Pass" by Senator Schofield, seconded by Senator Faiss. Motion carried with one no vote cast by Senator Foote.

<u>SJR-24</u>
Memorializes Congress of United States to authorize and fund veterans' hospital in Clark County, Nv. (BDR 1482)

Senator Schofield stated that there are approximately 53,000 veterans in the Clark County area and an estimated 62,000 by 1980. The Senator continued by stating that there was a need to have a veterans hospital in Clark County.

Senator Foote felt that with so many other states represented that this bill didn't have much of a chance for recognition in Congress.

Motion of "Do Pass" by Senator Schofield, seconded by Senator Faiss. Motion carried with two no votes from Senator Foote and Raggio.

<u>SB-333</u>
Sets out additional requirements for public meetings.(BDR 19-858)

Chairman Gibson went over the amendments for the committee's consideration. Page 3, line 5, delete closed bracket and body - on line 6 delete italicised colon and the open bracket. After the closed bracket on line 12 insert "body from holding a closed meeting. 2 - delete line 13 and insert (A) consider the character as opposed to professional com petence in the position. On line 16, delete "deployment" and insert "consider the deployment". On line 17, delete "allegations" and insert "consider allegations". Amend Section 8, page 3 - insert between lines 18 and 19 a new subsection D. "Confer with its legal advisor concerning strategy to be adopted by the body with respect to litigation which it is or is likely to be involved." Amend Section 8, page 3, delete lines 21 and 22 and insert, "which specifies the nature of the business to be considered and the exemption under subsection 1, pursuant to which the meeting is to be closed."

Senator Raggio was still concerned about the person's rights who was being considered for imbezzlement. You would still have to state the reason the meeting would be closed.

Frank Daykin, L.C.B. stated that you might close the meeting by stating that the meeting is being closed to discuss the possibility of a criminal charge pursuant to paragraph C.

Senator Hilbrecht felt that s.s. D might touch upon client, attorney priviledge. Feels that this language might "ham-string" public agencies.

Chairman Gibson informed the committee AB-437 passed the Assembly.

Senator Gojack stated that the Attorney General favored the concept of SB-333 over AB-437. The Senator expressed interest in working out the problems with SB-333 and passing it out of committee.

Chairman Gibson asked Senators Gojack and Hilbrecht to work on the objectionable language and try to come up with something that would be acceptable to the committee.

Bob Warren, Nevada League of Cities, testified against certain parts of this bill as it would affect the small cities. In many small communities the Mayor is the non voting member, except for a tie-breaker situation, and there would be a quorum if two members showed up at the meeting. Noted on page 2, line 9 the language requirement there could become a burden to the small communities. Suggested an amendment to read, "notice of a specific meeting as requested". On line 20, page 2 suggested that it be amended to read "two-thirds of the members present". On Page 3, line 13, "this would preclude hearings for interviews of a professional," this would make it an open meeting.

Bob Broadbent, County Commissioners, testified that many of the small communities have the commissioner also working with administrative functions, this also could create problems.

Again Chairman stated that this bill would be worked on by Senator Gojack and Hilbrecht and brought back to the committee for re-consideration.

Chairman Gibson passed out copies of the Iowa law on Last Best Offer for the committee to read prior to the meeting on bills relating to the last best offer theory.

With no further business the meeting was adjourned at 4:10 p.m.

Respectfully submitted,

Janice Peck

Janice M. Peck
Committee Secretary

Approved:

James I. Gibson

Chairman

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS

Date Monday 4-18-77 Time 2 PM Room 243

Bills or Resolutions to be considered	Subject	Counsel requested*
SB-504	Revises provisions on coroner's inquests and investigations of certain deaths. (BDR 20-1662)	
AB-333	Increases distance certain activities must be conducted from polling place during elections. (BDR 24-944)	
AB-568	Authorizes local government to let contracts without competitive bidding if no bids are received.	
AB-579	Provides criteria for property tax refunds from county treasuries. (BDR 31-1232)	
AB-640	Grants emergency powers over water and energy to Governor. (BDR 19-1652)	
AB-569	Clarifies restriction on county commissioners against voting on certain matters extending beyond their term of office.	
AB-618	Permits certain state and local employees to participate in federal Social Security. (BDR 23-1816)	

FOR COMMITTEE ACTION (Committee will consider the various public employee acts.

SB-242	Enacts State Employee-Management Relations Act. (BDR 23-44)	
SB-346	Expands subjects of bargaining between local government employers and employees and limits prohibition against strikes to certain employees. (BDR 23-1072)	
SB-434	Reorganizes local government employee-management relations board, requires secret ballot elections for recognition of local government employee organization and requires financial reports from organizations. (BDR 23-1535)	
SB-435	Abolishes State Fire Marshall Division in Department of Commerce and reassigns function. (BDR 18-1839)	

*Please do not ask for counsel unless necessary.

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE 4-18

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY..........

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
Bill Isaeff	X	A.B640	NEV. A.G.
STEVEN STUCKER	YES	AB568	City of North Las Vegas

SENATE

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A. B. 618

1. In 1953 enabling legislation was enacted and an agreement with the Social Security Administration was signed to provide Social Security coverage for public employees not covered by the Public Employees Retirement System. The program is fairly small and unknown. Today there are 36 reporting entities covering approximately 2100 employees. Coverage is strictly voluntary and the consent of both the employees and the employer is required before application for coverage can be made. Persons covered under the Public Employees Retirement System cannot be included.

'age 1, ine 9. 'age 3, ine 6

2. Reason for this bill. For the past three years the Social Security Administration has been reviewing our agreements and operations and has found that we are covering persons that are in effect ineligible for PERS coverage.

3. At the time Nevada's enabling legislation was enacted, a person, by federal law, could only be covered if he or she could not receive PERS coverage because of the position held. Later, the federal law was changed to permit coverage of individuals who are personally ineligible for coverage under PERS. Nevada's enabling legislation has never been changed to reconcile with this provision. Passage of this bill would do so.

LEAVE OUT UNLESS ASKED

4. Persons required to be covered by PERS:

Before July 1, 1971 - 1200 hrs. per yr. and $150 per mo.

After July 1, 1971 - $3600 per yr.

1975 - 40 hrs. per month

5. On page 2 line 20 provision is made to allow retroactive coverage of up to 6 years. This retroactive period is the same as permitted under the Social Security Act. Often it takes longer than the present 1 year period allowed to get an agreement between management and employees. Therefore valuable quarters of coverage can be lost. For example:

#1

To be fully insured requires 40 quarters of coverage.

To be currently insured requires 6 quarters of coverage.

It is not required that coverage be retroactive for 6 years or at all. It would be permitted and again, the effective date of coverage must be approved by all concerned.

6. If not passed - Because of the word "position", a position control system for each political entity would be necessary to satisfy the Social Security Administration. Needless paperwork would be required of each entity involved. If the bill is [redacted] passed, determinations can be made from payroll records which are already required to be maintained.

In summary - this only affects public employees with no other retirement or disability coverage available to them. It is strictly voluntary and must be agreed upon by the employees and the employer.

Mr. Barret's office has been advised that there is no fiscal impact (Kimberly Wood). Have also advised Ed Shore of Legislative Bureau that fiscal impact is erroneous.

Represents approximately $7 million in payroll annually.

NEVADA
STATE PERSONNEL DIVISION

GOVERNOR

HOWARD E. BARRETT
DIRECTOR OF ADMINISTRATION

PERSONNEL ADVISORY COMMISSION

ROBERT C. PHELPS
CHAIRMAN

DANIEL S. HUSSEY

ROBERT T. McADAM

MRS. CONNIE JO PICKING

REV. I. W. WILSON

JAMES F. WITTENBERG
PERSONNEL ADMINISTRATOR

CARSON CITY

MEMORANDUM

TO: Senator James Gibson, Chairman
Government Affairs

FROM: Jim Wittenberg
State Personnel Administrator

DATE: April 18, 1977

SUBJECT: Amendments to SB 242

As I indicated to you and your committee in my earlier testimony we planned to introduce amendments to SB-242 when the bill was next scheduled for hearing.

It was my understanding that when SB-242 was initially scheduled that preliminary testimony only was to be heard and that it would be rescheduled for more extensive testimony including amendments at a later date.

Attached are the proposed amendments to SB-242.

JFW/sm
Attachments

PROPOSED AMENDMENTS

SENATE BILL NO. 242 - COMMITTEE ON

GOVERNMENT AFFAIRS

Referred to Committee on Government Affairs

SUMMARY - Enacts State Employee-Management Relations Act. (BDR 23-44)

FISCAL NOTE: Local Government Impact: No.

State or Industrial Insurance Impact: Yes.

AN ACT relating to labor relations; providing a procedure for collective bargaining for employees in the classified service of the state; providing for creation of employee organizations; providing procedures for arbitration; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title 23 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 36, inclusive, of this act.

SEC. 2. This chapter may be cited as the State Employee-Management Relations Act.

SEC. 3. It is the public policy of this state and the purpose of this chapter to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of state government. *In achieving these objectives, it is the declared legislative intent to promote the interest of the state in bargaining on a statewide basis by considering statewide units presumptively appropriate.* These policies are best effectuated by:

1. Granting to classified employees the right of organization and representation;

2. Requiring the state and each department, board, commission or agency thereof, and the University of Nevada System, to negotiate with, and enter into written agreements with employee organizations representing classified employees which have been certified or recognize

3. Authorizing the [advisory personnel commission] *employee-management relations board* of the state personnel system to assist in resolving disputes between classified employees and public employers; and

[4. Prohibiting strikes by classified employees and providing remedies for violation of such prohibition.]

SEC. 4. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 5 to 12, inclusive, of this act have the meanings ascribed to them in those sections.

SEC. 5. "Administrative employee" means:

1. Every employee in the unclassified service of the state; and

[2. Every agency or division head holding a position in the classified service of the state.]

2. "Managerial employee" means any employee having significant responsibilities for formulating and administering agency policies and programs. This would include but is not limited to department and division heads and their deputies as well as chiefs and supervisors of major functional areas who have substantial managerial responsibilities.

SEC. 6. "Bargain collectively" means the performance of the mutual obligation of the public employer and the recognized employee organization*(s)* to meet at reasonable times and confer in good faith with respect to wages, hours and other *terms and* conditions of employment, and *may include* the execution of a written contract incorporating any agreement reached if requested by either party; but such obligation does not compel either party to agree to a proposal or require the making of a concession.

SEC. 7. "Classified employee" means an employee in the classified service of the state.

SEC. 8. ["Commission" means the advisory personnel commission of the state personnel system.] *"Board" means the Local Government Employe Management Relations Board.*

SEC. 9. ["Confidential employee" means any classified employee whose primary duties consist of work directly related to personnel management policies and who is directly responsible to a chief administrative officer, attorney, appointive officer or personnel officer, or who is a budget officer of the budget division or member of the professional personnel staff, other than clerical and accounting, of the personnel division of the department of administration.] *"Confidential employee" means any employee who, in the course of his duties, has acces to or possesses information relating to his employer's-employee relation*

SEC. 10. "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, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. [10] *11.* "Employee organization" means any:

1. Association, brotherhood, council or federation composed of *classified* employees of the State of Nevada; or

2. Craft, industrial or trade union whose membership includes *classified* employees of the State of Nevada.

SEC. [11] *12.* "Public employer" means the State of Nevada and each department, board, commission or other agency thereof, including the University of Nevada System.

SEC. [12] *13.* "Strike" includes the concerted failure to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by a public employee, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment.

SEC. [13] *14.* 1. Except as specifically limited, classified employees have the right to form, join and participate in, or to refrain from forming, joining or participating in any employee organization.

2. A public employer shall not discriminate among its employees on account of membership or nonmembership in an employee organization.

SEC. [14] *15.* It is the duty of the governor or his designated agent, on behalf of every public employer, to negotiate in good faith, concerning matters subject to mandatory collective bargaining which affect public employers generally, with the recognized employee organization, if any, for each appropriate unit among its classified employees If either party requests it, agreements so reached shall be reduced to writing. The negotiating agent for the state is the governor or his designated agent, and the governor may sign and enforce any agreement reached, and such agreement is binding upon all agencies *except those items which require the approval of other bodies.* Any employee organization which has entered into such an agreement may enter into supplemental agreements with a particular public employer concerning terms and conditions of employment peculiar to that agency.

[SEC 15. Matters subject to mandatory collective bargaining are:

1. Salaries, wages and hours of employment; and

2. Other terms and conditions of employment, including but not limited to:

(a) Grievance procedures;

(b) Application of seniority rights as affecting the matters contained herein;

(c) Work schedules relating to assigned hours and days of the week and shift assignments;

(d) Annual leave and other time off;

(e) Sick leave and use thereof;

(f) Application and interpretation of established work rules;

(g) Health and safety practices;

(h) Intradepartmental transfers;

(i) The effect of the contracting out of all or any part of the functions performed by or service furnished by any public employer;

(j) Such other matters as encompass the various physical dimensions of an employee's working environment;

(k) Methodology of examination and classification; and

(l) Matters pertaining to insurance.]

SEC. 16. Scope of negotiations.

1. The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or to make a concession.

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2. *The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.*

3. *Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel officer, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.*

4. *Excluded from the subjects of negotiations are matters of work performance, classification and reclassification, and the salary ranges for specific classifications provided that the amount of general salary adjustments and employee benefits shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work or which would interfere with the rights of a public employer to:*

A. *direct employees;*

B. *determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause;*

C. *relieve an employee from duties because of lack of work or other legitimate reason;*

D. *maintain efficiency of government operations;*

E. determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies;

F. the subject of organization security.

[SEC. 16. 1. This chapter does not interfere with the right of a public employer to:

(a) Carry out the statutory mandate and goals assigned to a public employer utilizing personnel, methods and means in the most appropriate and efficient manner possible;

(b) Manage the employees of the agency; to hire, promote, transfer assign or retain employees in positions within the agency and in that regard to establish reasonable work rules;

(c) Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause; or

(d) Lay off employees in the manner provided by NRS 284.380, in accordance with any applicable grievance procedure.

2. It is the obligation of every public employer to negotiate with the recognized employee organization, if any, concerning the impact of the exercise of its management rights as defined herein, upon its employees' salaries, wages, hours and other terms and conditions of employment.

SEC. 17. 1. An employee organization may apply to a public employer for recognition by presenting:

(a) A copy of its constitution and bylaws, if any;

(b) A roster of its officers, if any, and representatives; and

(c) A pledge in writing not to strike against the public employer under any circumstances. A public employer shall not recognize as representative of its employees any employee organization which has not adopted, in a manner valid under its own rules, the pledge required by this paragraph.

2. If an employee organization, at or after the time of its application for recognition, presents a verified list of dues paying members reflecting that it represents a majority of the employees in a negotiating unit, and if such employee organization is recognized by the public employer, it is the exclusive negotiating representative of the classified employees in that negotiating unit.

3. The power of a public employer to withdraw recognition from an employee organization is limited as follows:

(a) Recognition shall not be withdrawn for a period of 1 year from the time of recognition when at that time the public employer and employee organization were not operating under an agreement negotiated under this chapter.

(b) When the public employer and employee organization are operating under an agreement negotiated under this chapter, recognition may be withdrawn only during the last 90 days of the effective period of the agreement.

(c) Subject to the limitations contained in paragraphs (a) and (b), recognition may be withdrawn only if an employee organization:

(1) Fails to present a copy of each change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers or representatives;

(2) Disavows its pledge not to strike against the public employer under any circumstances;

(3) Ceases to be supported by a majority of the classified employees in the negotiating unit for which it is recognized; or

(4) If an employee organization is aggrieved by the refusal or withdrawal of recognition, or by the recognition or refusal to withdraw recognition of another employee organization, the aggrieved employee

organization may appeal to the commission. If the commission in good faith doubts whether any employee organization is supported by a majority of the classified employees in a particular negotiating unit, it may conduct an election by secret ballot upon the question. The filing of an appeal by an aggrieved employee organization shall automatically stay the decision of the public employer to refuse or withdraw recognition or to recognize or refuse to withdraw recognition from another employee organization pending the decision of the commission. Subject to judicia review, the decision of the commission is binding upon the public employer and all employee organizations involved.]

SEC. 17. Exclusive representation.

The employee organization selected for the purpose of collective bargaining by the majority of the employees in an appropriate unit shall be the exclusive representative of all the employees in the unit, and an employer shall not bargain on matters covered by this chapter with any other representative except as provided in SECTION 20, Subsections (1) and (2) of this chapter.

SEC. 18. Registration of employee organization.

1. Every employee organization, prior to requesting recognition by a public employer for purposes of collective bargaining or prior to submitting a petition to the Board for purposes of requesting a representation election, shall adopt a constitution and by-laws and shall register with the Board by filing a copy thereof, together with an annual report in a form prescribed by the Board, and an amended report whenever changes are made, which shall include:

A. The name and address of the organization and of any parent organization or organization with which it is affiliated;

B. The names and addresses of the principal officers and all representatives of the organization;

C. The amount of the initiation fee and of the monthly dues which members must pay;

D. The name of its local agent for service of process and the address where such person can be reached; and

E. A pledge, in a form prescribed by the Board that the employee organization will conform to the laws of the state and that it will accept members without regard to age, color, sex, religion, national origin, or handicap.

2. A copy of the current constitution and by-laws of the state and national groups with which the employee organization is affiliated or associated shall accompany each annual report.

3. An employee organization which is not registered as provided in this section, is prohibited from requesting recognition by a public employer or submitting a petition requesting a representation election. This prohibition shall be enforced by injunction upon petition of the Board to the appropriate district court.

SEC. 19. Recognition and Certification

1. Any employee organization which is designated or selected by a majority of public employees in an appropriate unit as their representative for purposes of collective bargaining shall request recognition by the public employer as the exclusive representative. Such request shall include:

A. A description of the job groupings or positions which constitute the unit claimed to be appropriate.

B. Proof of majority support.

2. Notice of the request and composition of the proposed unit shall immediately be posted by the employer on a bulletin board at each

facility in which members of the unit claimed to be appropriate are employed.

3. Such request for recognition shall be granted by the employer unless:

A. the employer has a good-faith doubt as to the accuracy or validity of the evidence demonstrating majority support in an appropriate unit or as to the appropriateness of the claimed unit; or

B. another employee organization

(1) files with the employer a challenge to the appropriateness of the unit, or

(2) submits a competing claim of representation of employees in the unit within a reasonable period of time after the posting of notice of the original request, and

(3) submits dues deduction authorizations or other evidence, such as notarized membership lists, cards or petitions by a substantial number of employees in the proposed bargaining unit supporting its claim; or

C. there is currently in effect a lawful written collective agreement negotiated by the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, and the request for recognition is made earlier than 90 days and less than 60 days prior to the expiration date of such agreement; or

D. within the previous 12 months, another employee organization has been lawfully recognized or certified as the exclusive representative of any of the employees included in the unit described in the request for recognition.

4. If the public employer refuses to recognize the employee organization the employee organization may file a petition with the

Board for certification as the bargaining agent for a proposed bargaining unit. The petition shall be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit indicating that such employees desire to be represented for purposes of collective bargaining by the petitioning employee organization. Provided that any employee, employers or employee organization having sufficient reason to believe any of the employee signatures were obtained by collusion, coercion, intimidation or misrepresentation or are otherwise invalid, shall be given a reasonable opportunity to verify and challenge the signatures appearing on the petition.

5.A. The Board or one of its designated agents shall investigate the petition to determine its sufficiency; if it has reasonable cause to believe that the petition is sufficient, the Board shall provide for an appropriate hearing upon due notice. Such a hearing may be conducted by an agent of the Board, who shall not make any recommendations with respect thereto. If the Board finds upon the record of the hearing that the petition is sufficient, it shall immediately:

(1) Define the proposed bargaining unit and determine which public employees shall be qualified and entitled to vote at any election held by the Board;

(2) Identify the public employer or employers for purposes of collective bargaining with the bargaining agent;

(3) Order an election by secret ballot.

B. Where an employee organization is selected by a majority of the employees voting in an election, the Board shall certify the employee organization as the exclusive collective bargaining representative of all employees in the unit;

C. In any election in which none of the choices including the choice of no representation on the ballot receives the vote of a majority of the employees voting, a run-off election shall be held according to rules promulgated by the Board.

D. No new election may be conducted in any appropriate bargaining unit to determine the exclusive representative if a representative election has been conducted within the preceding twelve month period.

E. Any group of employees shall have the right to file a petition with the Board alleging that the certified or currently recognized employee organization no longer represents the majority of employees in the bargaining unit. The Board shall dismiss any such petition filed during the first year of the challenged employee organization's incumbency as the exclusive bargaining representative, or any petition filed earlier than 90 and less than 60 days before the expiration of an existing lawful agreement between the employer and the organization. Such a petition shall be accompanied by whatever evidence of employee desires, and in whatever strength, the Board prescribes by rule or regulation. After the petition has been filed, the Board shall conduct an election by secret ballot to determine the wishes of the employees involved. If a majority of the valid votes cast favors decertification, the employee organization shall be decertified as exclusive bargaining representative. Such an election, regardless of the outcome, shall be a bar to any other election in the bargaining unit or any part thereof for a succeeding twelve month period. No employer shall be allowed to file a decertification petition.

SEC. 20. Employee rights

1. Employees shall have the right to join, form, and participate in or refrain from joining, forming, or participating in any employee organization, of their own choosing, to negotiate collectively through a

bargaining agent with their public employer in the determination of the terms and conditions of their employment and to be represented in the determination of grievances arising thereunder. Public employees shall have the right to refrain from exercising the right to be represented.

2. Nothing in this part shall be construed to prevent any public employee from presenting at any time, his own grievances in person or by legal counsel, to his public employer, and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable notice of such action.

3. A public employer may bargain collectively with representatives of supervisory employees but is not required to do so. Managerial and confidential employees and active duty members of the Nevada National Guard shall be prohibited from the exercise of any collective bargaining rights under this chapter. This would not preclude the "meet and confer" process by supervisory, managerial, and confidential employees with their employers.

SEC. 21. Employers' rights and responsibilities.

1. A public employer shall not discriminate in any way among its employees because of membership or non-membership in any employee organization.

2. Nothing in this chapter shall interfere with the right of the public employer to;

A. Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods and means in the most appropriate and efficient manner possible;

B. Manage the employees of the agency; to hire, promote, transfer, assign or retain employees in positions within the agency and *in that regard to establish reasonable work rules.*

C. Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause, or to lay off employees in the event of lack of work or funds or for other legitimate reasons, provided, however, that the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequences of violating the terms and conditions of any collective bargaining agreement in force, or civil or career service regulation.

[SEC. 18. 1. All classified employees constitute one negotiating unit except as provided in subsections 2 and 3.

2. Administrative employees are excluded from any negotiating unit.

3. Confidential employees constitute a separate negotiating unit.]

4. Bargaining units will be composed of employees in the following statewide occupational groups:

a. Office support services.

b. Blue collar, building trades and other crafts.

c. Professional and technical services.

d. Public safety services and security.

SEC. 22. 1. Whenever an employee organization *or the employer* desires to negotiate concerning any matter which is subject to negotiation pursuant to this chapter, it shall give written notice of such desire to the public employer. If the subject of negotiation requires the budgeting of money by the public employer, the public employee organization shall give such notice on or before July 1 of even-numbered years.

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2. This section does not preclude, but this chapter does not require, informal discussions between a public employee organization and a public employer of any matter which is not subject to negotiation or contract under this chapter. Any such informal discussion is exempt from all requirements of notice or time schedule.

3. All items within the agreement become effective and binding upon execution except those items which require the approval of other bodies, including but not limited to the commission, the state board of examiners or the legislature. Those items requiring additional approval become effective upon approval of the appropriate body, and may be retroactive to the date of execution of the agreement.

[4. Those items agreed to and requiring a budgetary allocation shall be jointly presented and recommended to the legislature by the public employer and employee organization at the legislative session next following the execution of the negotiated agreement, and included in the state budget presented to the legislature.]

SEC. 23. Collective bargaining; approval or rejection.

1. After an employee organization has been recognized or certified pursuant to SECTION 19 of this chapter, the bargaining agent for the organization, and the chief executive officer of the appropriate public employer or employers jointly shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit. The chief executive officer, or his representative, and the bargaining agent, or its representative, shall meet at reasonable times and bargain in good faith. In conducting negotiations with the bargaining agent, the chief executive officer, or his representative shall consult with, and attempt to represent the views of the legislative body of the public employer. Any collective bargaining agreement reached by the negotiators shall be reduced to writing and such agreement shall be signed by the chief

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executive officer and ratified by the employee organization and shall be completed not later than December 1 for presentation to the public employer. Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until such agreement has been ratified at a regularly scheduled meeting of the Legislature, subject to the provisions of subsections 2 and 3 of this section.

2. Upon execution of the collective bargaining agreement with fiscal impact, the chief executive shall request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requeste amount is appropriated, the collective bargaining agreement shall be administered pro rata or according to instructions of the legislative body by the chief executive officer on the basis of the amount appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute nor be evidence of any unfair labor practice or bad faith bargaining.

3. If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule or regula tion. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.

4. If the agreement is not ratified by the legislature in accordance with procedures adopted by the Board, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.

5. *Any collective bargaining agreement shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term, except those terms and conditions provided for in applicable merit and civil service rules and regulations.*

SEC [20] *24.* Whenever an employee organization *or employer* has giv written notice of its desire to negotiate, the parties shall promptly commence negotiations. During the course of negotiations, the parties may mutually agree to utilize the services of a mediator to assist them in resolving their dispute.

[SEC. 21. 1. If, within 90 days after the employee organization *or employer* has given its notice, the parties have not reached agreement either party may submit the dispute to arbitration. The decision of the arbitrator in negotiations with the governor is advisory only unless the parties to the dispute agree, prior to the submission of the dispute to artitration, to make the decision of the arbitrator final and binding The decision of the arbitrator in negotiations for supplemental agreements is final and binding.

2. The parties may agree upon a mutually acceptable arbitrator or either party request from the American Arbitration Association a list of seven potential arbitrators. The parties shall select their arbitrator from this list by alternately striking one name until the name of only one remains, who will be the arbitrator for the dispute in question. The employee organization is entitled to strike the first name.

3. The State of Nevada and the employee organization each shall pay one-half of the cost of arbitration. However, each party shall pay its own costs incurred in the preparation and presentation of its case.

4. The arbitrator shall report his decision to the parties no later than 90 days after the dispute is submitted to arbitration unless both parties waive this limit.

SEC. 22. 1. For the purpose of investigating disputes, the arbitrator may issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.

2. The district court in and for the county in which any investigation is being conducted by an arbitrator may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the arbitrator.

3. If any witness refuses to attend or produce any papers required by such subpoena, the arbitrator may report to the district court in and for the county in which the investigation is pending by petition, setting forth:

a. That due notice has been given of the time and place of attendance of the witness or the production of books and papers;

b. That the witness has been subpoenaed in the manner prescribed in this chapter; and

c. That the witness has failed and refused to attend or produce the papers required by subpoena before the arbitrator in the investigation named in the subpoena, or has refused to answer questions propounded to him in the course of such investigation,

and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the arbitrator.

4. The court, upon petition of the arbitrator, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order and then and there show cause why he has not attended or testified or produced the books or papers before the arbitrator. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpoena

was regularly issued by the arbitrator, the court shall thereupon enter an order that the witness appear before the arbitrator at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.]

SEC. 25. Impasse procedure.

1. The provisions of this Article shall be inapplicable to any employer and recognized employee organization which agree to a procedure for settlement of their differences that will result in decisions that are final and binding.

2. Either the employer or the employee representative may declare that an impasse has been reached in negotiations over the provisions of a collective agreement. The party making such declaration may, after the board has determined an impasse exists:

A. ask the Board for a list of mediators from which the parties may make a selection, in which event the Board shall supply such list forthwith; or

B. ask the Board to designate a mediator, in which event the Board shall comply immediately upon the consent of the other party; or

C. jointly agree with the other party on a mediator or on another agency or body to provide the mediator.

3. When a mediator is selected as provided in SECTION 25-2, the fees and costs of such service shall be borne equally by the parties.

4. The Board shall have the right, on its own motion, and pursuant to such rules and regulations as it shall prescribe, to appoint a mediator if it is satisfied that an impasse exists and that the exigencie of the situation created by the failure of the parties to request the designation of a mediator or to agree on a mediator justify such intervention. The fees and costs of such service shall be borne equally by the parties.

5. If the mediator is unable to effect settlement of the controversy within calendar 15 days after his appointment or by September 30 whichever occurs first, either party may, by written notification to the other, request that their differences be submitted to a fact-finding panel. Within five days after receipt of the aforesaid written request, each party shall designate a person to serve as its member of the fact-finding panel. The members so designated shall select the third member who shall serve as chairman of the panel; or if within five days after such designation they fail to do so, the Board shall appoint such chairman within five days after receiving a request from one of the parties. The Board shall appoint the chairman of the fact-finding panel in accordance with such rules and procedures as it shall prescribe.

The chairman appointed by the Board shall not be the same person who served as mediator without the consent of both parties.

The panel shall, within calendar 10 days after its establishment, meet with the parties or their representatives, either jointly or separately, and shall make inquiries and investigations, hold hearings, and take such other steps as it may deem appropriate. The panel shall initially determine what issues are in dispute and therefore properly before the fact-finders. The parties shall be required to address their initial evidence and argument to this question, unless they have reached an agreement defining the issues.

In arriving at their findings and recommendations, the fact-finders shall consider, weigh, and be guided by the following criteria:

A. The lawful authority of the employer.

B. Stipulation of the parties.

C. The interests and welfare of the public and the financial ability of the employer to meet those costs.

D. Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:

(1) in public employment in Nevada.

(2) in public employment in the western states.

(3) in comparable private employment in Nevada.

E. The average consumer prices for goods and services, commonly known as the cost of living.

F. The overall compensation presently received by the employe including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

G. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment, including any other matters agreed to by the parties as a subject of bargaining, through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in public or private employment.

For the purpose of such hearings, investigations, and inquiries, the Chairman of the fact-finding panel shall have the power to hold

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hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person and, in connection therewith, to issue subpoena duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter subject to its jurisdiction. In the event of contumacy or refusal to obey a subpoena on the part of any person or persons, the Board has authority to bring an action to enforce the subpoena in a court of competent jurisdiction.

If the dispute is not settled within 30 days after its appointment the panel shall make the findings of fact and recommend terms of settlement, which recommendations shall be advisory only, unless the parties have agreed in writing prior thereto that such recommendations shall be binding. All members of the panel shall have the right to vote on the recommendations unless the parties agree to the contrary.

Any findings of fact and recommended terms of settlement shall indicate the last best offer of the parties, and shall be submitted in writing to the parties and to the board privately. If the parties do not accept the recommendations as the basis for settlement, they shall resume negotiations for a period of 10 calendar days or longer if they mutually agree. During this time the board shall exercise a continuing jurisdiction in an effort to facilitate settlement of the dispute. The board, the panel, the employer or the employee representative may make such findings and recommendations public if the dispute is not settled after the 10 day period, or such extended period as the parties have agreed to, has been exhausted.

The costs for the services of the chairman, including per diem fees, if any, and actual and necessary travel and subsistence expenses, and any other mutually incurred costs, shall be borne equally by the employer and the employee representative.

(1) If the dispute remains unresolved, the employee organization shall call a meeting of its membership, at which the members attending shall be asked to vote by secret ballot on the following question: "Do you wish to accept the fact-finder's recommendations?"

(2) If the question is answered in the affirmative the findings and recommendations shall be submitted to the appropriate legislative body pursuant to SECTION 23 of this act as an agreement. If the question is answered in the negative the recommendations along with the vote of the employees shall be submitted to the appropriate legislative body pursuant to SECTION 23 of this act.

SEC. [23] *26.* The following proceedings required by or pursuant to this chapter are not subject to any statute which requires that meetings be open and public *except fact-finding hearings, if either party requests, may be open to the public:*

1. Any negotiation or informal discussion between an employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

2. Any meeting of a mediator with either party or both parties to a negotiation.

[3. Any meeting or investigation conducted by an arbitrator.]

[4.] *3.* Any meeting of the head of an employer with its management representative or representatives.

[SEC. 24. A public employer shall not engage in a lockout or cause, instigate, encourage or condone a strike.

SEC. 25. A classified employee or employee organization shall not engage in a strike, and an employee organization shall not cause, instigate, encourage or condone a strike.

SEC. 26. 1. If a strike occurs against the public employer, the public employer shall, and if a strike is threatened against the public employer, the public employer may, apply to a court of competent jurisdiction to enjoin such strike. The application shall set forth the facts constituting the strike or threat to strike.

2. If the court finds that an illegal strike has occurred or unless enjoined will occur, it shall enjoin the continuance or commencement of such strike. The provisions of N.R.C.P. 65 and of the other Nevada Rules of Civil Procedure apply generally to proceedings under this section, but the court shall not require security of the public employer.

SEC. 27. 1. If a strike is commenced or continued in violation of an order issued pursuant to section 26 of this act, the court may:

(a) Punish the employee organization or organizations guilty of such violation by a fine of not more than $50,000 against each organization for each day of continued violation.

(b) Punish any officer of an employee organization who is wholly or partly responsible for such violation by a fine of not more than $1,00 for each day of continued violation, or by imprisonment as provided in NRS 22.110.

(c) Punish any employee of the public employer who participates in such strike by ordering the dismissal or suspension of such employee.

2. Any of the penalties enumerated in subsection 1 may be applied alternatively or cumulatively, in the discretion of the court.

SEC. 28. 1. If a strike or violation is commenced or continued in violation of an order issued pursuant to section 26 of this act, the public employer may:

(a) Dismiss, suspend or demote all or any of the employees who participate in such strike or violation.

(b) Cancel the contracts of employment of all or any of the employe who participate in such strike or violation.

(c) Withhold all or any part of the salaries or ages which would otherwise accrue to all or any of the employees who participate in such strike or violation.

2. Any of the powers conferred by subsection 1 may be exercised alternatively or cumulatively.]

SEC. [29.] *27.* This chapter does not limit, impair or affect the right of any classified employee *or representative of management* to the expression of a view, grievance, complaint or employment or their betterment, if such view, grievance, complaint or opinion is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

[SEC. 30. 1. It is a prohibited practice for a public employer or its designated representative willfully to:

(a) Interfere with, restrain or coerce employees in the exercise of any right guaranteed under this chapter.

(b) Dominate, interfere or assist in the formation or administration of any employee organization; but a public employer is not prohibite from permitting employees to confer during work hours without loss of time or pay.

(c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.

(d) Discharge or otherwise discriminate against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because he

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has formed, joined or chosen to be represented by any employee organization.

(e) Refuse to bargain collectively in good faith with the exclusiv representative of a negotiating unit.

(f) Violate the provisions of any written agreement with respect to salaries, wages, hours and other terms and conditions of employment affecting classified employees, including an agreement to arbitrate or to accept the terms of an arbitration award where previously the parties have agreed to accept such award as final and binding.

2. It is a prohibited practice for a classified employee or for an employee organization or its designated agent willfully to:

(a) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under this chapter, but this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

(b) Refuse to bargain collectively in good faith with the employer if it is an exclusive representative of a negotiating unit.

(c) Restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances.

(d) Violate the provisions of any written agreement with respect to terms and conditions of employment affecting public employees, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.]

SEC. 28. Unfair labor practices.

1. It shall be unlawful for an employer to:

27 *A. Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise*

to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

B. Deny to employee organizations rights guaranteed to them by this chapter.

C. Refuse or fail to bargain and bargain in good faith with an employee organization recognized or certified pursuant to SECTION 19 of this chapter.

D. Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; provided, however, that an employer and an employee organization may include in the collective agreement provisions pursuant to which representatives of the recognized or certified organization shall have the right to receive periods of released time without loss of compensation for the purpose of negotiations, including the processing of grievances and related matters.

2. It shall be unlawful for an employee organization to:

A. Cause or attempt to cause an employer to violate the provisions of paragraph A. of subsection 1.

B. Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter; provided, however, that this paragraph shall not impair the right of an employee organization to prescribe reasonable rules in respect to the acquisition or retention of membership therein.

C. Refuse or fail to bargain and bargain in good faith with an employer of any of the employees of which it is the exclusive representative.

D. Refuse to participate and participate in good faith in the mediation and fact-finding procedures set forth in SECTION 25.

3. The duty to bargain in good faith requires the parties to begin negotiations prior to the adoption by the employer of its final budget for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse. The parties shall have the authority to agree to retroactive application of any agreement between them, whether or not it requires the expenditure of funds. The employer shall have authority to make such expenditures pursuant to such agreement, fact-finding recommendation, arbitration award, or order of the Board.

SEC. 29. Charges of unfair labor practices. Violations of the provisions of SECTION 28 of this chapter shall be remedied by the Board in the following manner:

1. *Whenever it is charged by an employer or an employee organization that any person has engaged in or is engaging in any unfair labor practice, the Board, or any agent designated by the Board for such purpose, shall conduct a preliminary investigation to determine if there is substantial evidence indicating a prima facia violation of the applicable unfair labor practice provision.*

2. *If, upon a preliminary investigation, it is determined that there is not substantial evidence indicating a prima facia violation of the applicable unfair labor practice provision, the designated agent of the Board shall dismiss the charge.*

3. *A charging party whose charge is thus dismissed, may appeal to the chairman and one other member of the Board, and if they find substantial evidence of a meritorious charge, that charge shall be reinstate[d] and served pursuant to the procedures of paragraph A of this section.*

A. *If the Board or its agent determines that there is substantial evidence indicating a prima facia violation the Board or such agent shall issue and cause to be served upon the person, a copy of the charges and a notice of hearing before the Board or a member thereof, or before a designated agent, at a place therein fixed, to be held not less than ten days after service of a copy of the charges of the Board. Any charge may be amended by the charging party, at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person upon whom the charge is served may file an answer to the charge. The charging party and the respondent shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the member or agent conducting the hearing, or the Board, any other person may be allowed to intervene in the proceeding and to present testimony. In any hearing the Board shall not be bound by the judicial rules of evidence.*

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B. Whenever a charging party alleges that a person has engaged in unfair labor practices and that he will suffer substantial and irreparable injury if he is not granted temporary relief, the Board may petition the district court for appropriate injunctive relief, pending the final adjudication by the Board with respect to such matter. Upon the filing of any such petition, the court shall cause notice thereof to be served upon the parties, and thereupon shall have jurisdiction to grant such temporary relief or restraining order as it deems just and proper.

4. The testimony taken by the member, agent, or the Board shall be reduced to writing and filed with the Board. Thereafter the Board, upon notice, may take further testimony or hear argument.

A. If, upon consideration of all evidence taken, the Board finds substantial evidence that an unfair labor practice has been committed, then it shall state its findings of fact and shall issue and cause to be served an order requiring the respondent party to cease and desist from the unfair labor practice, and to take such positive action as the Board deems necessary.

B. If, upon consideration of the evidence taken, the Board finds that the person or entity named in the charge has not engaged in and is not engaging in the unfair labor practice, the Board shall state its findings of fact and shall issue an order dismissing the charge.

C. No notice of hearing shall be issued based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event, the six month period shall be computed from the day of his or her discharge.

5. The district court is empowered, upon the filing of an appropriate petition, to review final orders of the Board. Until the record in a case has been filed in the appropriate district 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 findings or order made or issued by it.

6. A. The Board may petition for enforcement of the order and for appropriate injunctive relief, and shall file the record of the proceedings before the Board in the district court.

B. Upon the filing of the petition, the appropriate district court shall cause notice thereof to be served upon the respondent, and thereupon shall have jurisdiction of the proceeding and shall grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its members or agent, shall be considered by the district court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Board, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

C. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the Board, its members or agent, the court may order the additional evidence to be taken before the Board, its members or agent, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record *considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.*

D. Upon the filing of the record the jursidiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in accordance with the rules of appellate procedure. An appropriate district court may enforce its rulings by contempt proceedings, if necessary.

7. The commencement of proceedings under subsection 5 or 6 shall not, unless specifically ordered by the district court, operate as a stay of the Board's order.

8. Petitions filed under this part shall be heard expeditiously by the district court to which presented, and shall take precedence over all other civil matters except prior matters of the same character.

[SEC. 31. The commission shall adopt regulations governing proceedings:

1. Brought before it under the provisions of this chapter.

2. Brought before the hearing officer under this chapter.

SEC. 32. The commission shall appoint a hearing officer to conduct hearings and render decisions as provided in section 33 of this act.

SEC. 33. A question which arises as to whether an unfair labor practice has been or is being committed by a public employer or employee organization may be submitted to the commission by the following procedure:

1. A complaint may be filed with the commission alleging that an unfair labor practice has been or is being committed. The commission shall refer the complaint to the hearing officer within 5 days after its receipt.

2. The hearing officer shall transmit such complaint to the public employer or employee organization charged in the complaint within 5 days after he receives it.

3. The hearing officer shall schedule the matter for hearing within 30 days after his transmittal of the complaint to the party charged unless there is a conflict with the hearing calendar of the hearing officer, in which case the hearing shall be scheduled for the earliest possible date after the expiration of the 30 days.

4. After the hearing and consideration of the evidence, the hearing officer shall render his decision in writing, setting forth the reasons therefor.

5. The decision of the hearing officer shall be promptly transmitted to the commission for action consistent with section 34 of this act.

SEC. 34. 1. If no appeal is taken from the decision of the hearing officer as provided in section 35 of this act, the party committing the unfair labor practice is bound thereby.

2. The commission shall, in such event, issue and cause to be served upon the party committing the unfair labor practice an order requiring the party to cease and desist from the unfair labor practice,

and shall take such further affirmative action as will effectuate the policies of this chapter, including but not limited to:

(a) Withdrawal of certification of an employee organization established or assisted by any action defined by this chapter as an unfair labor practice;

(b) Reinstatement of an employee discriminated against in violation of the provisions of this chapter, with or without back pay; or

(c) Ordering a party who refused to bargain collectively in good faith to pay the full costs of fact-finding resulting from the negotiations in which the refusal to bargain collectively in good faith occurred

3. Any party may petition the district court in and for Carson Cit in and for the county in which the aggrieved party resides, or in and for the county where the act on which the proceeding was based occurred for the enforcement of a commission order entered under this section.

SEC. 35. 1. Within 30 days after receipt by the commission of the decision of the hearing officer, the public employer or employee organization may request in writing that the commission review the decision.

2. The review shall be conducted by the commission and shall be confined to the record unless, for good cause shown upon application made prior to hearing on review, leave is granted to present additional evidence. The commission shall upon request hear oral argument and receive written briefs.

3. The commission shall not substitute its judgment for that of the hearing officer as to the weight of evidence on questions of fact. The commission may reverse, affirm or modify the decision of the hearing officer if substantial rights of the party seeking review have been prejudiced because the decision of the hearing officer is:

(a) In violation of constitutional or statutory provisions;

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(b) In excess of his statutory authority;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary, capricious or characterized by an abuse of discretio

4. The commission shall render its written decision setting forth the reasons therefor. If the commission affirms the decision of the hearing officer in whole or part, it shall issue and cause to be served upon the party committing the unfair labor practice an order requiring the party to cease and desist from the unfair labor practice and shall take the further affirmative action authorized by section 34 of this act.

5. Any party to the complaint may seek judicial enforcement of such order as provided in section 34 of this act.

SEC. 36. 1. For the purpose of hearing and deciding appeals or complaints, the commission or hearing officer may issue subpoenas requiring the attendance of witnesses before it, together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.

2. The district court in and for the county in which any hearing is being conducted by the commission or hearing officer may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the commission or hearing officer.

3. If any witness refuses to attend or testify or produce any papers required by such subpoena, the commission or hearing officer may report to the distrct court in and for the county in which the hearing is pending by petition, setting forth:

(a) That due notice has been given of the time and place of the attendance of the witness or the production of the books and papers;

(b) That the witness has been subpoenaed in the manner prescribed in this chapter; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena before the commission or hearing officer in the hearing named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing,

and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the commission or hearing officer.

4. The court, upon petition of the commission or hearing officer, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and show cause why he has not attended or testified or produced the books or papers before the commission or hearing officer. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued by the commission or hearing officer, the court shall thereupon enter an order that the witness appear before the commission or hearing officer at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.]

SEC. 30. Board's authority. The Local Government Employee Management Relations Board shall have the following powers and duties:

1. To establish, after consulting with representatives of public employee organizations and public employers, lists or procedures for providing lists of qualified neutral persons available to serve as mediators, fact-finders, and arbitrators;

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2. To act upon requests for the appointment of mediators, fact-finders, and arbitrators;

3. To determine in disputed cases or otherwise to approve appropriate bargaining units.

4. Pursuant to the certification provisions of subdivision 5 of SECTION 19, to arrange for and supervise the determination of certified employee representatives for appropriate units by means of secret ballot elections, and to certify the results of such elections;

5. To decide contested matters involving recognition, certification, or decertification of employee organizations;

6. To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer or jurisdiction between two or more employee organizations;

7. To investigate unfair practice charges, or alleged violations of this chapter, and to take such action and make such determinations in respect of such charges or alleged violations as the Board deems necessary to effectuate the policies of this chapter;

8. To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books or papers relating to any matter subject to its jurisdiction;

9. To study and analyze criteria and guidelines for the determination of interests disputes and to collect, study, analyze, and make available data relating to wages, benefits, and employment practices in public and private employment;

10. To make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions, purposes, and policies of this chapter;

11. To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena;

12. To delegate its powers to any member of the Board or to any person appointed by the Board for the performance of its functions, except that no fewer than two Board members shall be permitted to issue a ruling or decision on the merits of any dispute coming before it; and

13. To take such other action as the Board deems necessary to discharge its powers and duties or otherwise to effectuate the purposes of this chapter including the power to appoint employees with the authority to enforce the powers conferred to the board by this chapter.

[SEC. 37. NRS 288.070 is hereby amended to read as follows:

288.070 "Strike" means any concerted:

1. Stoppage of work, slowdown or interruption of operations by [employees of the State of Nevada or] local government employees;

2. Absence from work by [employees of the State of Nevada or] local government employees upon any pretext or excuse, such as illness, which is not founded in fact; or

3. Interruption of the operations of [the State of Nevada or] any local government employer by any employee organization.

SEC. 38. NRS 288.230 is hereby amended to read as follows:

288.230 1. The legislature finds as facts:

(a) That the services provided by [the state and] local government employers are of such nature that they are not and cannot be duplicated from other sources and are essential to the health, safety and welfare of the people of the State of Nevada;

(b) That the continuity of such services is likewise essential, and their disruption incompatible with the responsibility of the state to its people; and

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(c) That every person who enters or remains in the employment of [the state or] a local government employer accepts the facts stated in paragraphs (a) and (b) as an essential condition of his employment.

2. The legislature therefore declares it to be the public policy of the State of Nevada that strikes against [the state or] any local government employer are illegal.

SEC. 39. NRS 288.240 is hereby amended to read as follows:

288.240 1. If a strike occurs against [the state or] a local government employer, the [state or] local government employer shall, and if a strike is threatened against [the state or] a local government employer, the [state or] local government employer may, apply to a court of competent jurisdiction to enjoin such strike. The application shall set forth the facts constituting the strike or threat to strike.

2. If the court finds that an illegal strike has occurred or unless enjoined will occur, it shall enjoin the continuance or commencement of such strike. The provisions of N.R.C.). 65 and of the other Nevada Rules of Civil Procedure apply generally to proceedings under this section, but the court shall not require security [of the state or] of any local government employer.

SEC. 40. NRS 288.250 is hereby amended to read as follows:

288.250 1. If a strike is commenced or continued in violation of an order issued pursuant to NRS 288.240, the court may:

(a) Punish the employee organization or organizations guilty of such violation by a fine of not more than $50,000 against each organization for each day of continued violation.

(b) Punish any officer of an employee organization who is wholly or partly responsible for such violation by a fine of not more than $1,000 for each day of continued violation, or by imprisonment as provided in NRS 22.110.

(c) Punish any employee [of the state or] of a local government employer who participates in such strike by ordering the dismissal or suspension of such employee.

2. Any of the penalties enumerated in subsection 1 may be applied alternatively or cumulatively, in the discretion of the court.

SEC. 41. NRS 288.260 is hereby amended to read as follows:

288.260 1. If a strike or violation is commenced or continued in violation of an order issued pursuant to NRS 288.240, [the state or] the local government employer may:

(a) Dismiss, suspend or demote all or any of the employees who participate in such strike or violation.

(b) Cancel the contracts of employment of all or any of the employees who participate in such strike or violation.

(c) Withhold all or any part of the salaries or wages which would otherwise accrue to all or any of the employees who participate in such strike or violation.

2. Any of the powers conferred by subsection 1 may be exercised alternatively or cumulatively.]

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MASSACHUSETTS

Massachusetts' comprehensive bargaining law for public employees covers state, county, and municipal employees including teachers, provides a "final offer" arbitration procedure for police and firemen's bargaining disputes, broadens the scope of bargaining to embrace "standards of productivity and performance," permits negotiation of agency shop and binding grievance arbitration procedures, and stipulates that contract terms prevail over local ordinances. Special laws authorize agency shop agreements by public employees in Boston and surrounding Suffolk County and permit dues checkoff in other Massachusetts cities and counties. Texts follow:

Public Employees:

Full text of Secs. 1 to 15 of Ch. 150E, establishing the rights of public employees to organize and bargain with their public employers, providing for final and binding arbitration, and repealing Secs. 178D and 178G to 178N, as enacted by S. B. 1929, L. 1973, as amended by Chs. 354, 526 and 589, Ls. 1974, and as last amended by Chs. 591 and 689, Ls. 1975, both effective December 3, 1975.

Sec. 1. [Definitions]—The following words and phrases as used in this chapter shall have the following meaning unless the context clearly requires otherwise:—

"Board," the board of conciliation and arbitration established under Sec. 7 of Ch. 23.

"Commission," the labor relations commission established under Sec. 9 (O) of Ch. 23.

"Cost items," the provisions of a collective bargaining agreement which require an appropriation by a legislative body.

"Employee" or "public employee," any person employed by a public employer except elected officials appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission, and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general. Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter. (As amended by Ch. 689, L. 1975)

"Employee organization," any lawful association, organization, federation, council, or labor union, the membership of which includes public employees, and assists its members to improve their wages, hours, and conditions of employment.

"Employer" or "public employer," the commonwealth acting through the commissioner of administration, or any county, city, town or district acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees. In the case of school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives. In the case of employees of the community and state colleges and universities, the employer shall mean the respective board of trustees or any individual who is designated to represent it and act in its interest in dealing with its employees.

"Legislative body," the general court in the case of the commonwealth or a county, the city council or town meeting in the case of a city, town or district, or any body which has the power of appropriation with respect to an employer as defined in this chapter.

"Professional employee," any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type 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 an apprenticeship or from training in the performance of routine mental, manual or physical processes.

"Strike," a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment.

Sec. 2. [Right to organize and bargain]—Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in Sec. 12.

Sec. 3. [Determination of bargaining unit]—The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due re-

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gard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no uniformed member of the department, subordinate to a fire commission, fire commissioner, public safety director, board of engineers or chief of department shall be classified as a professional, confidential, executive, administrative or other managerial employee for the purpose of this chapter. (As amended by Ch. 526, L. 1974)

No elected or appointed official, member of any board of commission, representative of a public employer, including the administrative officer, director or chief of a department or agency of the commonwealth or any political subdivision thereof, or any other managerial or confidential employee shall be included in an appropriate bargaining unit or entitled to coverage under this chapter.

The appropriate bargaining unit in the case of the uniformed branch of the division of state police for officers subordinate to the rank of lieutenant shall be composed of members of the state police holding and in the rank of staff sergeant, corporal, policewoman and trooper. (As added by Ch. 591, L. 1975)

Sec. 4. [Recognition; representation; ballot election]—Public employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding 12 months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within 10 days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within 10 days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require.

Sec. 5. [Negotiation; grievance]—The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

Sec. 6. [Scope of bargaining]—The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to a proposal or make a concession.

Sec. 7. [Appropriations]—Any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years. The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be filed with the commission by the employer. (As amended by Ch. 589, L. 1974, effective July 24, 1974)

The employer shall submit to the appropriate legislative body within 30 days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining. The provisions of the preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of Sec. 34 of Ch. 71 are operative.

If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to Sec. 6 of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to Sec. 97A of Ch. 41; the regulations of a fire chief or other head of a fire department pursuant to Ch. 48; any of the following statutory provisions or rules or regulatons made thereunder:

(a) The second paragraph of Sec. 28 of Ch. 7;

(a½) Sec. 6E of Ch. 21;

(b) Sec. 50 to 56, inclusive, of Ch. 35;

(c) Sec. 24A, paragraphs (4) and (5) of Sec. 45, paragraphs (1), (4) and (10) of Sec. 46, Sec. 49, as it applies to allocation appeals, and Sec. 53 of Ch. 30;

(d) Secs. 21A and 21B of Ch. 40;

(e) Secs. 108D to 108I, inclusive, and Secs. 111 to 111L, inclusive, of Ch. 41;

(f) Sec. 33A of Ch. 44;

(g) Secs. 57 to 59, inclusive, of Ch. 48;

(g½) Sec. 62 of Ch. 92;

(h) Secs. 14 to 17E, inclusive, of Ch. 147;

(i) Secs. 30 to 42, inclusive, of Ch. 149;

(j) Sec. 53C of Ch. 262, the terms of the collective bargaining agreement shall prevail.

Sec. 8. [Final and binding arbitration]—The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provisions of Ch. 150C and shall, where such arbitration is elected by the employee as the method of grievance, resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of Secs. 43 and 46G of Ch. 31, Sec. 16 of Ch. 32, or Secs. 42 through 43A, inclusive, of Ch. 71.

Sec. 9. [Impasse; mediation; award]—After a reasonable period of negotiation over the terms of a collective bargaining agreement, either party or the parties acting jointly may petition the board for a determination of the existence of an impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine if the parties have negotiated for a reasonable period of time and if an impasse exists, within 10 days of the receipt of such petition, the board shall notify the parties of the results of its investigation. Failure to notify the parties within 10 days shall be taken to mean that an impasse exists.

Within five days after such determination, the board shall appoint a mediator to assist the parties in the resolution of the impasse. In the alternative, the parties may agree upon a person to serve as a mediator and shall notify the board of such agreement and choice of mediator.

After a reasonable period of mediation, not to exceed 20 days from the date of appointment, said mediator shall issue to the board a report indicating the results of his services in resolving the impasse.

If the impasse continues after the conclusion of mediation, either party or the parties acting jointly may petition the board to initiate fact-finding proceedings. Upon receipt of such petition, the board shall appoint a fact-finder, representative of the public, from a list of qualified persons maintained by the board. In the alternative, the parties may agree upon a person to serve as fact-finder and shall notify the board of such agreement and choice of fact-finder. No person shall be named as a fact-finder who has represented an employer or employee organization within the preceding 12 months. The fact-finder shall be subject to the rules of the board and shall, in addition to powers delegated to him by the board, have the power to mediate and to make recommendations for the resolution of the impasse. The fact-finder shall transmit his findings and any recommendations for the resolution of the impasse to the board and to both parties within 30 days after the date of his appointment. If the impasse remains unresolved 10 days after the transmittal of such findings and recommendations, the board shall make them public.

Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an impasse shall be binding on the parties and on the appropriate legislative body and made effective and enforceable pursuant to the provisions of Ch. 150C, provided that said arbitration proceeding has been authorized by the appropriate legislative body or in the case of school employees, by the appropriate school committee.

If the impasse continues after the publication of the fact-finder's report, the issues in dispute shall be returned to the parties for further bargaining.

Any time limitations prescribed in this section may be extended by mutual agreement of the parties and the board.

Sec. 9A. [Strike prohibited]—(a) No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

(b) Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immediately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

Sec. 10. [Prohibited practices]—(a) It shall be a prohibited practice for a public employer or its designated representative to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;

(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by an employee organization;

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in Sec. 6;

(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in Secs. 8 and 9;

(b) It shall be a prohibited practice for an employee organization or its designated agent to:

(1) Interfere, restrain, or coerce any employer in the exercise of any right guaranteed under this chapter;

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in Sec. 6;

(3) Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in Sec. 8 and 9. (Sec. 10, as amended by Ch. 589, L. 1974, effective July 24, 1974)

Sec. 11. [Complaint proceedings]—When a complaint is made to the commission that a practice prohibited by Sec. 10 has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The employer, the employee organization or the person so complained of shall have the right to file an answer to th original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such employer, such employee organization or such person shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission any person may be allowed to intervene in such proceeding. In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts.

Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in Sec. 10 and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the commission shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued the commission shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

Upon any complaint made under this section the commission in its discretion may order that the hearing be conducted by a member or agent of the commission. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission, any person may be allowed to intervene in such proceeding. In any hearing the member or agent shall not be bound by the technical rules of evidence prevailing in the courts. At the conclusion of the hearing, the member or agent shall determine whether a practice prohibited under Sec. 10 has been committed and if so, he shall issue an order requiring it or him to cease and desist from such prohibited practice. If the member or agent determines that a practice prohibited under Sec. 10 has not been committed, he shall issue an order dismissing the complaint. Any order issued pursuant to this paragraph shall become final and binding unless, within 10 days after notice thereof, any party requests a review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the commission requests, upon a transcript of the testimony taken at the preliminary hearing, together with such other testimony as the commission may require.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as [illegible] comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. The commission may institute appropriate proceedings in the superior court for the county wherein the prohibited practice has occurred for the enforcement of its order or orders. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint. (Sec. 11, as amended by Ch. 589, L. 1974, effective July 24, 1974)

Sec. 12. [Union dues]—The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting. Such service fee shall be proportionately commensurate with the cost of collective bargaining and contract administration.

Sec. 13. [List of unions, bargaining units]—The commission shall maintain a list of employee organizations. To be recognized as such and to be included in the list an organization shall file with the commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. Every employee organization shall notify the commission promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The commission shall indicate on the list which employee organizations [illegible] appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of such list shall be made available to interested parties upon request.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the same manner as other orders of the commission under this chapter.

Sec. 14. [Filing of statement; financial report]—No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers.

Every employee organization shall keep an adequate record of its financial transactions and shall make annually available to its members and to non-member employees who are required to pay a service fee under Sec. 12 of this act, within 60 days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and operating statement. Such report shall indicate the total of its receipts of any kind and the sources of such receipts, and disbursements made by it during its last fiscal year. A copy of such report shall be filed with the commission.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the same manner as other orders of the commission under this chapter.

Sec. 15. [Penalties]—Whoever wilfully assaults, physically resists, prevents, impedes, or interferes with a mediator, fact-finder, or arbitrator, or any member of the commission or any of the agents or employees of the commission in the performance of duties pursuant to this chapter shall be fined not more than $5000, or imprisoned not more than one year, or both.

Whoever knowingly files a statement or report under Sec. 14 of this chapter, which report is false in any material representation, shall be punished by a fine of not more than [illegible]

No compensation shall be paid by an employer to an employee with respect to any day or part thereof when such employee is engaged in a strike against said employer, nor shall such employee be eligible to recover such compensation at a later date in the event that such employee is required to work additional days to fulfill the provisons of collective bargaining agreement.

Any employee who engages in a strike shall be subject to discipline and discharge proceedings by the employer.

ED NOTE: Sec. 5 of S. B. 1929, L. 1973, effective July 1, 1974, states that "[t]he terms of any collective bargaining agreement in effect prior to the effective date of this act shall remain in full force and effect until the expiration date of said agreement."

Firemen and Policemen

Following is the full text of the provisions of Ch. 105E relating to binding interest arbitration for police and fire departments, as enacted by S.B. 1929, L. 1973, and as amended by Ch. 121, L. 1975, effective April 11, 1975. Expires June 30, 1977.

If an employee organization duly recognized as representing the firefighters or police officers of a city, town or district is engaged in an impasse which has continued for 30 days after the publication of the factfinders report pursuant to Sec. 9 of Ch. 150E, said employee organization shall petition the board to make an investigation. If, after investigation, the board determined that:

(1) the requirements of Sec. 9 of Ch. 150E have been complied with in good faith by the employee organization;

(2) thirty days have passed since the date of publication of the factfinders report pursuant to said Sec. 9;

(3) the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission, prior to the date of the fact-finders report; and

(4) an impasse exists, the board shall immediately notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel.

Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the employee organization, and a third an impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected without intervention by the board.

The arbitration panel shall, acting through its chairman, hold a hearing within 10 days after the date of appointment of the chairman at a place within the locality of the municipality involved, where feasible. The chairman shall give at least seven days' notice in writing to each of the other arbitrators and to the representatives of the municipal employer and employee organization of the time and place of such hearing. The chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, a person, labor organization, or governmental unit having substantial interest therein may be granted leave to intervene by the arbitration panel. The proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received into evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative to or pertinent to the issues presented to them for determination. 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 arbitration panel may, or the district attorney if requested, shall, invoke the aid of the superior court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order.

A record of the proceedings shall be kept, and the chairman shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an award by the panel. The hearing may be continued at the discretion of the panel and shall be concluded within 40 days from the time of commencement. At the conclusion of the hearing, each party shall submit a written statement containing its last and best offer for each of the issues in dispute to the panel, which shall take said statements under advisement. Within 10 days after the conclusion of the hearing, a majority of the panel shall select one of the two written statements and shall immediately give written notice of selection to the parties. The selection shall be final and binding upon the parties and upon the appropriate legislative body.

At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks and notify the board of the remand. Any award of the arbitration panel may be retroactive to the expiration date of the last contract. (As amended by Ch. 121, L. 1975, effective April 11, 1975)

In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decision by the panel, request that the arbitration proceedings be terminated, the panel, acting through its chairman, shall terminate the proceedings.

The factors, among others, to be given weight by the arbitration panel in arriving at a decision shall include:

(1) The financial ability of the municipality to meet costs.

(2) The interests and welfare of the public.

(3) The hazards of employment, physical, education, and mental qualifications, job training and skills involved.

(4) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.

(5) The decisions and recommendations of the fact finder.

(6) The average consumer prices for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wages and fringe benefits.

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(9) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(10) The stipulation of the parties.

Any determination or decision of the arbitration panel if supported by material and substantive evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either party or of the arbitration panel in the superior court in equity; provided, that the scope of arbitration in police matters shall be limited to wages, hours and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign and transfer employees.

The commencement of a new municipal finance year prior to the final award by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the beginning of said municipal finance year.

If a municipal employer or an employee organization wilfully disobeys a lawful order of enforcement pursuant to this section, or wilfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court.

Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The remaining costs of the arbitration proceedings under this section shall be divided equally between the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American Arbitration Association.

AGENCY SHOP

Following is the full text of Ch. 335, L. 1969, effective June 26, 1969, allowing the treasurer of the City of Boston and Suffolk County to make payroll deductions from the salaries of employees and to pay such deductions to the Collective Bargaining Agency as an agency service fee.

Sec. 1.—To assure that all employees of the city of Boston shall be adequately represented by their respective recognized or designated exclusive bargaining agents in bargaining collectively on questions of wages, hours and other conditions of employment, the collector-treasurer of said city shall deduct from each payment of salary made to each such employee during the life of a collective bargaining agreement so providing, and pay over to the exclusive bargaining agent of such employee, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided, however, that such sum shall not be deducted from any payment of salary until such collective bargaining agreement has been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.

Sec. 2.—To assure that all employees of the county of Suffolk shall be adequately represented by their respective recognized or designated exclusive bargaining agents in bargaining collectively on question of wages, hours and other conditions of employment, the county treasurer shall deduct from each payment of salary made to each such employee during the life of a collective bargaining agreement so providing, and pay over to the exclusive bargaining agent of such employee, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided, however, that such sum shall not be deducted from any payment of salary until such collective bargaining agreement has been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.

Following is the text of Sec. 17G, Ch. 180 of the Gen. Stats, as enacted by Ch. 463, L. 1970, as amended by Ch. 281, L. 1971, and as last amended by S. B. 1929, L. 1973, effective July 1, 1974, allowing certain county and city treasurers to make payroll deductions from the salaries of employees as payment to collective bargaining agencies for service fees. Provisions of this chapter are not applicable to the city of Boston.

Deductions on payroll schedules shall be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed for the payment of agency service fees to the employee organization, which, in accordance with the provisions of Ch. 150E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed. Such agency service fees shall be proportionately commensurate with the cost of collective bargaining and contract administration. Any such authorization may be withdrawn by the employee by giving at least 60 days' notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed and by filing a copy thereof with the treasurer of the employee organization.

The state treasurer, the common paymaster as defined in Sec. 133 of Ch. 175, or the treasurer of the county or municipality by which such employee is employed shall deduct from the salary of such employee such amount of agency service fees as may be certified to him on the payroll and transmit the sum so deducted to the treasurer of such employee organization; provided that the state treasurer or county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such employee organization has given to said organization a bond, in a form approved by the commissioner of corporations and taxation for the faithful performance of his duties, in such sum and with such surety or sureties as are satisfactory to the state treasurer, or the county or municipal treasurer.

The provisions of this section shall not be applicable to the city of Boston.

REVISED AGENDA
Eff. 4-15-77

SENATE

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS

Date Sat. 4-16-77 Time 2 PM Room 243

Bills or Resolutions to be considered	Subject	Counsel requested*
SB-501	Requires school officials to provide certain medical personnel for athletic events and practices. (BDR 34-1768)	
SB-502	Permits leasing of state lands under specific terms. (BDR 18-1896)	
SB-485	Requires master plans to include areas suited for development (BDR 22-1548)	
AB-521	Provides for retention of residence when changing precincts after close of registration for certain purposes. (BDR 24-1394)	
AB-579	Provides criteria for property tax refunds from county treasuries. (BDR 31-1323)	

FOR COMMITTEE ACTION:

SB-333	Sets out additional requirements for public meetings. (BDR 19-858)	
SB-351	Creates State Ethics Commission and provides procedures and ethical rules to govern conduct of elective public officers othern than judicial. (BDR 23-1076)	
AB-360	Requires county officers and employees to deposit funds belonging to others with county treasurer. (BDR 20-956)	

*Please do not ask for counsel unless necessary.

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