

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 1543

Short Title: Collective Bargaining for Government Workers. (Public)

Sponsors: Senator Shaw.

Referred to: Rules and Operations of the Senate.

March 28, 2007

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FOR CONTRACTS BETWEEN PUBLIC EMPLOYERS AND
3 LABOR ORGANIZATIONS REPRESENTING PUBLIC EMPLOYEES FOR THE
4 PURPOSE OF COLLECTIVE BARGAINING AND ESTABLISHING THE
5 PUBLIC EMPLOYEE LABOR RELATIONS COMMISSION TO ENSURE FAIR
6 DEALINGS BETWEEN PUBLIC EMPLOYERS AND LABOR
7 ORGANIZATIONS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 95-98 is repealed.

10 SECTION 2. The General Statutes are amended by adding a new Chapter to
11 read:

"Chapter 95A.

"Public Employee Labor Relations.

12 **"§ 95A-1. Definitions.**

13 The following definitions apply in this Chapter:

- 14 (1) Commission. – The Public Employee Labor Relations Commission.
15
16 (2) Public employee organization. – Any association, organization,
17 federation, or council composed of public employees having as one of
18 its purposes the representation of its members in negotiations with the
19 State or a political subdivision of the State.
20
21 (3) Public employee. – An employee of the State or a political subdivision
22 of the State.
23 (4) Public employer. – The State or any political subdivision of the State
24 as the context indicates.
25 (5) Strike. – The failure to report for duty as a result of concerted action
26 with a public employee organization, the willful absence from one's
27 position, the stoppage of work or the abstinence, in whole or in part,
28 from the full, faithful, and proper performance of the duties of
29 employment or any manner of interference with the operation of any

1 public employer for the purpose of inducing, influencing, or coercing a
2 change in the conditions or compensation or the rights, privileges, or
3 obligations of employment.

4 **"§ 95A-2. Public Employee Labor Relations Commission.**

5 (a) There is created the Public Employee Labor Relations Commission. The
6 purpose of the Commission is to provide for fair dealings between public employees
7 and public employers engaged in collective bargaining.

8 (b) The Commission shall consist of nine members appointed as follows:

9 (1) The Governor shall appoint five members, including:

10 a. One person who is a retired State employee.

11 b. One person who is a retired municipal employee.

12 c. One person who is a retired county employee.

13 d. Two persons representing the general public.

14 (2) The General Assembly shall appoint four members, including:

15 a. Two persons on the recommendation of the President Pro
16 Tempore of the Senate.

17 b. Two persons on the recommendation of the Speaker of the
18 House of Representatives.

19 (c) The Commission members shall elect from among their number a chair to
20 serve for a period of one year. Members of the Commission shall serve terms of two
21 years. Vacancies shall be filled by the appointing authority.

22 **"§ 95A-3. Right to self-organization; representation; dues.**

23 (a) Public employees have, and are protected in the exercise of, the right of
24 self-organization to form and join any employee organization, to meet and confer with
25 their employers through representatives of their own choosing on questions of wages,
26 hours, and other conditions of employment, except to strike, for the purpose of
27 contracting for rights, free from actual interference, restraint, or coercion.

28 (b) A public employee organization duly designated to represent the public
29 employees employed by a public employer shall be the exclusive contracting agent for
30 those public employees; and, that organization shall act, negotiate agreements, and
31 contract for the rights of those employees and represent the interests of all those
32 employees.

33 (c) A public employee organization claiming to represent a majority of the public
34 employees employed by a public employer shall be recognized as the exclusive
35 contracting agent by the public employer upon the presentation of a petition or other
36 document in which a majority of the public employees employed by that public
37 employer designates the public employee organization as their exclusive contracting
38 agent. In the event that a public employer has a good faith doubt as to the majority
39 status of the public employee organization, it shall, within 30 days of the receipt of the
40 petition or document, request the Commission to conduct a secret ballot election within
41 30 days of the receipt of the request. The Commission shall certify the results of the
42 election within three days after the election. Following recognition or certification and,
43 upon the written authorization of any public employee, the political subdivision shall
44 deduct from the payroll of the public employee the monthly amount of dues or

1 assessments of the public employee organization as certified by the secretary of the
2 public employee organization and shall deliver the same to the public employee
3 organization's treasurer no later than the last day of the month following the deduction.

4 **"§ 95A-4. Duty to meet and confer; arbitration; procedures.**

5 (a) The public employer and the public employee organization recognized or
6 certified as the exclusive contracting agent shall contract for all employees' rights.
7 Representatives of the public employer and the public employee organization shall meet
8 at reasonable times, including meetings appropriately related to the budget-making
9 process, and shall confer in good faith with respect to wages, hours, and other
10 conditions of employment, or the negotiation of an agreement or any questions arising
11 thereunder, and shall execute a written contract incorporating any agreement reached,
12 and neither party may be compelled to agree to a proposal or make a concession.

13 (b) If, after a reasonable period of negotiations concerning wages, hours, and
14 other conditions of employment, a dispute exists between the public employer and the
15 public employee organization, or if no agreement has been reached on wages, hours,
16 and other conditions of employment 60 days prior to the final date for the setting of the
17 budget of the State or the political subdivision, either party or the parties jointly may
18 request arbitration of the issue or issues in dispute by a board of arbitration. The board
19 of arbitration shall be composed of three persons, one appointed by the public employer,
20 one appointed by the public employee organization, and a third member to be agreed
21 upon by the parties. The members of the board representing the public employer and the
22 public employee organization shall be named within five days from the date of the
23 request for the appointment of the board. If, after a period of five days from the date of
24 the appointment of the two arbitrators appointed by the public employer and the
25 employee organization, the third arbitrator has not been mutually agreed upon, then
26 either arbitrator may request the federal mediation and conciliation service to furnish a
27 list of five members from its list of arbitrators. Within five days after the receipt of the
28 list, the representative of the public employer and the public employee organization
29 shall each strike two names from the list. The individual whose name remains on the list
30 is the third arbitrator. The third arbitrator is the chairman of the board of arbitration.

31 (c) The chairman of the board of arbitration shall establish reasonable dates and
32 places of hearing. Any hearings involved shall be conducted in accordance with the
33 rules established for arbitration by the American Arbitration Association. The North
34 Carolina Rules of Evidence do not apply. The chairman may issue subpoenas and
35 administer oaths. Upon completion of the hearings and within 15 days, the board of
36 arbitration shall make findings of fact and render a decision. The decision is final and
37 binding upon both parties, except as provided in subsection (d) of this section. The
38 compensation, if any, for the appointed arbitrator will be paid by the political
39 subdivision. The compensation and expenses of the third arbitrator, as well as all
40 stenographic and other expenses incurred by the arbitration board in connection with
41 arbitration proceedings, shall be paid equally by the parties.

42 (d) Prior to invoking the arbitration procedure provided in this Chapter, the
43 public employer and the public employee organization shall submit to each other a final
44 settlement offer on all unresolved issues. The arbitration panel is limited, after hearing,

1 to resolving the dispute by adopting, on an issue by issue basis, the final offer of either
2 the public employer or the public employee organization. In making its decision, the
3 panel shall consider the following:

- 4 (1) Prior agreements, if any, between the public employer and the public
5 employee organization.
- 6 (2) Comparison of the issues submitted to final offer settlement relative to
7 the employees in the contracting unit involved with those issues
8 related to other public and private employees doing comparable work,
9 giving consideration to factors peculiar to the area and classification
10 involved.
- 11 (3) The interests and welfare of the public, the ability of the public
12 employer to finance and administer the issues proposed and the effect
13 of the adjustments on the normal standard of public service.
- 14 (4) The lawful authority of the public employer.
- 15 (5) Any stipulations of the public employer and the public employee
16 organization.
- 17 (6) Any other factors, not confined to those listed in this section, which
18 are normally or traditionally taken into consideration in the
19 determination of issues submitted to final offer settlement through
20 voluntary conference, mediation, fact-finding, or other impasse
21 resolution procedures in public service or in private employment.

22 (e) Any arbitration decision as well as any written agreement between a public
23 employer and a public employee organization determining the terms and conditions of
24 employment of public employees shall contain the following notice: 'It is agreed by the
25 parties that any provision contained herein requiring legislative action to permit its
26 implementation by amendment of law or by providing the additional funds therefor, will
27 not become effective until the appropriate legislative body has given approval.'

28 **"§ 95A-5. Prohibited acts; hearings.**

29 (a) No public employer shall:

- 30 (1) Interfere with, restrain, or coerce public employees in the exercise of
31 rights guaranteed by this Chapter.
- 32 (2) Dominate or interfere with the formation or administration of any
33 public employee organization.
- 34 (3) Discharge or otherwise discriminate against a public employee
35 because the employee has signed or filed any petition, affidavit, or
36 complaint or given information or testimony pursuant to this Chapter.
- 37 (4) Refuse to meet and confer in good faith with any public employee
38 organization that has been recognized or certified as the exclusive
39 contracting agent of the public employees.
- 40 (5) Refuse to discuss grievances with the agent of the public employee.
- 41 (6) Refuse to abide by a valid arbitration decision.

42 (b) No public employee organizations shall:

- 43 (1) Restrain or coerce a public employee in the exercise of rights
44 guaranteed under this Chapter;

- 1 (2) Cause or attempt to cause a public employer to discriminate against a
2 public employee in violation of subsection (a) of this section;
3 (3) Refuse to meet and confer in good faith with a public employer;
4 (4) Strike against or withholding their members' services from a public
5 employer;
6 (5) Refuse to abide by a valid arbitration decision.

7 (c) Public employees who are absent from work without permission are
8 presumed to have engaged in a strike unless evidence of illness or other good cause is
9 presented by each public employee for each absence. Any public employee who
10 engages in a concerted strike against a public employer or withholds services from a
11 public employer shall be suspended from duty for a period not to exceed six months
12 without pay, and the public employee organization to which any striking public
13 employer belongs shall lose its right for six months to have the monthly amount of dues
14 withheld for all of its members' pay by the public employer.

15 (d) Any private citizen of the State or a political subdivision of the State against
16 which a prohibited act has been committed may seek a writ of mandamus or any other
17 remedy authorized by law to enforce compliance with this section by any treasurer or
18 chief financial officer.

19 (e) Any public employee, public employee organization, or public employer who
20 has reasonable cause to believe that a violation of this section has occurred may file a
21 complaint with the Commission and serve a copy on each person, public employee
22 organization, or public employer involved in the alleged violation.

23 (f) The Commission may make and enter an order dismissing the complaint or
24 may conduct an investigation or hold a hearing on the complaint. The public employee,
25 public employee organization, or public employer so complained of shall have the right
26 to file an answer to the complaint, or any amended complaints, within 20 days after the
27 service of the complaint. If a hearing is ordered, the Commission shall set the time and
28 place for the hearing, which time and place may be changed by the Commission at the
29 request of one of the parties for good cause shown.

30 (g) The public employee, public employee organization, or public employer may
31 appear in person or otherwise defend against the complaint. In the discretion of the
32 Commission any other person may be allowed to intervene in the proceedings.

33 (h) The Commission is not bound by the North Carolina Rules of Evidence. The
34 Commission has the power of subpoena and to administer oaths. A transcript of the
35 testimony taken at any hearing before the Commission shall be filed in the office of the
36 Commission, and be opened for inspection by either of the parties or their authorized
37 representatives. The Commission shall bear the cost of producing the transcript.

38 (i) If, upon all the testimony and evidence, the Commission determines that a
39 prohibited practice has been committed, it shall state its findings of fact in writing and
40 shall issue and cause to be served on the party committing the prohibited practice an
41 order requiring the public employee organization or the public employer to cease and
42 desist from the prohibited practice. The Commission may take any further affirmative
43 action as will comply with the provisions of this section, including the withdrawal of

1 certification of a public employee organization established by or assisted in its
2 establishment by any prohibited practice.

3 (j) If, upon all the testimony and evidence, the Commission determines that a
4 prohibited practice has not been or is not being committed, it shall state its findings of
5 fact and conclusions of law and shall issue an order dismissing the complaint.

6 (k) In the event that a public employee, public employee organization, or public
7 employer refuses to comply with an order from the Commission and fails to appeal the
8 order as hereinafter provided, the Commission shall request the Attorney General of
9 North Carolina to seek injunctive relief in the Superior Court of Wake County.

10 **"§ 95A-6. Judicial review.**

11 (a) Except as otherwise provided in subsection (b) of this section, any party
12 adversely affected by an order of the Commission is entitled to appeal a decision of the
13 Commission to the Superior Court of Wake County.

14 (b) An action appealing a decision of the Commission may only be initiated in
15 the Superior Court of Wake County. The appeal must be filed within 90 days from the
16 date of the entry by the Commission of its final order. The appeal shall be docketed as
17 soon as practicable. The court shall proceed to hear the appeal upon the original record
18 made before the Commission. Any party adversely affected by a decision and final
19 order of the superior court has the right to petition the Court of Appeals for a review of
20 the decision of the superior court."

21 **SECTION 3.** G.S. 120-123 is amended by adding a new subdivision to read:

22 **"(79) Public Employee Labor Relations Commission."**

23 **SECTION 4.** This act is effective when it becomes law.