

January 27, 1970

MINUTES

COMMITTEE ON STATE AND LOCAL AFFAIRS

Room 526 State Capitol Building

All members present except Senators Herd and Saar

Chairman, Norman E. Gaar, called the Committee to order.

Mr. Wright Crummett, Kansas League of Municipalities, explained the position of the League to the Committee. A printed copy of his remarks is attached. Mr. Wright's comments were directed to Senate Bills No. 383, 385 and House Bill No. 1573, all pertaining to public and professional negotiations. No action was taken on any of the bills. Senator Gaar informed the Committee that we would hear from the Commissioner of Education, C. Taylor Whittier, on Thursday, Feb. 5, regarding the bills.

Senator Gaar appointed a sub-committee consisting of himself, Sen. West and Sen. Hinchey. Senator West to be chairman, to study the question of public and professional negotiations. Said committee to make a full report to the entire committee within the next ten days to two weeks.

Mr. Ernie Moser, Kansas League of Municipalities, presented his views on unfair accounting and reporting to the Committee. Sen. Gaar instructed Mr. Moser and Senator Thomas to prepare a resolution on the subject to be introduced by the Committee.

On a motion by Senator Foster, Seconded by Senator Shultz, it was agreed by the Committee to amend House Bill No. 1614, but striking all after the enacting clause and inserting in lieu thereof the body of Senate Bill 410. All members voting aye.

Adjournment

Charlotte Conder

Except as otherwise noted, the individual remarks recorded herein have not been transcribed verbatim and this record has not been approved by the committee or by the individuals making such remarks.

SUGGESTED LEGISLATION^{1/}

[Title should conform to State requirements. The following is a suggestion: "An Act to Establish a Framework of Employer-Employee Relations by Providing Uniform and Orderly Methods for Dealings Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes."]

(Be it enacted, etc.)

[Title should conform to State requirements. The following is a suggestion: "An Act to Establish a Framework of Employer-Employee Relations by Providing Uniform and Orderly Methods for Collective Negotiations Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes."]

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^{1/}The following statute incorporates a "meet and confer in good faith" approach to labor-management relations in the State and local public service. However, on this and the succeeding pages appears in "running footnote" form alternative parallel language embodying a "collective negotiations" approach. On balance, the Advisory Commission on Intergovernmental Relations tends to favor the meet and confer in good faith approach but recognizes that different States will take varying positions regarding sections of this draft legislation; hence, the inclusion of alternate language.

Section 1. Findings and Purpose. The legislature hereby finds and declares that:

(1) the people of this State have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;

Section 1. Findings and Purpose. The legislature hereby finds and declares that:

(1) the people of this State have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of collective bargaining between public employers and public employee organizations can lead to various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;

(3) the State has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government;

(4) there neither is, nor can be, an analogy of statuses between public employees and private employees, in fact or law, because of inherent differences in the employment relationship arising out of the unique fact that the public employer was established by and run for the benefit of all the people and his authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the constitution, statutes, municipal charters, civil service rules, regulations, and resolutions; and

(3) experience in private and public employment has also proved that protection by law of the right of employees to organize and bargain collectively safeguards employees and the public from injury, impairment and interruptions, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the friendly adjustment of disputes arising out of differences as to wages, hours, and other working conditions, and by creating equality of bargaining power between employers and employees; and

(4) the State has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government.

(5) this difference between public and private employment is further reflected in the constraints that bar any abdication or bargaining away by public employers of their continuing legislative discretion and in the fact that constitutional provisions as to contract, property, and due process do not apply to the public employer and employee relationship.

It is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other terms and conditions of employment, acting within the framework of laws and charter provisions. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies.

It is the purpose of this act to obligate public agencies, public employees and their representatives to enter into collective negotiations with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other terms and conditions of employment.

It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies.

Section 2. Definitions. As used in this act:

(1) "Public employee" means any person employed by any public agency excepting those persons classed as supervisory public employees; elected and top management appointive officials; and certain categories of confidential employees including those who have responsibility for administering the public labor relations law as a part of their official duties.

(2) "Supervisory employee" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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(3) "Public agency" or "public employer" means the State of _____ and every governmental subdivision, district, public and quasi-public corporation, public agency and public service corporation and town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not.

(4) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in dealings with that public agency over wages, hours, and other terms and conditions of employment.

(5) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the employees of an appropriate unit.

(6) "Agency" means the Public Employee Relations Agency established pursuant to this act.

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(5) "Recognized employee organization" or "exclusive representative" means an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the employees of an appropriate unit.

(6) "Agency" means the Public Employee Relations Agency established pursuant to this act.

(7) "Meet and confer in good faith" is the process whereby the chief executive of a public agency, or such representatives as it may designate, and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions, and proposals, to endeavor to reach agreement on matters within the scope of discussions, and to seek by every possible means to implement agreements reached.

(8) "Memorandum of agreement" means a written memorandum of understanding arrived at by the representatives of the public agency and a recognized employee organization(s), which may be presented to the governing body or its statutory representative and to the membership of such organization(s) for appropriate action.

(7) "Collective negotiations" or "collective bargaining" means performance of the mutual obligation of the employer through its chief executive officer or designated representative and the recognized employee organization to meet at reasonable times and negotiate in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(8) "Agreement" means a written contract between an employer and an employee organization, usually for a definite term, defining the conditions of employment, including wages, hours, vacations, holidays, and overtime payments, and the procedures to be followed in settling disputes or handling issues that arise during the term of the contract.

(9) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the public agency and the recognized employee organizations through interpretation, suggestion, and advice.

(10) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with the fact-finder submitting a report to the parties describing the issues involved; the report may contain recommendations for settlement and may be made public

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(11) "Arbitration" means interpretation of the terms of an existing or a new memorandum of agreement or investigation of disputes by an impartial third party whose decision may be final and binding. Arbitration is advisory when the results are not binding upon the parties; it is final and binding when the parties, of their own volition, agree to submit a dispute and to abide by the decision of the impartial third party.

(12) "Strike" means the failure by concerted action with others to report for duty, the wilful 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, and without the lawful approval of one's superior, or in any manner interfering with the operation of government of the State, the government of any of the political subdivisions thereof, the public schools or any authority, commission, board or branch thereof, for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment.

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(12) "Strike" means any concerted stoppage of work or slowdown by public employees.

Section 3. Public Employee Relations Agency.

(a) There is hereby created in the [State department of civil service] a board, to be known as the [Public Employee Relations Agency], which shall consist of [⁵five] members appointed by the Governor, by and with the advice and consent of the senate from persons representative of the public. Not more than [³three] members of the Agency shall be members of the same political party. Each member shall be appointed for a term of [⁶six], except that [²two] shall be appointed for a term to expire [²two] years following the effective date of this act, [²two] for a term that shall expire [⁴four] years following the effective date of this act, and [¹one] for a term that shall expire [⁶six] years following the effective date of this act. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

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[(a) There is hereby created the Public Employee Relations Agency, which shall be composed of ~~[five]~~^[3] members. The Governor shall appoint two members who shall serve at his pleasure. The State Labor Committee, in accordance with its rules, shall appoint [2] members, who shall serve at the pleasure of the Committee. the fifth member of the Agency shall be elected and designated chairman by the unanimous vote of the,

other ~~[four]~~^[4] members, after which he shall be appointed by the Governor.

The chairman shall serve for ~~[three]~~^[3] years, commencing from the date of his appointment.

Vacancies in the office of any member shall be filled in the same manner as herein provided for appointment. [Three] members, consisting of the chairman, at least one member appointed by the Governor and at least one member appointed by the Committee shall at all times constitute a quorum of the Agency.

Membership in the State Labor Committee shall be open to any labor organization which represents employees as defined in the act. The State Labor Committee shall adopt reasonable rules for the purpose of designating and removing labor members of the Agency. The labor members shall be designated within [28] days after the effective date of this act. The first

(b) Members shall hold no other public office or public employment in the State or its political subdivisions. [The chairman shall give his full time to his duties.]

(c) Members of the Agency other than the chairman, when performing the duties of the Agency, ^{shall} be compensated at the rate of [one hundred dollars a day], together with an allowance of actual and necessary expenses incurred in the discharge of their responsibilities hereunder. The chairman shall receive an annual salary to be fixed within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

meeting of said Committee shall be convened by a representative of the labor organization having the largest number of members who are employees as defined in the act. This representative shall serve as acting chairman of the State Labor Committee until a permanent chairman is selected in accordance with the rules adopted by the State Labor Committee.]

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(d) The Agency may appoint an executive director and such other persons, including but not limited to mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, ^{The agency shall} prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation.

(c) [The chairman of the Agency shall receive a salary of _____
[and shall not engage in any other business, vocation or employment]. The remaining members shall serve without compensation, providing, however, that the chairman and other members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The chairman shall be responsible for the administrative functions of the Agency and ^{may} appoint such employees as may be necessary to carry out the work of the Agency.]

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(e) In addition to the ^{authority} provided in other sections, the Agency ^{may:}

(1) ~~Make~~ studies and analyses of, and act as a clearinghouse of information relating to, conditions of employment of public employees throughout the State.

(2) ~~Request~~ from any public agency such assistance, services, and data as will enable the Agency properly to carry out its functions and powers.

(3) ~~Establish~~ procedures for the prevention of improper public employer and employee organization practices as provided in Section ~~13~~ of this act, provided, that in the case of a claimed violation of paragraph (5) of subdivision (b) or paragraph (4) of subdivision (c) of such Section, procedures shall provide only for an entering of an order directing the public

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(3) ~~Establish~~ procedures for the prevention of improper public employer and employee organization practices as provided in Section ~~13~~ of this act, provided, that in the case of a claimed violation of paragraph (5) of subdivision (b) or paragraph (4) of subdivision (c) of such section, procedures shall provide only for an entering of an order directing the public agency or employee organization to bargain collectively.

agency or employee organization to meet and confer in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to Section 7 of this act or with meeting and conferring.

(4) Establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators, or members of fact-finding boards.

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers.

The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to Section 7 of this act or with negotiating collectively;

(4) Establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators, or members of fact-finding boards;

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers;

(6) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the Agency or any person appointed by the Agency for the performance of its functions. Such subpoenas shall be regulated and enforced [under the civil practice law and rules].

(7) To make, amend, and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this act.

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(7) to make, amend, and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this act.

Section 4. Public Employee Rights. Public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations.

Section 5. The Special Case of Supervisory Employees. Supervisory employees may form, join, and participate in the activities of employee organizations, provided such organizations do not include non-supervisory employees. A public agency shall not extend formal recognition to such an organization for the purpose of meeting and conferring with respect to grievances and conditions of employment.

Section 4. Rights of Employees. Employees shall have the right of self-organization, and may form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring the payment of service fees as a condition of employment as authorized in Section 5 (c).

Section 5. The Special Case of Supervisory Employees. Supervisory employees may form, join, and participate in the activities of employee organizations, provided such organizations do not include non-supervisory employees. A public agency shall not extend exclusive recognition to such an organization for the purpose of negotiating collectively with respect to grievances and conditions of employment.

Section 6. Public Employer Rights. Nothing in this act is intended to circumscribe or modify the existing right of a public employer to:

- (1) direct the work of their employees;
 - (2) hire, promote, demote, transfer, assign, and retain employees in positions within the public agency;
 - (3) suspend or discharge employees for proper cause;
 - (4) maintain the efficiency of governmental operations;
 - (5) relieve employees from duties because of lack of work or for other legitimate reasons;
 - (6) take actions as may be necessary to carry out the mission of the agency in emergencies; and
 - (7) determine the methods, means, and personnel by which operations are to be carried on.
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Section 7. Recognition of Employee Organizations.

(a) Public employers shall recognize employee organizations for the purpose of representing their members in employment relations with public agencies. Employee organizations may establish reasonable provisions for the dismissal of individuals from membership.

(b) Where an employee organization has been certified as representing a majority of the employees in an appropriate unit, or recognized formally, pursuant to the provisions of this act, the appropriate public employer shall meet and confer in good faith with such employee organization in the determination and administration of grievances arising under the terms and conditions of employment of the public employees as provided in this act, and may enter into a memorandum of agreement with the employee organization.

Section 7. Recognition of Employee Organizations.

(a) Public employers shall recognize employee organizations for the purpose of representing their members in employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Where an employee organization has been certified as representing a majority of the employees in an appropriate unit, or recognized exclusively, pursuant to the provisions of this act, the appropriate public employer shall bargain collectively with such employee organization on wages, hours, and other conditions of employment in the determination and administration of grievances arising under the terms and conditions of employment of the public employees as provided in this act, and may enter into an agreement with the employee organization.

(c) When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization, or employees, the Public Employee Relations Agency, established pursuant to this act, shall, at the request of any of the parties, investigate such question and, after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among employees, the history and extent of employee organization, geographical location, the provisions of Section ⁵ of this act, and the recommendations of the parties involved.

(c) When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization, or employees, the Public Employee Relations Agency, established pursuant to this act, shall, at the request of any of the parties, investigate such question and, after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among employees, the history and extent of employee organization, geographical location, the provisions of Section ⁵ of this act, and the recommendations of the parties involved.

(d) Following investigation of a question concerning the representation of employees, the Public Employee Relations Agency at the request of any of the parties, shall investigate such questions and certify to the parties in writing, the name(s) of the representative(s) that have been designated. The filing of a petition for the investigation or certification of a representative of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the Agency may provide for an appropriate hearing, and shall take a secret ballot of employees in the appropriate unit involved to ascertain such representatives for the purpose of formal recognition. If the Agency has certified a formally recognized representative in an appropriate unit, as provided in this section, it shall not be required to consider the matter again for a period of one year, unless it appears that sufficient reason exists. The Agency may promulgate such rules and regulations as may be appropriate to carry out the provisions of subsections (c) and (d) at this Section.

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Section 8. Rights Accompanying Formal Recognition.

(a) A public employer shall extend to an employee organization certified or recognized formally, pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with Section 7(d), during the 12 months following the date of certification or formal recognition.

(b) A public employer may extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees, provided that all employee organizations shall have the right to membership dues deductions until the formally recognized representative has been determined.

Section 8. Rights Accompanying Exclusive Recognition.

(a) A public employer shall extend to an employee organization certified or recognized exclusively, pursuant to this act, the right to represent the employees of the appropriate unit involved in collective bargaining proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with Section 7(d), during the 12 months following the date of certification or exclusive recognition.

(b) A public employer shall extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees, provided that all employee organizations shall have the right to membership dues deduction until the formally recognized representative has been determined.

(c) Representatives of formally recognized employee organizations shall be given time off without loss of compensation during normal working hours to meet and confer with public employees on matters falling within the scope of discussions.

Section 9. Procedures for Determining the Recognition Status of Local Employee Organizations.

(a) Every public agency, other than the State and its authorities acting through its legislative body, may establish procedures, not inconsistent with the provisions of Sections 7 and 8 of this act and after consultation with interested employee organizations and employer representatives, to resolve disputes concerning the recognition status of employee organizations composed of employees of such agency.

(c) Nothing in this Act or in any other statute of this State shall preclude a public employer from making an agreement with an exclusive representative to require as a condition of employment the payment of service fees to such representative on or after the thirtieth day following the beginning of employment or on the effective date of the agreement, whichever is the later.

(d) Representatives of exclusively recognized employee organizations shall be given time off without loss of compensation during normal working hours to bargain collectively with public employees on matters falling within the scope of negotiations.

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(b) in the absence of such procedures, disputes shall be submitted to the Public Employee Relations Agency in accordance with Section 7 of this act.

Section 10. Scope of Memorandum of Agreement. The scope of a memorandum of Agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however, that the scope of a memorandum of agreement shall not include proposals relating to (i) any subject preempted by Federal or State law or by municipal charter, (ii) public employee rights defined in Section 4 of this act, (iii) public employer rights defined in Section 6 of this act, or (iv) the authority and power of any civil service commission, personnel board, personnel agency or its agents established by constitutional provision, statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board.

(b) In the absence of such procedures, such disputes shall be submitted to the Public Employee Relations Agency in accordance with Section 7 of this act.

Section 10. Scope of Agreement. The scope of an agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of such agreement. Where there is a conflict between any agreement reached by a public employer and an employee organization and approved in accordance with the provisions of this act on matters appropriate to collective bargaining, as defined in this act, and any charter, special act, ordinance, rules or regulations adopted by the public employer or its agents such as a personnel board or civil service commission, or any general statute directly relating to hours of work of policemen or firemen, or any general statute providing for the method of covering or removing employees from coverage under the [] employees retirement system, the terms of such agreement shall prevail. Nothing herein shall diminish the authority and power of any civil service

commission, personnel board, personnel agency or its agents established by constitutional provision, statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board.

Section 11. Implementation of Memoranda of Agreement. If agreement is reached by the representative of the public agency and the recognized employee organization, they shall jointly prepare a memorandum of understanding and, within [14] days, present it to the appropriate governing authority for determination. The authority, as soon as practicable, shall consider the memorandum and take appropriate action. If a settlement is reached with an employee organization and the governing authority, the authority shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule, or regulation. If the governing authority rejects a proposed memorandum, the matter shall be returned to the parties for further deliberation.

Section 11. Implementation of an Agreement.

(a) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and executed by both parties.

(b) The agreement shall be valid and enforced under its terms when entered into in accordance with the provisions of this act. No publication thereof shall be required to make it effective.

(c) A request for funds necessary to implement the written agreement and for approval of any other matter requiring the approval of the appropriate legislative body, shall be submitted by the employer to the legislative body within [14] days of the date on which such agreement is executed. Matters requiring the approval of the State legislature shall be submitted by the employer within [14] days of the date the legislature convenes, if it is not in session at the time the agreement is executed. If rejected by the legislative body, the matter shall be returned to the parties for further

bargaining. Failure by the employer to submit such request to the legislature within the appropriate period shall be a refusal to bargain in good faith, in violation of Section 13(b)(5) of this act. The request shall be considered approved if the legislative body fails to vote to approve or reject the request within [30] days of the end of the period for submission to the legislative body. The parties may provide for those provisions of the agreement not requiring action by the legislative body to be effective and operative in accordance with the term of the agreement. If the legislative body rejects the provisions submitted to it by the employer, either party may reopen all or part of the remainder of the agreement.

Section 12. Resolution of Disputes Arising in the Course of Discussions.

(a) Public employers may include in memoranda of agreement concluded with formally recognized or certified employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such a provision may stipulate the submission of unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures resulting in a deadlock, either party may request the assistance of the Public Employee Relations Agency or the Agency may render such assistance on its own motion, as provided in subdivision (b) of this section.

Section 12. Resolution of Disputes Arising in the Course of Negotiations.

(a) Public employers may include in agreements concluded with exclusively recognized or certified employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of bargaining proceedings. Such a provision may stipulate the submission of unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures resulting in a deadlock, either party may request the assistance of the Public Employee Relations Agency or the Agency may render such assistance on its own motion, as provided in subdivision (b) of this section.

(b) On the request of either party or upon the agency's own motion, and if it determines an impasse exists in meet and confer proceedings between a public employer and formally recognized or certified employee organizations, the Agency shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by the Agency.

(c) If the deadlock persists [7] days after the mediator(s) has been appointed, the Agency shall appoint a fact-finding board of not more than [3] members, each representative of the

(b) On the request of either party or upon the agency's own motion and in the event it determines an impasse exists in bargaining proceedings between a public employer and an exclusively recognized or certified employee organization, the Agency shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by the Agency.

(c) If the deadlock persists [7] days after the mediator(s) has been appointed, the Agency shall appoint a fact-finding board of not more than [3] members, each representative of the public, from a list of qualified persons maintained by the Agency. The fact-finding board shall conduct a hearing, may administer oaths, and may request the Agency to issue subpoenas. It

public, from a list of qualified persons maintained by the Agency.

The fact-finding board shall conduct a hearing, may administer oaths, and may request the Agency to issue subpoenas.

It shall make written findings of facts and recommendations for resolution of the dispute and, not later than [21] days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public [7] days after it is submitted to the parties. If the dispute continues [14] days after the report is submitted to the parties, the report shall be made public.

- (d) If the parties have not resolved their deadlock by the end of a [49] day period commencing with the date of appointment of the fact-finding board, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by the Agency.
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board shall make written findings of facts and recommendations for resolution of the dispute and, no later than [21] days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public [7] days after it is submitted to the parties. If the dispute continues [14] days after the report is submitted to the parties, the report shall be made public.

- (d) If the parties have not resolved their deadlock by the end of a [49] day period commencing with the date of appointment of the fact-finding board, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by the Agency.

← If the parties do not jointly agree to such an arbitration procedure within [7] days after the end of the [49] day period, then the public employer, by written notice to the recognized employee organization and to the Agency, ^{may} request that the remaining differences be submitted to a board of [3] arbitrators. The recognized employee organization and the public agency shall within [5] days of such request each select and name one arbitrator and shall immediately thereafter notify each other and the Agency in writing of the name and address of the person so selected. The two arbitrators so selected and named, within [7] days from such request, ^{shall} agree upon and select and name a neutral arbitrator. If either party does not select its arbitrator or if the two arbitrators

← If the parties do not jointly agree to such an arbitration procedure within [7] days after the end of the [49] day period, either party, by written notice to the Agency, may request that the remaining differences be submitted to a board of [3] arbitrators. The recognized employee organization and the public agency shall within [5] days of such request each select and name one arbitrator and shall immediately thereafter notify each other and the Agency in writing of the name and address of the person so selected. The two arbitrators so selected and named, within [7] days from such request, shall agree upon and select and name a neutral arbitrator. If either party does not select its arbitrator or if the two

fail to agree upon, select, and name a neutral arbitrator within
[7] days, either party may request the Agency to
utilize its procedures for the selection of the neutral arbitrator.
Within a reasonable period following receipt of the request, the
neutral arbitrator shall be selected in accordance with rules and
procedures prescribed by the Agency for making such selection.
As soon as possible after the selection of the neutral arbitrator,
the [3] arbitrators or if either party shall not have selected
its arbitrator, the two arbitrators, as the case may be, shall meet
with the parties or their representatives, or both,
either jointly or separately, make inquiries and investigations,
hold hearings, or take such other steps as they deem appropriate.
The hearing shall be informal, and the rules of evidence prevailing
in judicial proceedings shall not be binding. Any and all documentary

arbitrators fail to agree upon, select, and name a neutral
arbitrator within [7] days, either party may request the
Agency to utilize its procedures for the selection of the
neutral arbitrator. Within a reasonable period following
receipt of the request, the neutral arbitrator shall be selected
in accordance with rules and procedures prescribed by the Agency
for making such selection. As soon as possible after the selection
of the neutral arbitrator, the [3] arbitrators or if either
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steps as they deem appropriate. The hearing shall be informal,
and the rules of evidence prevailing in judicial proceedings shall
not be binding. Any and all documentary evidence and other data

← evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues represented to them for determination.

If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: (i) With respect to a controversy over salaries, pensions and insurance, the arbitrators shall recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within [28] days after the selection of the neutral arbitrator; the arbitrators may,

← deemed relevant by the arbitrators may be received in evidence.

← The arbitrators may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues represented to them for determination.

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←

← make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within [7] days after their receipt from the arbitrators; (ii) with respect to a controversy over subjects other than salaries, pensions, and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within [28] days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; then determinations will be subject to review by the Agency.

(c) The costs for the mediation and fact-finding services provided by the Agency shall be borne by the Agency. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties to a dispute.

← [seven] days after their receipt from the arbitrators; (ii) with respect to a controversy over subjects other than salaries, pensions, and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within [28] days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; then determinations will be subject to review by the Agency.

← (c) The costs for the mediation and fact-finding services provided by the Agency shall be borne by the Agency. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties to a dispute.

Section 13. Prohibited Practices; Evidence of Bad Faith in Meet and Confer Proceedings.

(a) / Commission of prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) interfere, restrain or coerce public employees in the exercise of rights granted in Section 4 of this act;

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

Section 12. Prohibited Practices; Evidence of Bad Faith.

Commission of a

(a) / prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in collective negotiations proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) interfere, restrain or coerce public employees in the exercise of rights granted in Section 4 of this act;

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

(3) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;

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

(5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in Section 7 of this act;

(6) Deny the rights accompanying certification or formal recognition granted in Section 8 of this act;

(3) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;

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

(5) Refuse to bargain collectively/^{in good faith} with representatives of recognized employee organizations as required in Section 7 of this act;

(6) Deny the rights accompanying certification or exclusive recognition granted in Section 8 of this act;

(7) Blacklist. any employee organization or its members for the purpose of denying them employment;

(8) Avoid in good faith mediation, fact-finding, and arbitration endeavors as provided in Section ¹² of this act; or

(9) To institute or attempt to institute a lockout.

(c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

(1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in Section ⁴ of this act;

(2) Interfere with, restrain, or coerce a public employer with respect to management rights granted in Section ⁶ of this act or with respect to selecting a representative for the purposes of meeting and conferring on the adjustment of grievances;

(7) Blacklist. any employee organization or its members for the purpose of denying them employment;

(8) Avoid in good faith mediation, fact-finding, and arbitration endeavors as provided in Section ¹² of this act;

(9) Institute or attempt to institute a lockout; or

(10) Deal directly with employees on matters falling within the scope of negotiations circumventing the exclusive representative.

(c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

(1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in Section ⁴ of this act;

(2) Interfere with, restrain, or coerce a public employer with respect to management rights granted in Section ⁶ of this act or with respect to selecting a representative for the purposes of bargaining collectively on the adjustment of grievances;

(3) Seek modification of the status of supervisory public employees as set forth in Section ⁵ of this act;

(4) Refuse to meet and confer in good faith with a public employer as required in Section ⁷ of this act;

(5) Avoid in good faith mediation, fact-finding, and arbitration efforts as provided in Section ¹¹ of this act; or ¹²

(6) Engage in a strike.

(d) In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of Federal or State law applicable, wholly or in part to the private employment, shall be regarded as binding or controlling precedent.

(3) Seek modification of the status of supervisory public employees as set forth in Section ⁵ of this act;

(4) Refuse to bargain collectively/^{in good faith} with a public employer as required in Section ⁷ of this act;

(5) Avoid in good faith mediation, fact-finding, and arbitration efforts as provided in Section ¹¹ of this act; or ¹²

(6) Engage in a strike.

Section 4. Violations of Prohibited Practices.

(a) Any controversy concerning prohibited practices may be submitted to the Agency. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it by the Agency of a written notice, together with a copy of the charges. The accused party shall have [7] days within which to serve a written answer to such charges. The Agency's hearing will be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required. The Agency may use its rule-making power, as provided in Section 3, to make any other procedural rules it deems necessary to carry on this function.*

Section 4. Violations of Prohibited Practices.

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*Where a State has adopted an administrative procedures act, this section should be made to conform to it.

(b) The Agency shall state its findings of facts upon all the testimony and shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the Agency finds that the party accused has committed or is committing a prohibited practice, the Agency shall petition the [court] to punish such violation, and shall file in the [court] the record in the proceedings. Any person aggrieved by a final order of the Agency granting or denying in whole or in part the relief sought may obtain a review of such order in the [Court of Appeals] by filing in the [court] a complaint praying that the order of the Agency be modified or set aside, with copy of the complaint filed on the Agency, and thereupon the aggrieved party shall file in the [court] the record in the proceeding, certified by the Agency. Findings of the Agency as to the facts shall be conclusive unless it is made to appear to the [court's] satisfaction that the findings of fact were not supported by substantial evidence.

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Section 1⁵ Local Public Agency Options. This act, except for Sections 2, 3(e) (3), 4, 5, 6, 7, 8, ~~13~~¹³, and ~~15~~¹⁴, shall be inapplicable to any public employer, other than the State and its authorities, which, acting through its legislative body, has adopted by local law, ordinance, or resolution its own provisions and procedures which have been submitted to the Agency by such public employer and as to which there is in effect a determination by the Agency that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this act with respect to the State.

Section 16. Separability. [Insert separability clause.]

Section 17. Effective Date. [Insert effective date.]

Section 1⁵ Local Public Agency Options. This act, except for Sections 2, 3(e) (3), 4, 5, 6, 7, 8, ~~13~~¹³, and ~~15~~¹⁴, shall be inapplicable to any public employer, other than the State and its authorities, which, acting through its legislative body, has adopted by local law, ordinance, or resolution its own provisions and procedures which have been submitted to the Agency by such public employer and as to which there is in effect a determination by the Agency that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this act with respect to the State.

Section 16. Separability. [Insert separability clause.]

Section 17. Effective Date. [Insert effective date.]