

**COLLECTIVE BARGAINING ADMINISTRATION
STUDY COMMITTEE**

**REPORT TO THE LEGISLATIVE COUNCIL
AND THE MEMBERS OF THE
FIRST SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY**

STATE OF IOWA

1977

FINAL REPORT

COLLECTIVE BARGAINING ADMINISTRATION STUDY COMMITTEE

The Collective Bargaining Administration Study Committee was created by the Legislative Council to study the questions and ambiguities arising under the Public Employment Relations Act and the administration of the Act, the feasibility of a program to allow public employees to transfer to other employment with either the same or another public employer, and the alternative methods of initiating a flexible work schedule for state employees. These study topics were requested under Senate Concurrent Resolution 109, Senate Concurrent Resolution 115 and House Concurrent Resolution 143, respectively. The Study Committee decided to give first priority to the study of the Public Employment Relations Act and to address the remaining two study topics if time permitted.

The following legislators served as members of the Collective Bargaining Administration Study Committee:

Representative John H. Connors, Chairperson
Senator Eugene M. Hill, Vice Chairperson
Senator Leonard C. Andersen
Senator Lucas J. DeKoster
Senator George R. Kinley
Senator James Redmond
Representative Edgar H. Bittle
Representative Horace Daggett
Representative Emil S. Pavich
Representative Charles N. Poncy

The Study Committee held five meetings during the 1976 interim. During its first three meetings, the Collective Bargaining Administration Study Committee requested and received comments and recommendations on collective bargaining issues and problems arising from the administration of the Public Employment Relations Act from representatives of public employers, representatives of employee organizations and the Public Employment Relations Board. The public employer representatives included the League of Iowa Municipalities, the Iowa State Association of Counties, the Iowa Association of School Boards, the Director of State Employment Relations, the Executive Secretary of the State Board of Regents, and the Director of the Iowa Merit Employment Department. Representatives of the public employee organizations included the Iowa Federation of Labor, AFL-CIO, the Iowa Conference of Teamsters, the State of Iowa Employees Association, AFSCME, the Iowa Association of Professional Fire Fighters, and the Iowa State Education Association.

RECOMMENDATIONS OF PUBLIC EMPLOYERS

With one exception, the representatives of public employers recommended against any substantive changes in the Public Employment Relations Act and, in response to three recommendations

of employee organizations, the Iowa Association of School Boards specifically recommended that the scope of negotiations remain unchanged, that fact-finding not be deleted from impasse procedures and that bargaining rights for supervisory employees not be authorized. The exception to recommendations against substantive changes was made by the Director of State Employment Relations who agreed that voting requirements be changed from a majority of eligible employees to a majority of employees voting on questions of exclusive bargaining representation and employee organization certification.

In general, the representatives of the public employers agreed that substantive changes should not be made in the Public Employment Relations Act at this time because the Act has not been operational long enough to assess its effectiveness and that additional experience under the Act is necessary before the desirability or necessity of specific changes can be evaluated. The representatives of public employers also agreed that the Act is working well despite some problems which could be expected during the first year of its implementation.

The Director of State Employment Relations also recommended that representatives of the General Assembly meet with the Governor to discuss the establishment of a framework for executive-legislative liaison with regard to state collective bargaining. The Director also urged consideration of legal questions relating to whether or not the State of Iowa or the General Assembly must accept an arbitrator's decision.

RECOMMENDATIONS OF PUBLIC EMPLOYEE ORGANIZATIONS

The representatives of public employee organizations recommended twenty amendments to the Public Employment Relations Act to clarify the legislative intent on a number of definitions and procedures and to improve the operation of the law. The recommendations are summarized as follows:

1. Redefine Public Employer.

The Iowa Conference of Teamsters recommends that the definition of "Public Employer" be clarified to remove the many questions which have arisen particularly relating to state collective bargaining.

2. Redefine Supervisory Employee.

The Iowa Federation of Labor, AFL-CIO recommends that the term "supervisory employee" include only those public employees who have actual managerial prerogatives. The present definition is considered to be too broad and loosely constructed.

The Iowa Association of Professional Fire Fighters recommends that the term "supervisory employee" be limited to those public employees who perform a preponderance of supervisory functions.

3. Redefine Employee Organization.

The Iowa Federation of Labor, AFL-CIO recommends that the definition of "employee organization" be redefined by striking the words "public" and "primary" from the current definition. The definition as amended would read as follows:

"Employee organization" means an organization of any kind in which employees participate and which exists for the purpose of representing employees in their employment relations.

The Iowa Conference of Teamsters recommends that the term "employee organization" should include any organization which seeks to represent public employees, which is selected by public employees to represent them and which meets the other requirements as specified in sections 20.25 and 20.26 of the Code.

4. Determination of Bargaining Units.

The Iowa Federation of Labor, AFL-CIO recommends that the guidelines used by the Public Employment Relations Board in defining a bargaining unit be amended to include language similar to the National Labor Relations Act as follows:

"The board shall decide in each case whether in order to insure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:---."

The AFL-CIO further commented that the Board relies too heavily on the phrase "efficient administration of government" in defining the bargaining units resulting in bargaining units which are too large and which include too many diverse groups.

The Iowa Conference of Teamsters recommends that multi-employer and multi-union certifications for bargaining units should be considered.

5. Authorize the Public Employment Relations Board to Take Remedial Action in Cases of Prohibited Practice Violations Before Seeking Injunctive Relief in the District Court.

The Iowa Conference of Teamsters recommends that the Study Committee give consideration to amending section 20.11 of the Code to grant the Public Employment Relations Board authority to take remedial action before seeking injunctive relief in the District Court.

The Iowa State Education Association recommends that the Public Employment Relations Board be given explicit authority to render a monetary judgment in cases where employees have been unjustly disciplined in a prohibited practice.

6. Change Employee Voting Requirements from a Majority of Eligible Voters to a Majority of Those Voting.

The Iowa Federation of Labor, AFL-CIO, the SIEA-AFSCME, the Iowa Conference of Teamsters, the Iowa Association of Professional Fire Fighters, and the Iowa State Education Association recommend that employee voting requirements be changed to a majority of those voting.

7. Remove Fact-Finding Phase of Impasse Procedures.

The Iowa Federation of Labor, AFL-CIO, the Iowa Conference of Teamsters, the Iowa Association of Professional Fire Fighters and the Iowa State Education Association recommend that the fact-finding phase of impasse procedures be deleted because of cost factors.

8. Remove Impractical and Ambiguous Requirements Relating to the Internal Conduct of Employee Organizations.

The Iowa Conference of Teamsters specifically recommends that section 20.25, subsection 3, paragraph b of the Code be amended by striking the words "or otherwise". The Iowa Conference of Teamsters considers this paragraph as enacted to be of questionable constitutionality.

9. Specify Employee Organization Rights.

The Iowa State Education Association recommends that employee organizations either be granted specific rights by statute or allow such rights to be established by negotiations.

10. Expand Scope of Negotiations and Restrict the Application of Certain Management Rights.

The Iowa Federation of Labor, AFL-CIO, recommends that the increasing conflict and disagreement over the rights of management and the statutory list of bargainable items could be resolved by adopting the scope of bargaining provisions of the National Labor Relations Act.

The Iowa Conference of Teamsters recommends that the statutory provisions relating to public employer rights and the scope of negotiations should be amended to allow for meaningful collective bargainings to determine valid subjects of concern to employers and employees. The Conference recommends that section 20.7 of the Code relating to public employer rights be amended to qualify the rights designated by the phrase "except where restricted by provisions of a validly negotiated collective bargaining agreement". The Conference also recommends that section 20.9 of the Code which outlines the scope of negotiations be amended by adding the phrase "and other working conditions".

The Iowa State Education Association recommends that the scope of mandatory negotiations be amended to include basic labor law provisions "wages, hours, and terms and conditions of employment". The Association recommends that this amendment would remove serious shortcomings in the present, restrictive scope of negotiations.

11. Authorize Supervisory Employee Bargaining Rights.

The Iowa Federation of Labor, AFL-CIO, recommends the establishment of supervisory bargaining units because their concerns and problems closely parallel those of other public employees and their managerial responsibilities are generally procedurally outlined leaving little room for independent judgment.

The Iowa Association of Professional Fire Fighters recommends that supervisory employees be allowed the right to organize and to collective bargaining.

12. Eliminate Double Issue Ballot.

The Iowa Federation of Labor, AFL-CIO, recommends that the double issue ballot be eliminated to avoid confusion during the bargaining unit and exclusive representation determination process.

The Iowa Association of Professional Fire Fighters also recommends the elimination of the double issue ballot. The ballot should include a list of employee organizations eligible to be the exclusive bargaining agents and provision for a negative representation vote. A run-off election would be held if an employee organization or the negative vote does not receive the required majority.

13. Restrict the Number of Appeals to the District Court During the Process of Selecting Exclusive Bargaining Representatives.

The Iowa Association of Professional Fire Fighters recommends that only one appeal be allowed from a decision or ruling of the Public Employees Relations Board to the District Court during the process of determining an exclusive bargaining representative. Under current law, an appeal to the District Court may be made after a bargaining unit has been determined, to contest an election petition, and after a disputed election. Bargaining unit questions, election petition deficiencies, election rules, and election misconduct could be resolved at the same time by an appeal of an aggrieved party.

The Iowa State Education Association recommends that the appeal of an arbitrator or his decision be restricted so that mere disagreement with an arbitrator's ruling cannot be used as grounds for an appeal.

14. Clarify Statutory Impasse Procedure Deadlines Including the State Budget Certification Date.

The State of Iowa Employees Association, AFSCME, recommends that the state budget certification date be established as July 1st.

The Iowa Conference of Teamsters and the Iowa State Education Association recommend that the budget certification date should not be interpreted as restricting the completion of collective bargaining negotiations.

15. Authority Early Requests for Binding Arbitration.

The Iowa Federation of Labor, AFL-CIO, recommends that the Collective Bargaining Act authorize binding arbitration at the request of either party to a collective bargaining agreement anytime during the negotiation process.

16. Redefine Exempt, Confidential, and Temporary Employees.

The Iowa State Education Association recommends that confidential employees be defined similar to the provisions of the National Labor Relations Act. The National Labor Relations Act specified that only those employees who are directly involved with information and material related to collective bargaining be given a confidential exemption from collective bargaining.

17. Remove Biennial Requirement on State Collective Bargaining Contracts.

The State of Iowa Employees Association, AFSCME, recommends that state employee collective bargaining contracts not be restricted to biennial basis.

18. Provide for Statutory Bargaining Units.

The State of Iowa Employees Association, AFSCME, recommends that the General Assembly adopt statutory bargaining units for state employees. The state of Wisconsin was mentioned as a state having statutory bargaining units.

19. Clarify Executive-Legislative Roles in the Negotiation and Ratification of State Collective Bargaining Contracts.

The Iowa State Education Association recommends that the Collective Bargaining Act be clarified to clearly outline the role of the Governor or his designee in the state collective bargaining process. The role of the state bargaining agents should be clearly prescribed in the law.

20. Authorize the Continuation of the Procedures to Determine the Exclusive Bargaining Agent for Employees and the Commencement of Collective Bargaining Pending Appeals as to the Determination of

Appropriate Bargaining Units, Eligible Employees and Other Related Disputes.

The Iowa Association of Professional Fire Fighters recommends that when disputes arise over the membership of bargaining units the Public Employment Relations Board should authorize an election to determine the exclusive bargaining agent for the undisputed employees and the ballots of disputed employees be held separately, and if the employee organization wins the election the employees not a party of the dispute can proceed with the bargaining process.

The Iowa Conference of Teamsters also recommends that elections be held and collective bargaining allowed to proceed in disputes concerning "supervisory employees" by using procedures similar to those of the National Labor Relations Board. The National Labor Relations Board usually will allow the collective bargaining process to continue if not more than ten percent of the membership of the proposed bargaining unit is in dispute.

RECOMMENDATIONS OF THE PUBLIC EMPLOYMENT RELATIONS BOARD

The Public Employment Relations Board made the following recommendations to clarify various provisions of the Public Employment Relations Act, to correct technical errors and to remove potential conflicts in the administration of the Act. The recommendations are as follows:

1. Redefine "confidential employee".

The Board recommends that the present definition of confidential employee be narrowed to cover only those employees who are directly involved in the establishment or implementation of labor relations policy. Section 20.3, subsection 7, unnumbered paragraph 1, Code 1977, would read as follows:

"Confidential employee" means any public employee who works in a close continuing relationship with representatives of a public employer who formulate, determine and effectuate managerial decisions in the field of labor relations.

2. Redefine Temporary Employees to be Excluded From Collective Bargaining.

The Board recommends that all temporary, casual, and seasonal public employees be excluded from collective bargaining. The present law excludes temporary employees who are employed for four months or less.

3. Provide Separate Procedures for Collective Bargaining for Employees of the Public Employee Relations Board.

The Board recommends that an arbitrator be used to process any petition or complaint filed by Board employees. This

procedure would avoid any conflicts or potential conflicts if Board employees are placed in bargaining units with other public employees or are represented by an employee organization that represents other employees.

4. Authorize the Board to Use Attorneys Already Employed or Employ Private Legal Counsel for Legal Representation.

The Board recommends that it be authorized to be represented in any legal proceeding by any licensed attorney employed by the Board. There is a possibility that the Board will be confronted with cases involving state agencies which will preclude the use of the Attorney General's staff. The Board should be able to use the attorneys already employed as hearing officers or employ private attorneys if circumstances require.

5. Clarify Prohibited Practices Provisions.

The Board recommends the removal of public employees from section 20.10, subsection 1, which relates to the requirement to bargain in good faith. Only public employers and employee organizations are party to collective bargaining negotiations, not a public employee in his or her individual capacity. A technical amendment is recommended for section 20.10, subsection 3, paragraph b to clarify the legislative intent that both the employer's right to select a representative for collective bargaining purposes and for grievance procedure purposes are to be protected. Also amendments are recommended for section 20.10, subsections 3 and 5 to clarify the liability of both public employers and employee organizations for the actions of their respective agents or representatives.

6. Authorize the Board to Order An Appropriate Remedy For A Violation of a Prohibited Practice.

The Board recommends that it be empowered to order an appropriate remedy for violation of a prohibited practice. Under present law, the Board must petition the district court for such determination. Under the proposed amendment, the Board would still have to seek injunctive relief for enforcement of its remedy if the accused party refuses to comply.

7. Repeal Provisions of Chapter 20 Conflicting with the Administrative Procedures Act.

The Board recommends that the administrative procedures outlined in section 20.11, subsections 5 through 11, be repealed because of the conflict with the Administrative Procedures Act. The Board also recommends that petitions for judicial review of the Board's decisions be given priority over other matters before the Courts.

8. Remove Requirement That the Board Conduct a Hearing On Bargaining Unit Within Thirty Days of Petition.

The Board recommends that the requirement that the Board conduct a unit determination hearing within thirty days of the receipt of a petition be eliminated. The workload of the Board has not permitted strict adherence to this requirement and the parties to the petition usually require more than thirty days to fully pursue informal settlement of appropriate bargaining units as encouraged by the Administrative Procedures Act and the rules of the Board.

9. Confidentiality of Documents Showing Interest in Employee Organizations.

The Board recommends that documents submitted by employees to show interest in representation by employee organizations should remain confidential to protect an employee's right to secret vote on whether or not he or she supports a given employee organization.

10. Permissible Length of Collective Bargaining Contract..

The Board recommends that the two-year limitation on the length of a contract be deleted. The recommendation would also clarify the time period during which the Board may not accept a petition for certification or decertification of an exclusive bargaining representative.

11. Clarification of Individual Rights to Grievance Procedures.

The Board recommends that sections 20.17 and 20.18 be amended so that individual grievances cannot be resolved in violation of the terms of the collective bargaining agreement to which the individual is a party and that an individual may file a grievance only under one grievance system.

12. Retroactive Implementation of Contracts.

The Board recommends that collective bargaining agreements or arbitrator's awards rendered after the commencement of a fiscal year may provide for retroactive implementation of its provisions.

13. Delete Impasse Procedure Date Requirements.

The Board recommends that the requirement that impasse procedures must begin 120 days before the budget certification submission date be removed and the time period for mediation be increased from ten to twenty-one days. The time limits, in the experience of the Board, are impossible to administer in a manner which will guarantee the availability of impasse services to all parties which request them. The Board also recommends that the Board be given discretionary authority to provide mediation services at any time to facilitate the resolution of an impasse.

14. Restrict Testimony by Mediators, Fact-Finders, Arbitrators, Members of the Board and Employees of the Board on Behalf of Parties to a Dispute.

The Board recommends that mediators, fact-finders, arbitrators, and members or employees of the Board should be restricted from giving testimony on behalf of any party to a prohibited practice, representation or impasse resolution before any court or other quasi-judicial body with respect to any information, facts or other matter coming to his or her knowledge through a party in his or her official capacity as a resolver of disputes.

RECOMMENDATIONS OF THE STUDY COMMITTEE

The Collective Bargaining Administration Study Committee adopted the following recommendations:

1. The definition of "employee organization" should be amended to reflect the Public Employment Relations Board's interpretation of the existing definition that public employees may be represented by an organization of any kind which exists for the purpose of representing employees in their employment relations and in which public employees of a specified bargaining unit have total independence of action and control over the collective bargaining activities of that bargaining unit.

2. The definition of "confidential employee" should be narrowed to strictly limit the number of public employees who are excluded from collective bargaining participation. The following definition is recommended:

"Confidential employee" means any public employee who works in a close, continuing relationship with the representatives of a public employer who formulate, determine, and effectuate managerial decisions in the field of labor relations.

3. The definition of supervisory employee should be amended to restrict the number of employees included as supervisors to those individuals whose primary employment duties are management duties which may include but shall not be limited to having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote ...

4. The county board of supervisors should be considered the public employer of all county employees for the purposes of collective bargaining under Chapter 20 of the Code.

5. The exclusion of temporary employees (those employed for four months or less) from collective bargaining should be amended to include any temporary, casual, and seasonal public employees.

6. The Public Employment Relations Board should establish the qualifications of, and employ, all of its employees, but the employees should in all other respects be subject to the provisions of Chapter 19A (Merit Employment). The employees of the Board, except secretarial and clerical employees, should be exempt from collective bargaining. Secretarial and clerical employees should be eligible for participation in collective bargaining unless otherwise excluded by provisions of the Public Employment Relations Act.

7. The Public Employment Relations Board should be allowed to use licensed attorneys already in its employ or employ private legal counsel to represent it in legal proceedings.

8. Section 20.10 should be amended to correct technical errors and clarify the legislative intent relating to prohibited practices by individual employees, public employees, and employee organizations separately. The following subsections and paragraphs of section 20.10 should be amended to read as follows:

1. It shall be a prohibited practice for any public employer, ~~public~~ employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer ~~or his designated representative~~ willfully to:

3. It shall be a prohibited practice for public employees or an employee organization or for any person, ~~union~~ or organization ~~or their agents~~ willfully to:

a. Interfere with, restrain, coerce or harass any public employee with respect to any of his rights under this chapter or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section 20.8.

b. Interfere, restrain, or coerce a public employer with respect to rights granted in this chapter or with respect to selecting a representative for the purposes of negotiating collectively ~~on the adjustment of~~ or adjusting grievances.

NEW SUBSECTION. Violations by agents or representatives of a public employer or employee organization shall be deemed to constitute a violation of this section by that public employer or employee organization.

9. The Public Employment Relations Board should be authorized to determine remedies in cases of violations of prohibited practices. If an accused party refuses to obey the determination or remedy imposed by the Board, a petition for injunctive relief would be necessary to enforce the remedy.

10. Section 20.11 relating to prohibited practice violations should be amended by striking subsections 5 through 11, inclusive,

because these subsections contain administrative procedures which are in conflict with the provisions of the Administrative Procedures Act. The provisions of the Administrative Procedures Act are being followed by the Board in lieu of these subsections at the present time.

11. The thirty-day limitation between the date of receipt of a petition and the date of a public hearing on the petition to define an appropriate bargaining unit should be deleted. The limitation does not allow sufficient time to fully pursue informal settlement of appropriate bargaining units as encouraged by the Board and the Administrative Procedures Act.

12. Records received by the Public Employment Relations Board showing the interest of public employees in an employee organization should be maintained in confidence by the Board to protect the rights of public employees.

13. The double issue ballot for determining the desire for representation and the certification of an exclusive bargaining agent or organization should be eliminated and replaced by a ballot listing the employee organizations qualifying by employee showing of interest and a provision for no representation.

14. The voting requirements for representation elections should be changed from a majority of eligible public employees to a majority of those public employees voting. This change is considered desirable particularly when bargaining units have several hundred or even several thousand members.

15. The requirement that collective bargaining contracts for state employees be two years should be deleted. This change will allow flexibility in the duration of state employee contracts.

16. The requirement that any collective bargaining contract not exceed two years should also be deleted. This change will also provide for greater flexibility in the duration of public collective bargaining contracts, some of which may be negotiated for three years similar to private industry contracts.

17. An appeal from a ruling or order of the board with regard to a bargaining unit determination or bargaining representation determination should be taken only after the election has been held to determine the preference of employees and the results are certified by the board except that a preliminary, procedural or intermediate action or order of the board may be immediately appealed to the district court if all administrative remedies have been exhausted and review of the final order of the board following the election will not provide an adequate remedy to the aggrieved party.

18. The provision for the resolution of an individual employee grievance by a public employer should be qualified to require that the resolution or adjustment of the grievance must be

consistent with the terms of the existing collective bargaining agreement.

19. The provisions outlining grievance procedures for state employees should be clarified to provide that a state employee under a collective bargaining agreement must follow the grievance procedures in that contract. If no grievance procedures are specified in the contract, the grievance procedures under Chapter 19A are then applicable. The state employee should not have the option to choose one or the other procedures nor to pursue the resolution of the same grievance through both procedures.

20. The 120-day deadline for the commencement of impasse procedures should be deleted to allow more flexibility to the various units of government and employee organizations to carry out collective bargaining negotiations. The proposed amendment will require impasse procedures to begin reasonably in advance of the public employers budget certification submission date. The board will have the authority to determine if good faith bargaining is being pursued by the parties.

21. A provision in the law relating to the internal conduct of employee organization affairs should be amended to remove an ambiguity as to the potential conflicts between the business and financial interests of an organization's officers and their families and the organization's financial interests. Under existing law, it is not clear which relatives of an officer or agent of an employee organization are included in the prohibition against conflict of fiduciary obligations.

22. Authority should be given to allow a collective bargaining agreement or an arbitrator's award to include provision for its retroactive implementation if the agreement is reached or the award rendered after the commencement of a public employer's fiscal year.

CONCLUSION

The Collective Bargaining Administration Study Committee completed its recommendations with regard to the Public Employment Relations Act at its meeting on December 15, 1976. Time did not permit consideration of Senate Concurrent Resolution 115, a request to study the feasibility of a program to allow public employees to transfer to other employment with either the same or another public employer, or House Concurrent Resolution 143, a request to study alternative methods of initiating a flexible work schedule for state employees; therefore, no recommendation is made with regard to these two Resolutions.

Copies of the Study Committee minutes and other research and study material are filed in the Legislative Service Bureau and are available upon request.

Collective Bargaining Administration Study Committee
Final Report
Page 14

A copy of the bill draft prepared by the Legislative Service Bureau encompassing the recommendations of the Study Committee is attached to and by this reference made a part of this report.

HOUSE FILE _____

By COLLECTIVE BARGAINING
ADMINISTRATION STUDY
COMMITTEE

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to public employment relations, amending the
2 Public Employment Relations Act, and providing penalties
3 for violations.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section twenty point three (20.3), subsection
2 one (1), Code 1977, is amended to read as follows:

3 1. "Public employer" means the state of Iowa, its boards,
4 commissions, agencies, departments, and its political sub-
5 divisions including school districts and other special pur-
6 pose districts. For the purpose of collective bargaining
7 under this chapter, the board of supervisors shall be the
8 public employer of all public employees of the county.

9 Sec. 2. Section twenty point three (20.3), subsection
10 four (4), Code 1977, is amended to read as follows:

11 4. "Employee organization" means an organization of any
12 kind ~~in which public employees participate and~~ which exists
13 for the primary purpose of representing public employees in
14 their employment relations and in which public employees of
15 a specified bargaining unit have total independence of action
16 and control over the collective bargaining activities of that
17 unit to the exclusion of such control by employees of the
18 private sector.

19 Sec. 3. Section twenty point three (20.3), subsection
20 seven (7), Code 1977, is amended to read as follows:

21 7. a. "Confidential employee" means any public employee
22 who works in ~~the personnel offices~~ a close, continuing re-
23 lationship with the representatives of a public employer ~~or~~
24 ~~who has access to information subject to use by the public~~
25 ~~employer in negotiating or who works in a close continuing~~
26 ~~working relationship with public officers or representatives~~
27 ~~associated with negotiating on behalf of the public employer~~
28 who formulate, determine, and effectuate managerial decisions
29 in the field of labor relations.

30 b. "Confidential employee" also includes the personal
31 secretary of any of the following: Any elected official or
32 person appointed to fill a vacancy in an elective office,
33 member of any board or commission, the administrative offi-
34 cer, director, or chief executive officer of a public employ-
35 er or major division thereof, or the deputy or first assis-

1 tant of any of the foregoing.

2 Sec. 4. Section twenty point four (20.4), subsection two
3 (2), unnumbered paragraph two (2), Code 1977, is amended to
4 read as follows:

5 Supervisory employee means any individual whose primary
6 employment duties are management duties which may include
7 but shall not be limited to having authority in the inter-
8 est of the public employer to hire, transfer, suspend, lay-
9 off, recall, promote, discharge, assign, reward or disci-
10 pline other public employees, or the responsibility to di-
11 rect them, or to adjust their grievances, or effectively to
12 recommend such action, if in connection with the foregoing
13 exercise of such authority is not of a merely routine or
14 clerical nature, but requires the use of independent judg-
15 ment. All school superintendents, assistant superintendents,
16 principals and assistant principals shall be deemed to be
17 supervisory employees.

18 Sec. 5. Section twenty point four (20.4), subsection five
19 (5), Code 1977, is amended by striking the subsection and
20 inserting in lieu thereof the following:

21 5. Temporary, casual, and seasonal public employees.

22 Sec. 6. Section twenty point four (20.4), Code 1977, is
23 amended by adding the following new subsection:

24 NEW SUBSECTION. Employees of the board, except secre-
25 tarial and clerical personnel.

26 Sec. 7. Section twenty point five (20.5), subsection four
27 (4), Code 1977, is amended to read as follows:

28 4. The board may employ such persons as are necessary
29 for the performance of its functions. Personnel of the board,
30 after initial appointment by the board, shall be employed
31 pursuant to the provisions of chapter 19A. Secretarial and
32 clerical personnel employed by the board may engage in col-
33 lective bargaining subject to the provision of this chapter.

34 Sec. 8. Section twenty point six (20.6), Code 1977, is
35 amended by adding the following new subsection:

1 NEW SUBSECTION. The board may be represented in any pro-
2 ceeding in the district court, court of appeals or the state
3 supreme court by any licensed attorney employed by the board.

4 Sec. 9. Section twenty point ten (20.10), subsection one
5 (1), Code 1977, is amended to read as follows:

6 1. It shall be a prohibited practice for any public em-
7 ployer~~-public-employee~~ or employee organization to will-
8 fully refuse to negotiate in good faith with respect to the
9 scope of negotiations as defined in section 20.9.

10 Sec. 10. Section twenty point ten (20.10), subsection
11 two (2), unnumbered paragraph one (1), Code 1977, is amended
12 to read as follows:

13 It shall be a prohibited practice for a public employer
14 ~~or-his-designated-representative~~ willfully to:

15 Sec. 11. Section twenty point ten (20.10), subsection
16 three (3), unnumbered paragraph one (1), Code 1977, is amended
17 to read as follows:

18 It shall be a prohibited practice for public employees
19 or an employee organization or for any person~~-union~~ or or-
20 ganization ~~or-their-agents~~ willfully to:

21 Sec. 12. Section twenty point ten (20.10), subsection
22 three (3), paragraph b, Code 1977, is amended to read as fol-
23 lows:

24 b. Interfere, restrain or coerce a public employer with
25 respect to rights granted in this chapter or with respect
26 to selecting a representative for the purposes of negotiating
27 collectively ~~on-the-adjustment-of~~ or adjusting grievances.

28 Sec. 13. Section twenty point ten (20.10), Code 1977,
29 is amended by adding the following new subsection:

30 NEW SUBSECTION. Violations by agents or representatives
31 of a public employer or employee organization shall be deemed
32 to constitute a violation of this section by that public em-
33 ployer or employee organization.

34 Sec. 14. Section twenty point eleven (20.11), subsection
35 four (4), Code 1977, is amended to read as follows:

1 4. The board shall file its findings of fact and conclu-
2 sions of law. If the board finds that the party accused has
3 committed a prohibited practice, the board may order an ap-
4 propriate remedy or, within thirty days of its decision, enter
5 into a consent order with the party to discontinue the
6 practice, or with respect to a remedy. The board may petition
7 the district court for injunctive relief pursuant to rules
8 of civil procedures 320 to 330.

9 Sec. 15. Section twenty point eleven (20.11), Code 1977,
10 is amended by striking subsections five (5) through eleven
11 (11), inclusive.

12 Sec. 16. Section twenty point thirteen (20.13), subsection
13 two (2), Code 1977, is amended to read as follows:

14 2. Within thirty days of receipt of a petition or Upon
15 notice to all interested parties if on its own initiative
16 and in the absence of informal settlement as provided by board
17 rule, the board shall conduct a public hearing, receive written
18 or oral testimony, and promptly thereafter file an order
19 defining the appropriate bargaining unit. In defining the
20 unit, the board shall take into consideration, along with
21 other relevant factors, the principles of efficient administra-
22 tion of government, the existence of a community of interest
23 among public employees, the history and extent of public em-
24 ployee organization, geographical location, and the recommen-
25 dations of the parties involved.

26 Sec. 17. Section twenty point thirteen (20.13), Code 1977,
27 is amended by striking subsection three (3).

28 Sec. 18. Section twenty point fourteen (20.14), subsection
29 six (6), Code 1977, is amended to read as follows:

30 6. The hearing and appeal procedures shall be the same
31 as provided in section 20-14 chapter seventeen A (17A) of
32 the Code. An appeal may be taken from a ruling or order of
33 the board with regard to a bargaining unit determination or
34 bargaining representative determination only after the election
35 has been held as provided in section twenty point fifteen

1 (20.15) of the Code except as otherwise provided in section
2 seventeen A point nineteen (17A.19), subsection one (1) of
3 the Code.

4 Sec. 19. Section twenty point fourteen (20.14), Code 1977,
5 is amended by adding the following new subsection:

6 NEW SUBSECTION. The sufficiency of the written evidence
7 in support of a petition required by this section or section
8 twenty point fifteen (20.15) of the Code shall be
9 administratively determined by the board and such written
10 evidence shall be a confidential record of the board until
11 returned to the party which submitted it.

12 Sec. 20. Section twenty point ~~fifteen~~ (20.15), subsections
13 one (1) and two (2), Code 1977, are amended to read as fol-
14 lows:

15 1. Upon the filing of a petition for certification of
16 an employee organization, the board shall submit ~~two questions~~
17 a question to the public employees at an election in an ap-
18 propriate bargaining unit. The ~~first~~ question on the ballot
19 shall permit the public employees to ~~determine whether or~~
20 ~~not such public employees desire exclusive bargaining~~
21 ~~representation. The second question on the ballot shall list~~
22 vote for no bargaining representation or for any employee
23 organization which has petitioned for certification or which
24 has presented proof satisfactory to the board of support of
25 ten percent or more of the public employees in the appropriate
26 unit.

27 2. If a majority of the votes cast on the ~~first~~ question
28 ~~is in the negative for no bargaining representation,~~ the
29 public employees shall not be represented by an employee
30 organization. If a majority of the votes cast on the ~~first~~
31 question is ~~in the affirmative for a listed employee~~
32 organization, then the employee organization ~~receiving a~~
33 ~~majority of the votes cast on the second question~~ shall
34 represent the public employees in an appropriate bargaining
35 unit.

1 Sec. 21. Section twenty point fifteen (20.15), subsections
2 three (3) and five (5), Code 1977, are amended to read as
3 follows:

4 3. If none of the choices on the ballot receive the vote
5 of a majority of the public employees ~~who could be represented~~
6 ~~by an employee organization voting~~, the board shall conduct
7 a runoff election among the two choices receiving the greatest
8 number of votes.

9 5. Upon completion of a valid election in which the
10 majority choice of the employees ~~who could be represented~~
11 ~~by an employee organization voting~~ is determined, the board
12 shall certify the results of the election and shall give
13 reasonable notice of the order to all employee organizations
14 listed on the ballot, the public employers, and the public
15 employees in the appropriate bargaining unit.

16 Sec. 22. Section twenty point fifteen (20.15), subsection
17 six (6), Code 1977, is amended to read as follows:

18 6. A petition for certification as an exclusive bargain-
19 ing representative shall not be considered by the board for
20 a period of one year from the date of the certification or
21 noncertification of an exclusive bargaining representative
22 or during the first two years of the duration of a collective
23 ~~bargaining agreement which shall not exceed two years. A~~
24 ~~collective bargaining agreement with the state, its boards,~~
25 ~~commissions, departments, and agencies shall be for two years~~
26 ~~and the effective date of any such agreement shall be July~~
27 ~~4 of odd-numbered years.~~ However, if a petition for
28 decertification is filed during the duration of a collective
29 bargaining agreement, the board shall award an election under
30 this section not more than one hundred eighty days nor less
31 than one hundred fifty days prior to the expiration of the
32 collective bargaining agreement. If an employee organization
33 is decertified, the board may receive petitions under section
34 20.14, provided that no such petition and no election conducted
35 pursuant to such petition within one year from decertification

1 shall include as a party the decertified employee organization.

2 Sec. 23. Section twenty point seventeen (20.17), subsection
3 one (1), Code 1977, is amended to read as follows:

4 1. The employee organization certified as the bargaining
5 representative shall be the exclusive representative of all
6 public employees in the bargaining unit and shall represent
7 all public employees fairly. However, any public employee
8 may meet and adjust individual complaints with a public
9 employer without the intervention of the bargaining
10 representative if the adjustment is consistent with the
11 existing collective bargaining contract or agreement.

12 Sec. 24. Section twenty point seventeen (20.17), subsection
13 six (6), Code 1977, is amended to read as follows:

14 6. No collective bargaining agreement or arbitrators'
15 decision shall be valid or enforceable if its implementation
16 would be inconsistent with any statutory limitation on the
17 public employer's funds, spending or budget or would
18 substantially impair or limit the performance of any statutory
19 duty by the public employer. A collective bargaining agreement
20 or arbitrators' award may provide for benefits conditional
21 upon specified funds to be obtained by the public employer,
22 but the agreement shall provide either for automatic reduction
23 of such conditional benefits or for additional bargaining
24 if the funds are not obtained or if a lesser amount is
25 obtained. A collective bargaining agreement entered into,
26 or an arbitrator's award rendered after the commencement of
27 a public employer's fiscal year, may provide for retroactive
28 implementation of its provisions.

29 Sec. 25. Section twenty point eighteen (20.18), unnumbered
30 paragraph two (2), Code 1977, is amended to read as follows:

31 Public employees of the state shall follow ~~either~~ the
32 grievance procedures provided in a collective bargaining
33 agreement, or in-the-event-that, if no such procedures are
34 so provided, such employees shall follow grievance procedures
35 established pursuant to chapter 19A.

1 Sec. 26. Section twenty point nineteen (20.19), Code 1977,
2 is amended to read as follows:

3 20.19 IMPASSE PROCEDURES--AGREEMENT OF PARTIES. As the
4 first step in the performance of their duty to bargain, the
5 public employer and the employee organization shall endeavor
6 to agree upon impasse procedures. Such agreement shall provide
7 ~~for implementation of these impasse procedures not later than~~
8 ~~one hundred twenty days prior to~~ the parties to meet at rea-
9 sonable times reasonably in advance of the certified budget
10 submission date of the public employer to negotiate in good
11 faith. If the parties fail to agree upon impasse procedures
12 under the provisions of this section, the impasse procedures
13 provided in sections 20.20 to 20.22 shall apply.

14 Sec. 27. Section twenty point twenty (20.20), Code 1977,
15 is amended to read as follows:

16 20.20 MEDIATION. In the absence of an impasse agreement
17 between the parties or the failure of either party to utilize
18 its procedures, ~~one hundred twenty days prior to~~ if the parties
19 have met at reasonable times reasonably in advance of the
20 certified budget submission date to negotiate in good faith,
21 the board shall, upon the request of either party, appoint
22 an impartial and disinterested person to act as mediator.
23 It shall be the function of the mediator to bring the parties
24 together to effectuate a settlement of the dispute, but the
25 mediator may not compel the parties to agree. A mediator,
26 fact-finder, arbitrator, labor relations examiner, hearing
27 officer, member of the board or other officer or employee
28 of the board shall not be required to testify in behalf of
29 any party to a prohibited practice, representation or im-
30 passe resolution proceeding pending before any court, arbitra-
31 tor, fact-finder, or the board, with respect to any
32 information, facts or other matters coming to his knowledge
33 through a party or parties in his official capacity as a
34 resolver of disputes. Notwithstanding the provisions of
35 sections twenty point twenty-one (20.21) and twenty point

1 twenty-two (20.22) of the Code, the board may provide mediation
2 services at any time to facilitate resolution of an impasse.

3 Sec. 28. Section twenty point twenty-one (20.21), unnum-
4 bered paragraph one (1), Code 1977, is amended to read as
5 follows:

6 If the impasse persists ten twenty-one days after the me-
7 diator has been appointed, the board shall appoint a fact-
8 finder representative of the public, from a list of qualified
9 persons maintained by the board. The fact-finder shall conduct
10 a hearing, may administer oaths, and may request the board
11 to issue subpoenas. The fact-finder shall make written
12 findings of facts and recommendations for resolution of the
13 dispute and, not later than fifteen days from the day of
14 appointment, shall serve such findings on the public employer
15 and the certified employee organization.

16 Sec. 29. Section twenty point twenty-five (20.25),
17 subsection three (3), paragraph b, Code 1977, is amended to
18 read as follows:

19 b. Business or financial interests of its officers and
20 agents, their spouses, minor children, or parents ~~ex-otherwise~~,
21 that conflict with the fiduciary obligation of such persons
22 to the organization shall be prohibited.

23 Sec. 30. Section thirteen point seven (13.7), Code 1977,
24 is amended to read as follows:

25 13.7 SPECIAL COUNSEL. No compensation shall be allowed
26 to any person for services as an attorney or counselor to
27 any executive department of the state government, or the head
28 thereof, or to any state board or commission, but the executive
29 council may employ legal assistance, at a reasonable compensa-
30 tion, in any pending action or proceeding to protect the in-
31 terests of the state, but only upon a sufficient showing,
32 in writing, made by the attorney general, that the department
33 of justice cannot for reasons stated by the attorney general
34 perform said service, which reasons and action of the council
35 shall be entered upon its records. When the attorney general

1 determines that the department of justice cannot perform legal
2 service in an action or proceeding, the executive council
3 shall request the department involved in the action or pro-
4 ceeding to recommend legal counsel to represent the department.
5 If the attorney general concurs with the department that the
6 person recommended is qualified and suitable to represent
7 the department, the person recommended shall be employed.
8 If the attorney general does not concur in the recommendation,
9 the department shall submit a new recommendation. This section
10 shall not affect the office of the commerce counsel, the trans-
11 portation regulation board counsel, ~~or the legal counsel of~~
12 the Iowa department of job service, or the legal counsel of
13 the public employment relations board.

14 Sec. 31. Section nineteen A point three (19A.3), Code
15 1977, is amended by striking subsection twenty-one (21).

16 Sec. 32. The provisions of this Act shall be effective
17 July 1, 1977.

18 EXPLANATION

19 This bill provides for redefining public employer as it
20 relates to county government, employee organization, confiden-
21 tial employee, supervisory employee and excludes all temporary,
22 casual and seasonal employees and employees of the public
23 employment relations board, except secretarial and clerical
24 employees, from collective bargaining. Secretarial and cleri-
25 cal employees of the board may also be subject to exclusion
26 under other provisions of the Act such as being a confidential
27 employee. Employees of the board are to be appointed by the
28 board, but after appointment, they are subject to the merit
29 system. The board is also authorized to use licensed attorneys
30 employed by the board to represent it in legal proceedings.

31 The bill provides that the board may order an appropriate
32 remedy in the case of a violation of a prohibited practice,
33 which remedy is subject to court enforcement if the accused
34 party fails to comply. Separate hearing and appeal proce-
35 dures specified in the Act are deleted because of the conflict

1 with the Administrative Procedures Act. The thirty-day dead-
2 line within which the board must hold a public hearing and
3 determine an appropriate bargaining unit is also deleted.
4 In addition, an appeal from a ruling or order of the board
5 with regard to a bargaining unit determination or bargaining
6 representative determination may be made only after the
7 employees have voted on the question unless the judicial
8 review of the final board ruling or order would not provide
9 an adequate remedy.

10 Other provisions of the bill provide for the confidentiali-
11 ty of written evidence received by the board showing support
12 for employee organizations by public employees, delete the
13 double issue ballot in favor of a ballot question listing
14 the alternatives of no representation and the one or more
15 employee organizations qualifying to be voted on by bargaining
16 unit employees, change the voting requirements from a majority
17 of the employees eligible to vote to a majority of those
18 voting, eliminate the two-year requirement for state collective
19 bargaining agreements and the two-year maximum length of any
20 collective bargaining contract, and authorize retroactive
21 implementation of negotiated contracts or arbitrator's awards
22 if the contract is entered into or the award rendered after
23 the commencement of the public employer's fiscal year. The
24 bill increases the time for mediation from ten to twenty-one
25 days and removes the specific date for commencing impasse
26 procedures (120 days before the certified budget submission
27 date) in favor of a more flexible time frame which can vary
28 depending on budgeting circumstances and governmental units
29 involved.

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