

HOUSE BILL 2961

By Moore

AN ACT to enact the "Public Safety Employee Bargaining Act" and to amend Tennessee Code Annotated, Title 4.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Public Safety Employee Bargaining Act."

SECTION 2.

(a) The purpose of the this act is to guarantee public safety employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public safety employees, to promote full communication between public employers and public safety employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public safety employees/labor organizations and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions. It is also the purpose of this act to promote the improvement of personnel management and employer-employee relations within the various public agencies in the state by providing a uniform basis for recognizing the right of public safety employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. It is hereby declared as the public policy of this state and its political subdivisions that the best interests of the people of the state are best served by the prevention or prompt settlement of labor disputes in the public sector.

(b) This state's public policy is best effectuated by:

(1) Granting to all public safety employees the right of organization and representation;

(2) Requiring the state, local governments, and other political subdivisions to negotiate with exclusive representatives/bargaining agents duly certified to represent public safety employees;

(3) Creating a public safety employees relations board to assist in resolving disputes between public safety employees and public employers; and

(4) Recognizing the statutory prohibition against strikes by public safety employees and providing remedies for violations of such prohibition.

(c) Bargaining units established prior to the effective date of this act shall continue to be recognized as appropriate bargaining units for the purposes of this act.

(d) An employee/labor organization that was recognized by a public employer as the exclusive representative/bargaining agent of an appropriate bargaining unit on the effective date of this act shall be recognized as the exclusive representative of the unit on the effective date of this act and shall be deemed certified by the board.

(e) Nothing in this act shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative/bargaining agent prior to the effective date of this act. Nothing in this act shall be construed to annul or modify the status of an existing or recognized exclusive representative/bargaining agent.

(f) A public employer that, prior to the effective date of this act, adopted by ordinance, resolution, or charter amendment a system of provisions and procedures permitting public safety employees to form, join, or assist a labor organization for the purpose of bargaining collectively through exclusive representatives/bargaining agents shall amend such ordinance, resolution, or charter amendment and immediately comply

with this act unless the ordinance, resolution or charter amendment meets or exceeds all elements of this act.

(g) Any collective bargaining agreement in effect on the effective date of this act shall remain in full force and effect but the parties shall amend the terms and conditions of such collective bargaining agreements to comply with this act.

SECTION 3.

For purposes of this act:

(1) "Appropriate bargaining unit" means a group of public safety employees with a community of interest designated by the board for the purpose of collective bargaining;

(2) "Appropriate governing body" of a public employer is the policymaking individual or body representing the public employer. In the case of the state, the appropriate governing body is the governor or the governor's designee or, in the case of a constitutionally created body, the constitutionally designated head of such body. At the local level, the appropriate governing body is the elected or appointed representative body or individual charged with management of the local public body. In the event of dispute, the board shall determine the appropriate governing body;

(3) "Arbitration" means a method of settling a labor-management dispute by having a neutral third party hold an informal hearing, take testimony, and render a decision award or both. In the case of a collective bargaining impasse, such proceedings are known as "interest arbitration";

(4) "Authorization card/petition" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative/bargaining agent;

(5) "Bargaining unit" means either that unit determined by the board or that unit determined by the public employer and the public safety employee/labor organization and approved by the board to be appropriate for the purposes of collective bargaining;

(6) "Board" means the public employment relations board established pursuant to Section 4;

(7) "Certification" means the designation by the board of an employee/labor organization as the exclusive representative/bargaining agent for all public safety employees in an appropriate bargaining unit;

(8) "Chief executive officer" for the state means the governor, and for other public employers means the person, whether elected or appointed, who is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer;

(9) "Collective bargaining" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its public safety employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. To "bargain collectively" includes executing a written contract incorporating all the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal, nor does it require the making of a concession;

(10) "Confidential employee" means a person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a management employee;

(11) "Employee/labor organization" means any organization, agency, employee representation committee or plan, union, association, fraternal order, occupational or professional society, or group of any kind, or a local or subdivision thereof, however organized or constituted, by whatever name, whether incorporated or not, in which public safety employees participate or seek to participate, and which exists for the purpose, in whole or in part, of the representation of public safety employees in collective bargaining or otherwise meeting, consulting, conferring, or dealing with public employers concerning employment relations, labor disputes, wages, benefits, hours, and grievances of any kind relating to employment, or conditions of work, but shall not include any employee/labor organization which, by ritualistic practice, constitutional or by-law proscription, by tacit agreement among its members, or otherwise, denies a person or persons membership in its organization on account of race, creed, color, or political affiliation;

(12) "Exclusive representative/bargaining agent" means an employee/labor organization that, as a result of certification, has the exclusive right to represent all public safety employees in an appropriate bargaining unit for the purposes of collective bargaining;

(13) "Fair share" means the payment to an employee/labor organization which is the exclusive representative/bargaining agent for an appropriate bargaining unit by an employee within that bargaining unit who is not a dues-paying member of that employee/labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on upon those expenditures by an employee/labor organization which are permissibly chargeable to all public safety employees in the appropriate bargaining unit, including but not limited to all expenditures incurred by the employee/labor

organization in negotiating the contract applicable to all public safety employees in the appropriate bargaining unit, servicing such contract, and representing all such public safety employees in grievances and disciplinary actions provided that such fair share fee shall not exceed the dues paid by members of the employ/labor organization;

(14) "Good faith bargaining" means, but is not limited to, the willingness of both parties to meet at reasonable times and places, as mutually agreed upon, in order to discuss issues which are proper subjects of bargaining, with the intent of reaching a common accord. "Good faith bargaining" includes an obligation for both parties to authorize their respective representatives to negotiate and enter into an agreement subject to ratification, to participate actively in the negotiations with an open mind and a sincere desire to cooperate as equals, and to make a sincere effort to resolve differences and come to an agreement. In determining whether a party failed to bargain in good faith, the board shall consider the total conduct of the parties during negotiations as well as the specific incidents of alleged bad faith. Incidents indicative of bad faith include, but not be limited to, the following occurrences:

(A) Failure to meet at reasonable times and places with representatives of the other party for the purpose of negotiations;

(B) Placing unreasonable restrictions on the other party as a prerequisite to meeting;

(C) Refusal to discuss bargainable issues;

(D) Refusing, upon reasonable written request, to provide public information, excluding work products as defined in Section 30;

(E) Refusing to negotiate because of an unwanted person on the opposing negotiating team;

(F) Refusing to commence negotiations or reach an agreement prior to or during the budget making process;

(G) Refusing to negotiate based upon an assertion that the applicable budget has been established prior to reaching agreement;

(H) Negotiating directly with public safety employees rather than with their certified exclusive representative/bargaining agent; and

(I) Refusing to reduce an agreement to writing;

(15) "Grievance" means a complaint by a public safety employee, group of public safety employees, or employee/labor organization based upon an alleged violation, misinterpretation, or inequitable application of any existing agreements, contracts, statutes, ordinances, policies and rules of a public employer, or any authority, commission, or board, or any other branch of the public service, as they apply to hours, wages, or the terms and conditions of employment including, but not limited to, hours, wages, promotion, discipline, termination, lay-offs, and any other benefit of employment whether economic or non-economic;

(16) "Impasse" means failure of a public employer and an exclusive representative/bargaining agent, to reach agreement in the course of negotiating a collective bargaining agreement;

(17) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment; or the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee;

(18) "Law enforcement officer" means an employee of a public safety agency who is authorized by law to engage in or supervise the prevention,

detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and juvenile delinquency, has statutory powers of arrest, including, but not limited to, police, corrections, probation, parole, and judicial officers;

(19) "Legislative body" means the state legislature, the county legislative body, the school board of a local education agency, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit. The board of trustees of the University of Tennessee or the state board of regents, or the appropriate board's designee, shall be deemed to be the legislative body with respect to all public safety employees of each constituent state college or university. The board of trustees of a community college shall be deemed to be the legislative body with respect to all public safety employees of the community college;

(20) "Lockout" means an act by a public safety agency to prevent its public safety employees from going to work for the purpose of resisting the demands of the public safety employees' exclusive representative/bargaining agent or for the purpose of gaining a concession from the exclusive representative/bargaining agent;

(21)(A) "Management employee/official" means an individual, employed by a public employer who:

(i) Is engaged primarily in management functions that are not merely routine, incidental, or clerical in nature and require the exercise of independent judgment, who devotes a majority of employment time to the

exercise of such judgment, and to whom one (1) or more of the following applies. The person:

(a) Formulates or assists in formulating, developing, administering or effectuating management policies which are applicable to bargaining unit public safety employees;

(b) May reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations;

(c) Has an executive role on behalf of the employer in the administration of agreements resulting from collective bargaining negotiations;

(d) Has a significant executive role in personnel administration;

(e) They have a significant executive role in employee relations;

(f) Has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

(g) Has a significant executive role in the preparation or administration of budgets for any public safety agency or institution or subdivision thereof; or

(ii) Serves as a sheriff, police chief, or director of public safety of any police, or public safety department.

(B) Other police officers or emergency medical services personnel may be determined by the board to be managerial employees of such departments.

(C) In determining whether an individual is a managerial employee, the board may consider historic relationships of the employee to the public employer and to co-employees. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis or occasionally assumes a managerial, supervisory, or directory role. "Management" employee/official does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs. Rank or title shall not be used to determine whether an employee is managerial;

(22) "Mediation" means an 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 safety agency and the recognized or certified employee/labor organization through interpretation, suggestion, and advice;

(23) "Person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, or employee/labor organization;

(24) "Public employer" or "employer" means the state or any county, sheriff, clerk of court, public defender, district attorney general, municipality, or special district or any subdivision or agency thereof or any elected or appointed officer, including constitutional officers, which the board determines has sufficient legal distinctiveness to properly carry out the functions of a public employer. With respect to all public safety employees determined by the board as properly belonging to a statewide bargaining unit composed of civil service system employees or selected professional service employees, the governor shall be deemed to be the public employer; and the board of trustees of the University of Tennessee or the state board of regents, or the appropriate board's

designee, shall be deemed to be the public employer with respect to all public safety employees of each constituent state university. The board of trustees of a community college shall be deemed to be the public employer with respect to all public safety employees of the community college. The school board of a local education agency shall be deemed to be the public employer with respect to all public safety employees of the school district;

(25) "Public safety agency" means every governmental subdivision, every district, every authority, every public and quasi-public corporation, every public agency, public service corporation, and every town, city, county, county having a metropolitan form of government, and municipal corporation, whether incorporated or not and whether chartered or not, that employs public safety employees;

(26) "Public safety employee" means an employee of a public safety agency who is a law enforcement officer, or an emergency medical services personnel and includes an individual who is temporarily transferred to a supervisory or management position.

The following are not public safety employees:

(A) Those persons holding positions by appointment or employment in the armed forces, reserve or national guard. This subdivision (26)(A) shall apply only to such capacity and shall not prohibit a public safety employee who is a member of the armed forces, reserve or national guard from being a member of a bargaining unit as a public safety employee;

(B) Those individuals acting as negotiating representatives for employer authorities by whom they are employed;

(C) Those persons who are designated by the board as managerial or confidential employees pursuant to criteria contained in this act;

(D) Those persons who have been convicted of a crime and are inmates confined to penal institutions within the state; or

(E) Those persons employed by the board;

(27) "Recognized employee/labor organization" means an employee/labor organization which has been formally acknowledged voluntarily by the public employer as an employee/labor organization that represents public safety employees of the public safety agency. Nothing contained in this subdivision (27) shall prevent the board from certifying an employee/labor organization as the exclusive representative/bargaining agent over the public employer's objection or refusal to voluntarily recognize the employee/labor organization;

(28) "Representative" includes any individual or employee/labor organization;

(29) "Scope of representation" means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, benefits, hours, and other terms and conditions of employment, except, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order; and

(30) "Supervisory employee" means an individual, employed by a public safety employer, who performs different work from subordinates, who devotes a majority of work time to supervisory duties that requires the use of independent judgment, who customarily and regularly directs the work of two (2) or more other public safety employees, and who has the authority in the interest of the employer to hire, promote, terminate or discipline other public safety employees or whose recommendations on such actions are given significant weight. "Supervisor" does not include an individual who performs merely routine, incidental, or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the employee's subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs. Rank or title shall not be used to determine whether an employee is supervisory.

SECTION 4.

(a)

(1) The public safety employees relations board, referred to in this act as the board, shall be composed of a chair and at least two (2) full-time members to be appointed by the governor, subject to confirmation by the senate, from persons representative of the public and known for their objective and independent judgment, who shall not be employed by, or hold any office or commission with, any governmental unit in the state or any employee/labor organization, while in such office. The governor shall appoint one (1) member recommended by organized labor representatives actively involved in representing public safety employees, one (1) member recommended by public employers actively involved in collective bargaining and one (1) member jointly recommended by the other two (2) appointees who shall have verifiable experience in labor relations. In no event shall more than one (1) appointee be a person who, on account of previous vocation, employment, or affiliation, is, or has been, classified as a representative of employers; and in no event shall more than one (1) such appointee be a person who, on account of previous vocation, employment, or affiliation, is, or has been, classified as a representative of public safety employees or employee/labor organizations. The board members shall devote full time to board duties and shall not engage in any other business, vocation, or employment while in such office. The governor shall designate which appointee shall be the chair of the board.

(2) The terms of office of the board members shall be four (4) years, with the terms of office beginning in January of the second year following each regularly scheduled general election at which a governor is elected to a full term of office; provided, that the initial appointment of the chair shall be for a term of

office so that the term shall expire the second year following the regularly scheduled general election at which a governor is elected to a full term of office following the effective date of this act. One (1) board member shall be appointed for a for a term of one (1) year, and one (1) board member shall be appointed for a term of two (2) years. Thereafter, every term of office shall be for four (4) years.

(3) Vacancies shall be filled by appointment by the governor in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

(b) The chair shall be responsible for the administrative functions of the board and shall have the authority to employ such personnel as may be necessary to carry out this act. Once appointed to the office of chair, the chair shall serve as chair for the duration of the term of office of chair. Nothing contained in this section prohibits a chair or board member from serving multiple terms.

(c) The chair and the other board members shall be paid annual salaries to be fixed by law. Such salaries shall be paid in equal monthly installments. All board members shall be reimbursed for necessary expenses, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The property, personnel, and appropriations related to the board's specified authority, powers, duties, and responsibilities shall be provided to the board by the commissioner of finance and administration.

(e) The board shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, furniture, equipment, and supplies, and for printing and binding,

as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the board shall be allowed and paid upon the presentation of itemized and affirmed vouchers therefore approved by the chair.

(f) The board may, in its discretion, charge for publications, subscriptions, and copies of records and documents in accordance with rules promulgated by the office of open records counsel. Such funds shall be deposited in a trust fund to be established by the board and shall be used to help defray the cost of providing such publications, subscriptions, and copies of records and documents.

(g) The board shall maintain and keep open during reasonable business hours an office, which shall be provided in Nashville for the transaction of its business, at which its official records and papers shall be kept. The board may hold sessions and conduct hearings at any place within the state.

(h) The board shall have a seal for authentication of its orders and proceedings, upon which shall be inscribed the words "State of Tennessee--Public Safety Employees Relations Board--Seal" and which shall be judicially noticed.

(i) The board is expressly authorized to provide by rule for, and to destroy, the destruction of obsolete records of the board.

(j) The deliberations of the board in any proceeding before it are closed and exempt from, title 8, chapter 44 and title 10, chapter 7, part 5. However, any hearing held or oral argument heard by the board pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 or pursuant to this act shall be open to the public. All draft orders developed in preparation for, or preliminary to, the issuance of a final written order are confidential and exempt from title 8, chapter 44 and title 10, chapter 7, part 5.

(k) Any hearing held under this act shall be conducted according to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, by the board, a member of

the board, or a hearing officer designated by the board who is an employee of the board and a member of the Tennessee bar.

(l) The board may appoint an employee as elections supervisor to conduct elections in accordance with this act.

(m)

(1) There shall be a general counsel to the board. The general counsel of the board shall be hired by the board and shall serve as an employee of the board. The general counsel may be removed at any time by the board. The general counsel shall hold no other office or position in the government except as provided by law.

(2) The general counsel may:

(A) Investigate or cause to be investigated alleged unfair labor practices under this act;

(B) File and prosecute complaints under this act; and

(C) Exercise such other powers of the board as the board may prescribe.

(3) The general counsel shall have direct authority over, and responsibility for, all public safety employees in the office of general counsel, including public safety employees of the general counsel.

SECTION 5.

(a) The board shall, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt, promulgate, amend, or rescind such rules and regulations as it deems necessary and administratively feasible to carry out this act, including the establishment of procedures for:

(1) The designation of appropriate bargaining units;

(2) The selection, certification and decertification of exclusive representatives/bargaining agents;

(3) Determining whether a question of representation exists and to direct an election;

(4) The supervision or conduct of elections to determine whether an employee/labor organization has been selected as an exclusive representative/bargaining agent by a majority of the public safety employees in an appropriate unit and otherwise administer the provisions of this act relating to the according of exclusive recognition to employee/labor organizations;

(5) Resolution of issues relating to the duty to bargain in good faith;

(6) The filing of, hearing on, and determination of complaints of prohibited practices or unfair labor practices; and

(7) Such other actions as are necessary and appropriate to effectively administer the provisions of this act.

(b) The board shall:

(1) Hold hearings and make inquiries necessary to carry out its functions and duties;

(2) Conduct studies on problems pertaining to employee-employer relations; and

(3) Request from public employers and employee/labor organizations the information and data necessary to carry out the board's functions and responsibilities.

(c) To accomplish the objectives and carry out the duties prescribed by this act, the board may preserve and enforce order during any proceeding; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses; or issue subpoenas for, and compel the production of, books, papers,

records, documents, and other evidence. However, in the absence of extraordinary circumstances, no subpoena shall issue which commands the attendance or testimony of any board member or any board employee at a board proceeding with respect to the performance of official or assigned duties, or the production of books, papers, records, or documents of the board which have been prepared during the performance of such duties.

(d) If any person:

(1) Disrupts a proceeding or engages in conduct so near the place thereof as to obstruct the same;

(2) Neglects to produce, after having been ordered to do so, any pertinent book, paper, record, or document; or

(3) Refuses or fails to appear after having been subpoenaed or, upon appearing, refuses to take oath or affirmation as a witness or, after having taken the oath, refuses to be examined according to law,

the board may apply to the circuit or chancery court of the county where the proceeding is taking place for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Section 4-5-311(b) shall control the actions concerning such matters.

(e) Any subpoena, notice of hearing, or other process or notice of the board issued under this act shall be served personally or by certified mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service, and a returned post office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under this act shall be served in the county wherein the persons required to be served reside or may be found.

(g) The board shall adopt rules as to the qualifications of persons who may serve as mediators and arbitrators and shall maintain lists of such qualified persons who are not public safety employees of the board or public safety employees of a legislative body or an employee of a labor organization. Any party to a dispute may initiate dispute resolution procedures by mediators and arbitrators, pursuant to this act.

(g) Pursuant to its established procedures, the board shall resolve questions and controversies concerning claims for recognition as the exclusive representative/ bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining, expeditiously process charges of unfair labor practices and violations of Section 28 regarding the prohibition of strikes by public safety employees, and resolve such other questions and controversies as it may be authorized in this act to undertake. The petitioner, charging party, respondent, and any interveners shall be the adversary parties before the board in any adjudicatory proceeding conducted pursuant to this act. Any board statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to section 14 regarding the certification of exclusive representatives/ bargaining agents or Section 28 shall not constitute a rule within the meaning of the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

(h) The board shall provide by rule a procedure for the filing and prompt disposition of petitions for a declaratory statement as to the applicability of any statutory provision or any rule or order of the board. Such rule or rules shall provide for, but not be limited to, an expeditious disposition of petitions posing questions relating to potential unfair labor practices. Board disposition of a petition shall be final agency action, which shall be reviewable pursuant to section 27 regarding judicial review, and shall not constitute a rule as defined in the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

(i) Any final decision rendered in any case before a member of the board, a designee of the board, or hearing officer is appealable to the full board. Appeals to the board pursuant to this section shall be the exclusive administrative review of such actions, notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. However, nothing in this subsection(i) shall affect an employee's rights pursuant to Section 23 regarding grievance procedures or Section 24 regarding unfair labor practices.

(j) No member of the board, designee of the board, hearing officer, mediator, or arbitrator shall participate in any case or issue before the board in which such person has a potential conflict of interest. A conflict of interest shall include any case or action in which such person has a personal or professional interest and any case or action in which such person is personally or professionally associated with any of the parties involved.

SECTION 6. The procedures with respect to board appeals under Section 5 are as follows:

(1) Any person filing an appeal to the full board regarding a decision of a member of the board, a designee of the board, or hearing officer shall be entitled to a hearing before the board in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; however, the hearing shall be conducted within thirty (30) days of the filing of an appeal with the board, unless an extension of time is granted by the board for good cause. Discovery may be granted only upon a showing of extraordinary circumstances. A party requesting discovery shall demonstrate a substantial need for the information requested and an inability to obtain relevant information by other means. To the extent that the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 is

inconsistent with this section, the procedures contained in this section shall govern.

(2) This section does not prohibit any person from representing that person's self in proceedings before the board or from being represented by legal counsel or by any individual who qualifies as a representative pursuant to rules promulgated and adopted by the board.

(3) Any order of the board issued under this section may include back pay, if applicable, and an amount, to be determined by the board and paid by the public safety agency, for reasonable attorney's fees, witness fees, and other out-of-pocket expenses incurred during the prosecution of an appeal against a public safety agency in which the board sustains the employee. In determining the amount of an attorney's fee, the board shall consider only the number of hours reasonably spent on the appeal, comparing the number of hours spent on similar cases, and the reasonable hourly rate charged in the geographic area for similar appeals, but not including litigation over the amount of the attorney's fee.

SECTION 7. The board shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 concerning the receipt, processing, and resolution of appeals filed with the board.

SECTION 8.

(a) Public safety employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee/labor organization of their own choosing. Employee/labor organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Public safety employees shall have the right to be represented by any employee/labor organization of their own choosing and to negotiate collectively, through

a certified exclusive representative/bargaining agent, with their public safety agency in the determination of the terms and conditions of their employment. Public safety employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public safety employees shall have the right to refrain from exercising the right to be represented.

(c) Public safety employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public safety employees shall also have the right to refrain from engaging in such activities.

(d) Nothing in this act shall be construed to prevent any public safety employee from presenting, at any time, such employee's own grievances, in person or by legal counsel, to the public safety employee's public safety agency and having such grievances adjusted without the intervention of the exclusive representative/bargaining agent, subject to Section 25 regarding grievance procedures if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the exclusive representative/bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances. The employer shall not adjust any grievance submitted by any employee/labor organization if such employee/labor organization is not the exclusive representative/bargaining agent.

(e) Public safety employees shall not be prohibited by a public safety agency from serving as representatives of an exclusive representative/bargaining agent or of co-employees.

(1) Any public safety employee representing an exclusive representative/bargaining agent in the negotiation of a collective bargaining agreement under this act shall be authorized official time for such purposes without loss of compensation or any employment benefit, including attendance at

impasse proceedings, during the time the employee otherwise would be in a duty status. The number of public safety employees for whom official time is authorized under this subdivision (e)(i) shall not exceed the number of individuals designated by the exclusive representative/bargaining agent as representing the agency for such purposes.

(2) Any activities performed by any public safety employee relating to the internal business of a labor organization, including the solicitation of membership, elections of labor organization officials, political activity, and collection of dues, shall be performed during the time the employee is in a non-duty status unless otherwise permitted under the terms of a collective bargaining agreement.

(3) Except as provided in subdivision (e)(1), the board shall determine whether any public safety employee participating for, or on behalf of, an employee/labor organization in any phase of proceedings before the board shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(4) Except as provided in the preceding subdivision (e)(3):

(A) Any public safety employee representing an exclusive representative; or

(B) In connection with any other matter covered by this act, including the representation of co-employees in internal investigations, disciplinary proceedings, the processing of grievances, and arbitration proceedings, any public safety employee in an appropriate bargaining unit represented by an exclusive representative/bargaining agent who is designated by the exclusive representative/bargaining agent as a representative or steward;

Shall be granted official time without loss of pay or other benefits during such representation including, without limitation, preparation time.

SECTION 9.

(a) A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a public safety employee or a group of public safety employees in the free exercise of the rights described in this act.

(b) No public safety employee shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

SECTION 10. Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public safety agency, subject to grievance, may:

(1) Direct the work of, hire, promote, assign, and transfer public safety employees;

(2) Demote, suspend, discharge or terminate public safety employees for just cause;

(3) Determine qualifications for employment and the nature and content of personnel examinations;

(4) Take actions as may be necessary to carry out the mission of the public safety agency in emergencies; and

(5) Retain all rights not specifically limited by a collective bargaining agreement or by this act.

SECTION 11.

(a) Any employee/labor organization which has been certified as an exclusive representative/bargaining agent shall have the right to have its dues, fair share fees, and uniform assessments deducted and collected by the public safety agency from the salaries of those public safety employees who authorize the deduction of such dues, in

accordance with subsection (b), and uniform assessments or other assessments made in accordance with a uniform formula. However, such authorization is revocable, at the public safety employee's request upon thirty (30) calendar days' written notice to the public safety agency and employee/labor organization. Such deductions shall commence upon the exclusive representative/ bargaining agent's written request to the public safety agency. Such right to deduction, unless revoked shall be in force for so long as the employee/labor organization remains the certified exclusive representative/bargaining agent for the public safety employees in the unit. The public safety agency is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments. The deduction of such dues, fair share fees, and uniform assessments shall be the exclusive right of the certified exclusive representative/bargaining agent and the public safety agency is expressly prohibited from deducting dues for the benefit of any other employee/labor organization.

(b) Where the provisions of a collective bargaining agreement so provide, a public safety agency shall deduct a fair share fee from each nonmember's salary or wages and promptly transmit this amount to the exclusive representative/bargaining agent.

(1) As a precondition to the collection of fair share fees, the exclusive representative/bargaining agent shall provide nonmembers with notice and an adequate explanation of the basis for the fee, which explanation shall contain detailed financial information concerning all major categories of employee/labor organization expenses, including those for payments made to affiliated unions and shall be audited by a certified public accountant independent of the employee/labor organization and provided to all non-members. Proof of the service of the fair share fee notice shall be provided to the public safety agency.

(2) A public safety agency shall not refuse to carry out its obligations under this section on the grounds that the exclusive representative has not satisfied its responsibilities under this subsection (b).

(3) In order to avoid undue delays in the receipt of and determination of the validity of fair share fees or rebates, any challenge to a fair share fee or rebate must be filed within thirty (30) calendar days after receipt of the notice described in subdivision (b)(1).

(A) Any employee who wishes to challenge the fair share fee or rebate shall make such challenge in writing delivered to the exclusive representative/bargaining agent and a copy of the challenge notice shall be delivered to the public employer no later than thirty (30) calendar days from the date of receipt of the fair share fee notice described in subdivision (b)(1). Failure to deliver the challenge notice within thirty (30) calendar days of receipt of the fair share fee notice shall constitute an irrevocable waiver of the challenge.

(B) The challenge notice shall specify names and addresses of all public safety employees participating in the challenge and the basis for the objection or challenge.

(C) Upon receipt of the challenge notice, the exclusive representative/bargaining agent shall place all fair share fees received from the challenging employee by the public safety agency on behalf of the challenging employee into an escrow account exclusively set-up for such purpose. The public safety agency shall continue to deduct the fair share fee from the challenging employee pay and shall deliver the fair share fee to the escrow agent until the challenge is resolved.

(D) Within ten (10) business days of receipt of the challenge notice by the exclusive representative/bargaining agent, the exclusive representative/ bargaining agent and the challenging employee shall meet to resolve the issues raised in the challenge notice. If the challenging employee and the exclusive representative/bargaining agent are unable to resolve the issues, the challenging public safety employees and the exclusive representative/bargaining agent shall jointly submit the challenge to a neutral arbitrator within ten (10) business days of the date the meeting occurred. If the exclusive representative/bargaining agent and the challenging public safety employees cannot mutually agree upon an arbitrator, the exclusive representative/bargaining agent shall request a list of no less than seven (7) arbitrators from the board or the Federal Mediation and Conciliation Service, who shall all be members of the National Academy of Arbitrators. The parties shall alternately each strike one (1) name from the list until one (1) remains, with the first strike decided by a coin flip.

(E) The arbitrator selected by the parties shall commence a hearing on the challenge to the fair share fee within thirty (30) calendar days of being selected. If the arbitrator is unable to commence the hearing within thirty (30) days, the parties may jointly waive the thirty-day requirement in writing or select another arbitrator in the same manner.

(F) If the parties jointly agree, in lieu of arbitration the challenge may be filed with the full board within ten (10) business days of the date the meeting between the challenging employee and the employee/labor organization occurred. The challenge hearing before the board shall be

conducted in accordance with Section 6 regarding appeals and any board rules promulgated in accordance with Section 7.

(G) The arbitrator or the board shall be limited to the determination of the reasonableness of the fair share fee or rebate and shall not issue any finding, conclusion, or award on any other matter or issue. The exclusive representative/bargaining agent shall have the burden of proving the reasonableness of the fair share fee by a preponderance of the evidence. The final decision of the arbitrator or board shall be issued no later than ten (10) calendar days of the close of the hearing.

(H) Either party may appeal the final decision of the arbitrator or board in accordance Section 27.

(I) The public safety agency shall have no standing to initiate or participate in the challenge proceedings as a party and shall not be joined or named as a party to the proceedings.

SECTION 12. Every employee/labor organization seeking to become a certified exclusive representative/bargaining agent for public safety employees shall register with the board pursuant to the procedures set forth in the rules promulgated by the board prior to requesting recognition by a public safety agency for purposes of collective bargaining and prior to submitting a petition to the board requesting certification as an exclusive representative/bargaining agent. Further, if such employee/labor organization is not registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive representative/bargaining agent. The application for registration required by this section shall be under oath and in such form as the board may prescribe and shall include:

- (1) The name and address of the employee/labor organization;
- (2) The names and business address of the principal officers; and,

(3) A copy of the current constitution and bylaws of the employee/labor organization.

SECTION 13.

(a) Any employee/labor organization denied a registration shall be afforded the opportunity for a hearing by the full board in accordance with the requirements of Sections 6 and 7.

(b) The board may, pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, suspend or revoke the registration of any employee/labor organization for the violation of this act.

SECTION 14.

(a) Any employee/labor organization which is designated or selected by a majority of public safety employees who are not already represented by an employee/labor organization for purposes of collective bargaining shall request recognition by the public safety agency. The public safety agency shall, if satisfied as to the majority status of the employee/labor organization and the appropriateness of the proposed unit, recognize the employee/labor organization as the collective bargaining representative of public safety employees in the designated unit.

(1) Upon recognition by a public safety agency, the employee/labor organization shall immediately petition the board for certification. The board shall review only the appropriateness of the unit proposed by the employee/labor organization. If the unit is appropriate according to the criteria used in this act, the board shall immediately certify the employee/labor organization as the exclusive representative/bargaining agent of all public safety employees in the unit. If the unit is inappropriate according to the criteria used in this act, the board shall conduct an evidentiary proceeding to determine the appropriate unit.

(2) Whenever a public employer recognizes an employee/labor organization on the basis of majority status and on the basis of appropriateness in accordance with subdivision (e)(6)(E), the board shall, in the absence of inclusion of a prohibited category of public safety employees or violation of Section 24 regarding unfair labor practices, certify the proposed unit.

(3) If the public safety agency refuses to recognize the employee/labor organization, the employee/labor organization may file a petition with the board for certification as the exclusive representative/bargaining agent for a proposed bargaining unit. The petition shall be accompanied by a showing of interest consisting of dated statements or authorization cards signed by at least thirty percent (30%) of the public safety employees in the proposed unit, indicating that such public safety employees desire to be represented for purposes of collective bargaining by the petitioning employee/labor organization. Once a petition for certification has been filed by an employee/labor organization, any registered employee/labor organization desiring placement on the ballot in any election to be conducted pursuant to this section may be permitted by the board to intervene in the proceeding upon motion accompanied by dated statements signed by at least ten percent (10%) of the public safety employees in the proposed unit, indicating that such public safety employees desire to be represented for the purposes of collective bargaining by the employee/labor organization filing the petition. The petitions and dated statements signed by the public safety employees are confidential and exempt from the title 10, chapter 7, part 5, except that any employee, employer, or employee/labor organization having specific 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.

(4)

(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. If the board finds the petition to be insufficient, it may dismiss the petition.

(B) If the board finds upon the record of the hearing that the petition is sufficient, it shall immediately:

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

(ii) Identify the public safety agency or agencies for purposes of collective bargaining with the exclusive representative/bargaining agent; and

(iii) Order an election by secret ballot, the cost of such election and any required runoff election to be funded by the board, except that the board may assess costs against any or all parties to the election in accordance with Section 25 for unfair labor practices committed during the election. The board's order assessing costs of an election may be enforced pursuant to this act;

(b) When an employee/labor organization is selected by a majority of the public safety employees voting in an election, the board shall certify the

employee/labor organization as the exclusive bargaining representative/bargaining agent of all public safety employees in the unit. Certification is effective upon the issuance of the final order by the board or, if the final order is appealed, at the time the appeal is exhausted or any stay is vacated by the board or the court. No employee/labor organization that admits employees other than law enforcement officers and law enforcement support personnel to membership shall be certified as the exclusive representative/bargaining agent of any bargaining unit consisting of law enforcement officers.

(c) In any election in which none of the choices on the ballot receives the vote of a majority of the public safety employees voting, a runoff election shall be held according to rules promulgated by the board.

(d) No petition may be filed seeking an election in any proposed or existing appropriate bargaining unit to determine the exclusive representative/bargaining agent within twelve (12) months after the date of a board order verifying a representation election or, if an employee/labor organization prevails, within twelve (12) months after the date of an effective certification covering any of the public safety employees in the proposed or existing bargaining unit. Furthermore, if a valid collective bargaining agreement covering any of the public safety employees in a proposed unit is in effect, a petition for certification may be filed with the board only during the period extending from one hundred fifty (150) days to ninety (90) days immediately preceding the expiration date of that agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively;

or its actual effective date, if the agreement becomes effective after its ratification date.

(e) In defining a proposed bargaining unit, the board shall take into consideration:

(1) The principles of efficient administration of government;

(2) The number of employee/labor organizations with which the public safety agency might have to negotiate;

(3) The compatibility of the unit with the joint responsibilities of the public safety agency and public safety employees to represent the public;

(4) The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the public safety employees desire to negotiate;

(5) The organizational structure of the public safety agency; and

(6) Community of interest among the public safety employees to be included in the unit, considering:

(A) The manner in which wages and other terms of employment are determined;

(B) The method by which jobs and salary classifications are determined;

(C) The interdependence of jobs and interchange of public safety employees;

(D) The desires of the public safety employees; and

(E) The history of employee relations within the organization of the public safety agency concerning organization and negotiation and the interest of the public safety employees

and the public safety agency in the continuation of a traditional, workable, and accepted negotiation relationship;

(7) The statutory authority of the public safety agency to administer a classification and pay plan; and

(8) Such other factors and policies as the board may deem appropriate.

SECTION 15.

(a)

(1) Any public safety employee or group of public safety employees which no longer desires to be represented by the certified exclusive representative/bargaining agent may file with the board a petition to decertify the exclusive representative/bargaining agent. The petition shall be accompanied by dated statements signed by at least thirty percent (30%) of the public safety employees in the unit, indicating that such public safety employees no longer desire to be represented for purposes of collective bargaining by the certified exclusive representative/bargaining agent. The time of filing such petition shall be no sooner than twelve (12) months after the date of an effective certification of the exclusive representative/bargaining agent.

Furthermore, if a valid collective bargaining agreement covering any of the public safety employees in a proposed unit is in effect, a petition for certification may be filed with the board only during the period extending from one hundred fifty (150) days to ninety (90) days immediately preceding the expiration date of that agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement

means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.

(2) Any public safety employee or employee/labor organization having sufficient reason to believe any of the public safety 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. The board or one of its designated agents shall investigate the petition to determine its sufficiency. If the board finds the petition to be insufficient, it may dismiss the petition. If the board finds that the petition is sufficient, it shall immediately:

(A) Identify the bargaining unit and determine which public safety employees shall be qualified and entitled to vote in the election held by the board;

(B) Identify the public safety agency or agencies; and

(C) Order an election by secret ballot, the cost of such election to be funded by the board, except that the board may assess costs against any or all parties to the election in accordance with Section 25 for unfair labor practices committed during the election. The board's order assessing costs of an election may be enforced pursuant to this act.

(b) If a majority of the public safety employees voting in such election vote against the continuation of representation by the certified exclusive representative/bargaining agent, the certification of the employee/labor organization as

the exclusive representative/bargaining agent for the public safety employees in the bargaining unit shall be revoked upon certification of the election results by the board.

(c) If a majority of the public safety employees voting in such election do not vote against the continuation of representation by the certified exclusive representative/bargaining agent, the certification of the employee/labor organization as the exclusive representative/bargaining agent for the public safety employees in the unit shall be retained by the organization.

(d) No petition for decertification may be filed within twelve (12) months after the date of an effective certification covering any of the public safety employees in the existing bargaining unit. Furthermore, if a valid collective bargaining agreement covering any of the public safety employees in bargaining unit is in effect, a petition for decertification may be filed with the board only during the period extending from one hundred fifty (150) days to ninety (90) days immediately preceding the expiration date of that agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.

SECTION 16.

(a) If an exclusive representative/bargaining agent is decertified, the decertified exclusive representative/bargaining agent shall have no further right of recognition by the public safety agency and shall have no standing to represent the bargaining unit or any member of the bargaining unit. If a valid collective bargaining agreement covering the public safety employees in the bargaining unit is in effect, it shall remain in full force and effect and the public safety employees shall have the right to enforce all provisions of such collective bargaining agreement.

(b) Notwithstanding Section 14(d), if an exclusive representative/bargaining agent is decertified, any employee/labor organization may seek recognition as the exclusive representative/bargaining agent of the bargaining unit any time after the decertification election in the same manner as described in Section 14. If a new employee/labor organization is certified as the exclusive representative/bargaining agent and a valid collective bargaining agreement covering the public safety employees in the bargaining unit is in effect, it shall remain in full force and effect and the successor employee/labor organization shall have the right to enforce all provisions of such collective bargaining agreement.

SECTION 17.

(a) Notwithstanding the decertification of an exclusive representative/bargaining agent, the expiration of a collective bargaining agreement, an impasse in negotiations, an exhaustion of the board's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public safety agency, its representatives, or its agents shall unilaterally impose, modify, amend, delete, or alter any terms and conditions of employment as set forth in the expired or expiring collective bargaining agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without written agreement of the exclusive representative/bargaining agent or its successor. All provisions of a successor collective bargaining agreement resulting in an increase in compensation shall be applied retroactively to the expiration date of the prior collective bargaining agreement.

(b) A successor employee/labor organization is presumed to have adopted a preexisting collective bargaining agreement. Upon being certified, a successor exclusive representative/bargaining agent stands in the place of the previous or decertified exclusive representative/bargaining agent in all respects regarding the bargaining unit

and the collective bargaining agreement shall remain unchanged unless the successor exclusive representative and the public employer mutually agree to renegotiate any or all provisions of the collective bargaining agreement.

SECTION 18.

(a)

(1) After an employee/labor organization has been certified pursuant to this act, it shall be the obligation of the certified exclusive representative/bargaining agent for the bargaining unit and the chief executive officer of the appropriate public safety agency or agencies, jointly, to bargain collectively in the determination of the wages, benefits, hours, and terms and conditions of employment of the public safety employees within the bargaining unit. The chief executive officer or the chief executive officer's representative and the exclusive representative/bargaining agent or its representative shall meet at reasonable times and bargain in good faith within ten (10) days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes. The parties shall meet for a reasonable period of time and as often as necessary to reach agreement. The time period between bargaining sessions shall not exceed fifteen (15) calendar days unless both parties mutually agree to an extension of time, not to exceed an additional fifteen (15) calendar days.

(2) In conducting negotiations with the exclusive representative/bargaining agent, the chief executive officer or the chief executive officer's representative shall consult with, and attempt to represent the views of, the legislative body of the public safety agency. Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and such agreement shall be signed by the chief executive officer and the exclusive representative/bargaining agent. Any agreement signed by the chief executive

officer and the exclusive representative/bargaining agent shall not be binding on the public safety agency until such agreement has been ratified by the public safety agency and by a majority of the public safety employees who are members of the bargaining unit. However, with respect to statewide bargaining units, any agreement signed by the governor and the exclusive representative/bargaining agent for such a unit shall not be binding until approved by the majority of public safety employees who are members of the bargaining unit.

(b) If the agreement is not ratified by the public safety agency or is not approved by a majority vote of public safety employees voting in the unit, in accordance with procedures adopted by the board, the agreement shall be returned to the chief executive officer and the employee/labor organization for further negotiations. The agreement shall not be imposed unilaterally by the chief executive officer or the legislative body.

(c) Collective bargaining agreements shall be for a term of existence to be negotiated by the parties to the agreement and shall contain all of the terms and conditions of employment of the public safety employees in the bargaining unit during such term except those terms and conditions provided for in applicable merit and civil service rules and regulations not superseded by the collective bargaining agreement. Any collective bargaining agreement with a term exceeding five (5) years shall have a window period of not more than one hundred fifty (150) days and not less than ninety (90) days from the fifth anniversary of the date of the last of the parties to sign the first collective bargaining agreement between the parties and again every five (5) years thereafter for the purposes of filing decertification or representation petitions with the board.

(d) In the event of impasse, the parties shall participate in good faith in the mediation, and arbitration procedures required by this act.

(e) Collective bargaining agreements and other agreements between public safety agencies and exclusive representative/bargaining agent shall be valid and enforceable according to their terms when entered into in accordance with this act. Any collective bargaining agreement and any amendment thereto shall be filed by the public safety agency with the board within the later of ten (10) calendar days of the effective date of the collective bargaining agreement or amendment or within ten (10) calendar days of last party to sign the collective bargaining agreement or amendment.

(f) The following meetings shall be closed to the public but not to public safety employees who are members of the affected bargaining unit:

(1) Meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public safety agency and the exclusive representative/bargaining agent of the public safety employees of the public safety agency;

(2) Collective bargaining sessions; and

(3) Consultations and impasse resolution procedures at which the public safety agency and the exclusive representative/bargaining agent of the appropriate bargaining unit are present.

SECTION 19.

(a) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public safety agency and an exclusive representative/bargaining agent, an impasse shall be deemed to have occurred when one (1) of the parties so declares in writing to the other party and to the board. When an impasse occurs, the public safety agency or the exclusive representative/bargaining agent, or both parties acting jointly, may appoint, or secure the appointment of, a mediator to assist in the resolution of the impasse. If the parties cannot agree upon the

appointment of a mediator, either party may request the Federal Mediation and Conciliation Service (FMCS) to appoint a mediator. If the board maintains a list of mediators, the parties may mutually agree to request the board to appoint a mediator from its list, who shall immediately meet with the representatives of the parties, either jointly or separately, and shall take such other steps as the mediator may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: provided that a mediator does not have a power of compulsion.

(b)

(1) If an agreement has not been reached following a reasonable period of negotiations and mediation, not to exceed forty-five (45) calendar days from the date the mediator was appointed, either party may initiate arbitration to resolve the dispute by notifying the other party and the board in writing that the parties remain at impasse. A neutral arbitrator shall be selected by the parties to resolve the issues at impasse. Within seven (7) calendar days of notifying the board that the parties remain at impasse, the parties shall select an arbitrator by mutual agreement or either party may apply to the federal mediation and conciliation service to provide a list of seven (7) qualified arbitrators, certified by the National Academy of Arbitrators, from which the arbitrator shall be chosen. If the parties cannot agree on an arbitrator, the parties shall alternately each strike one (1) name from the list until one (1) remains, with the first strike decided by a coin flip. If the board has a system in place for providing arbitrators, the parties may, by mutual agreement, jointly apply to the board for the list of arbitrators. The parties shall utilize the same process to select an arbitrator regardless of how the list is obtained. The board shall not charge a fee for providing a list of arbitrators and shall not act as an intermediary or administrator between the parties and the arbitrator. Once the arbitrator is selected, the parties shall certify

to the arbitrator the issues that remain at impasse. The issues for determination by the neutral arbitrator shall be limited to the issues certified to the arbitrator. Unless resolved by the parties prior to the arbitration hearing, all issues certified by each party shall be submitted to the arbitrator.

(2) The fees and expenses of the mediator, the arbitrator, and the proceedings shall be borne by the losing party.

(c) The arbitrator and the parties shall promptly establish a date, time, and place for a hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. The rules of evidence prevailing in civil judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the arbitrator may be received in evidence. A record of the proceedings may, at the option and expense of either party, be made by a stenographer or court reporter. The parties shall split the cost of the arbitrator's copy of the transcript. The arbitrator has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitrator, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of a court of competent jurisdiction in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrator shall be concluded within thirty (30) calendar days following the selection or designation of the arbitrator, unless the parties agree to a longer period.

(d) The arbitrator shall, within thirty (30) calendar days following the conclusion of the hearing, make a written determination of the issues in dispute, based on the evidence presented. A copy of the determination shall be served on the board and on each of the parties to the dispute. The arbitrator's determination shall be final and binding upon both parties, subject to review by a court of competent jurisdiction upon the application of either party solely upon the question of whether the decision of the arbitrator was the result of fraud or collusion. The decision of the arbitrator shall be incorporated into the parties' collective bargaining agreement and executed by the parties forthwith subject to Section 24(a)(3).

SECTION 20. In making its determination, the arbitrator shall select the last best offer on an issue by issue basis and in so doing shall consider:

- (1) The constitutional and statutory authority of the public safety agency;
- (2) Stipulations of the parties;
- (3) The average consumer prices for goods and services, commonly known as the cost of living;
- (4) Changes in any of the circumstances under subdivisions (1) - (3) during the pendency of the proceedings;
- (5) Such other factors, not confined to the factors under subdivisions (1) -(3), that are normally or traditionally taken into consideration in the determination of wages, benefits, hours, and conditions of employment;
- (6) A comparison of the wages, benefits, hours, and conditions of employment of personnel involved in the proceedings with the wages, benefits, hours, and conditions of employment of like personnel of like employers of similar size within the state. However, if there is not an adequate number of comparable employers within the state, other state's employers may be considered;

(7) Whether the public safety agency is unable to pay for the compensation and benefit provisions of a collective bargaining agreement;

(8) The public's interest in reducing turnover and increasing retention of public safety employees;

(9) The interest and welfare of the public; and

(10) The morale and productivity of the bargaining unit.

SECTION 21. Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, if the representative of either or both the exclusive representative/bargaining agent and the public safety agency refuses to submit to the procedures set forth in Section 19 regarding resolution of impasse, refuses to comply with a lawful order or subpoena issued by the arbitrator, or disrupts the proceedings, the parties, the arbitrator, or the board on its own motion, may invoke the jurisdiction of a court of competent jurisdiction in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt. A decision of the arbitrator shall be final and binding on the parties and may be enforced at the instance of either party, the arbitrator or the board in a court of competent jurisdiction in the county where the dispute arose.

SECTION 22. All records that are relevant to, or have a bearing upon, any issue or issues raised by the proceedings conducted by the arbitrator shall be made available to the arbitrator by a request in writing to any of the parties to the impasse proceedings. Notice of such request must be furnished to all parties. Any such records that are made available to the arbitrator must also be made available to any other party to the impasse proceedings.

SECTION 23.

(a) Each public safety agency and exclusive representative/bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between the agency and public safety employee, or group of public safety employees, involving the interpretation or application of statutes, ordinances, policies, rules, and collective

bargaining agreements regarding the terms and conditions of employment including, but not limited to, hours, wages, promotion, discipline, termination, lay-offs, and any other benefit of employment whether economic or non-economic. Such grievance procedure shall have as its terminal step final and binding arbitration by an impartial arbitrator, mutually selected by the parties. However, an arbitrator shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee/labor organization is certified as the exclusive representative/bargaining agent of a unit, the grievance procedure then in existence may be the subject of collective bargaining, and any agreement which is reached shall supersede the previously existing procedure provided that final and binding arbitration may not be waived by the parties.

(b) All public safety employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or non-membership in any organization, except that the exclusive representative/bargaining agent shall process grievances for all bargaining unit members. Any public safety employee may process any grievance without assistance of the exclusive representative/bargaining agent. In such cases, the exclusive representative/bargaining agent shall have the right to be present for all proceedings and the public safety agency shall ensure the exclusive representative/bargaining agent is copied on the grievances, all papers and filings, and is noticed for all proceedings. The exclusive representative/bargaining agent shall have the right to join in a non-member's grievance for the benefit of its members at any step of the procedure for processing and adjusting grievances as defined in the collective bargaining agreement and shall have the right to intervene in the proceedings as an interested party on behalf of the bargaining unit. The exclusive representative/bargaining agent shall have the exclusive right to the arbitration of grievances. The public safety agency shall not process grievances through arbitration without the consent of the exclusive representative/bargaining agent. In such cases, the

exclusive representative/bargaining agent shall have the right to be present for all proceedings and shall be copied on all papers and filings and the public safety agency shall ensure the exclusive representative/bargaining agent is copied on all papers and filings and is noticed for all proceedings.

(c) A career/civil service system employee who is a public safety employee shall have the option of utilizing the civil service appeal procedure, or a grievance procedure established under this section, but such employee is precluded from availing such employee's self to more than one (1) of these procedures.

(d) Notwithstanding anything to the contrary contained in this section, an exclusive representative/bargaining agent shall not be required to file grievances arising under worker's compensation claims or from allegations or claims of hostile work environment, discrimination, harassment, or the alleged violation of any other civil right as defined by law or within the jurisdiction of the state or federal equal employment commissions or other agencies established for the purpose of receiving such claims unless the exclusive representative/bargaining agent has specifically reserved the right to do so in a collective bargaining agreement. The filing of a grievance shall not be required prior to seeking any other available legal remedy for such claims.

SECTION 24.

(a) Public safety agencies or their agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing public safety employees in the exercise of any rights guaranteed them under this act;

(2) Encouraging or discouraging membership in any employee/labor organization by discrimination in regard to hiring, tenure, or other conditions of employment;

(3) Refusing to bargain collectively, failing to bargain collectively in good faith, refusing to reduce an agreement reached through collective bargaining to

writing, or refusing to sign a final agreement agreed upon with the certified exclusive representative/bargaining agent for the public safety employees in the bargaining unit;

(4) Discharging, disciplining, denying promotion, transferring, or otherwise discriminating against a public safety employee because the employee has filed charges, given testimony, or exercised any right under this act;

(5) Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee/labor organization or contributing financial support to such an organization;

(6) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the certified exclusive representative/bargaining agent for the public safety employee or the public safety employee involved;

(7) Refusing to comply with the terms of collective bargaining agreement, this act, or any rule or decision of the board; or

(8) Refusing to abide by an arbitration award. Nothing contained in this subdivision (a)(8) shall prevent an arbitration award from being enforced judicially in addition to the remedies provided for herein. The filing of an unfair labor practice charge with the board shall not be required prior to seeking judicial enforcement and the court shall not hold such proceedings in abeyance based upon a pending charge. The board shall not postpone or dismiss such a charge based upon pending judicial action.

(b) A public safety employee/labor organization or anyone acting on its behalf or its officers, representatives, agents, or members is prohibited from:

(1) Interfering with, restraining, or coercing public safety employees in the exercise of any rights guaranteed them under this act or interfering with,

restraining, or coercing managerial employees by reason of their performance of job duties or other activities undertaken in the interests of the public safety agency;

(2) Causing or attempting to cause a public safety agency to discriminate against a public safety employee because of the employee's membership or non-membership in an employee/labor organization or attempting to cause the public safety agency to violate this act. However, an employee/labor organization shall be entitled to negotiate with a public safety agency over the agency's administrative processing of programs or benefits exclusively available to members of the employee/labor organization;

(3) Refusing to bargain collectively or failing to bargain collectively in good faith with a public safety agency;

(4) Discriminating against a public safety employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceedings provided for in this act;

(5) Refusing to comply with the terms of collective bargaining agreement, this act, or any rule or decision of the board; or

(6) Refusing to abide by an arbitration award.

(c) Notwithstanding subsections (a) and (b), the parties' rights of free speech shall not be infringed, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair employment practice or of any other violation of this act, if such expression contains no promise of benefits or threat of reprisal or force.

SECTION 25.

(a) It is the intent of the legislature that the board acts as expeditiously as possible to settle disputes regarding alleged unfair labor practices. To this end, unfair labor practices shall be remedied by the board in accordance with the following

procedures and in accordance with the Uniform Administrative Procedures Act; compiled in title 4, chapter 5, however, to the extent that the Uniform Administrative Procedures Act is inconsistent with this section, the procedures contained in this section shall govern.

(b) A proceeding to remedy an unfair labor practice shall be initiated by the filing of a charge with the board by a public safety employer, public safety employee, or employee/labor organization, or any combination thereof. Such a charge shall contain a clear and concise statement of facts constituting the alleged unfair labor practice, including the names of all individuals involved in the alleged unfair labor practice, specific reference to the unfair labor practice pursuant to Section 24 alleged to have been violated, and such other relevant information as the board may by rule require or allow. Service of the charge shall be made upon each named respondent at the time of filing with the board. The charge must be accompanied by sworn statements and documentary evidence sufficient to establish a prima facie violation of the applicable unfair labor practice provision. Such supporting evidence is not to be attached to the charge and is to be furnished only to the board.

(c) The board, or any agent designated by it for such purpose, shall thereupon review the charge to determine its sufficiency.

(1) If upon review it is determined that the charge is insufficient, the board or its designated agent may issue a summary dismissal of the charge. A charging party whose charge is dismissed by a designated agent may appeal the dismissal to the board within twenty (20) calendar days after the date of issuance of the dismissal. If the board finds the charge to be sufficient, it shall reinstate the charge; and

(2) If upon review it is determined that the charge is sufficient, the board shall notify the parties. Each respondent so charged shall thereupon file an

answer to the charge with the board and serve a copy upon the charging party, no more than twenty (20) calendar days after service of notification of the sufficiency of the charge, unless otherwise allowed by the board. The board, in its discretion, may allow a charge or answer to be amended at any time. The board may also, in its discretion, allow other interested parties to intervene in the proceeding.

(d) Whenever a charging party alleges that a respondent has engaged in unfair labor practices and that the charging party will suffer substantial and irreparable injury if not granted temporary relief, the board may petition the circuit 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.

(e) The board may issue prehearing orders requiring the parties to provide written statements of relevant issues of fact and law and such other information as the board may require to expedite the resolution of the case. Such orders may further direct the parties to identify witnesses, exchange intended exhibits and documentary evidence, and appear at a conference before the board or a member thereof, or a designated hearing officer, for the purpose of handling such matters as will aid the board in expeditiously resolving the case before it.

(f) Whenever the proceeding involves a disputed issue of material fact and an evidentiary hearing is to be conducted:

(1) The board shall issue and serve upon all parties a notice of hearing before an assigned hearing officer at a time and place specified therein. Such notice shall be issued at least fourteen (14) days prior to the scheduled hearing.

(2) The evidentiary hearing shall be conducted by a hearing officer designated by the board. Such hearing officer may be the board itself, a member of the board, or an agent designated by the board for such purpose, provided that such agent shall be an employee of the board and a member of the Tennessee bar.

(3) Not later than forty-five (45) calendar days after the close of the evidentiary hearing, unless extended by the board with the consent of all parties, the hearing officer shall submit to the board and to all parties a recommended order which shall include findings of fact and recommended rulings on procedural matters. The recommended order may also include recommended conclusions of law if requested by the board.

(4) If the hearing was held before the board or a member of the board, the board may elect to issue a final order which is in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) Upon consideration of the record in the case:

(1) If the board finds that an unfair labor practice has been committed, it shall issue and cause to be served an order requiring the appropriate party or parties to cease and desist from the unfair labor practice and take such positive action, including reinstatement of public safety employees with or without back pay, as will best implement the general policies expressed in this act. The order may further require the party or parties to make periodic reports showing the extent to which it has complied with the order. If, upon consideration of the record in the case, the board finds that an unfair labor practice has not been or is not being committed, it shall issue an order dismissing the case;

(2) If the board determines the alleged unfair labor practice occurred more than six (6) months prior to the filing of the charge, the board shall issue an

order dismissing the case, unless the person filing the charge was prevented from doing so by reason of service in the armed forces, in which case the six-month period shall run from the date of the person's discharge; and

(3) The board may award to the prevailing party all or part of the costs of litigation, reasonable attorney's fees, and expert witness fees whenever the board determines that such an award is appropriate.

(h) Final orders of the board issued pursuant to this section shall be enforced pursuant to the provisions of Section 26 regarding enforcement of board orders and shall be reviewed pursuant to the provisions of Section 27 regarding judicial review.

SECTION 26. In case of any failure by any public safety agency, public safety employee, or employee/labor organization to comply with any order of the board, upon application of the board or, notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, upon application of any person who is a resident of the state and who is substantially interested in such order, any court of competent jurisdiction of this state shall have jurisdiction to enforce the order pursuant to the Uniform Administrative Procedures Act. However, if one (1) or more petitions for enforcement and a notice of appeal involving the same agency action are pending at the same time, the court considering the notice of appeal shall order all such actions transferred to and consolidated into one (1) action. If a petition for enforcement is filed after the time for filing notice of appeal has expired, the respondent may assert as a defense only that the agency action was not intended to apply to the respondent or that the respondent has complied with the agency action. Petitions for enforcement filed under this act shall be heard expeditiously by the court to which presented and shall take precedence over all other civil matters except prior matters of the same character.

SECTION 27. Judicial review of a final decision of the board shall be in accordance with §§ 4-5-322 and 4-5-323.

SECTION 28. No public safety employee or employee/labor organization may participate in a strike against a public safety agency by instigating or supporting, in any manner, a strike by public safety employees.

SECTION 29. This act shall not be construed to repeal, amend, or modify any law or ordinance establishing a merit or civil service system for public safety employees or the rules and regulations adopted pursuant to the law or ordinance or to prohibit or hinder the establishment of other such personnel systems unless such merit or civil service system laws or ordinances or rules and regulations adopted pursuant to the laws and ordinances are in conflict with this act, in which event such laws, ordinances, or rules and regulations shall not apply. In the event of a grievance, the grievant shall have the right to elect to have the grievance adjusted in accordance with the grievance and arbitration procedure contained in a collective bargaining agreement or to pursue an appeal through the merit or civil service system. Once made, such election shall be final and irrevocable.

SECTION 30.

(a) All discussions between the chief executive officer of the public safety agency, or the chief executive officer's representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from, title 8, chapter 44. Further any documents involved in the discussions shall be not be a public record and title 10, chapter 7, part 5 shall not apply to such documents.

(2) The collective bargaining negotiations between a chief executive officer, or the chief executive officer's representative, and an exclusive representative/bargaining agent shall be closed to the public and shall be exempt from title 8, chapter 44.

(3) All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from title 10, chapter 7, part 5.

SECTION 31. All rules promulgated by the board pursuant to this act shall be promulgated and reviewed in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 32.

(a) Any full-time public safety employee or public safety officer of any public safety agency or employee/labor organization may represent the public safety agency or any member of a bargaining unit in any proceeding authorized in this act, excluding the representation of any person or public safety agency in a court of law by a person who is not a licensed attorney.

(b) Any attorney licensed to practice in any state or the United States may represent any party in any arbitration proceedings or board proceedings authorized in this act without being admitted to the bar of this state and shall not be required to obtain special admission or admission *pro hac vice* for such proceedings.

SECTION 33. Tennessee Code Annotated, Section 4-29-233, is amended by adding the following language as a new, appropriately designated section:

() Public Employment Relations Board established pursuant to section 4 of this act.

SECTION 34. This act shall take effect July 1, 2010, the public welfare requiring it.