

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1982

By: Boyd (Betty) and Settle
of the House

and

Stipe of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to schools; amending 70 O.S. 1991, Sections 509.2, as amended by Section 1, Chapter 100, O.S.L. 1993, and 509.7, as amended by Section 1, Chapter 102, O.S.L. 1992 (70 O.S. Supp. 1993, Sections 509.2 and 509.7), which relate to recognition of employee bargaining organizations and impasse procedure; requiring certain action by county election board within certain time; requiring certain notice to certain parties; deleting obsolete language; requiring selection of certain committee member within certain time; establishing procedures for resolution of certain disputes; staying certain elections pending resolution of dispute; requiring certain notice to certain parties; requiring appointment of certain committee; providing for election of chair of certain committee; providing for judicial review of certain dispositions, findings and recommendations; defining record for judicial review; providing standard of review; providing for appeal to Oklahoma Supreme Court; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 1991, Section 509.2, as amended by Section 1, Chapter 100, O.S.L. 1993 (70 O.S. Supp. 1993, Section 509.2), is amended to read as follows:

Section 509.2 A. The local board of education shall recognize an employee organization designated by an election of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit. The members of an employee organization shall be employees as defined in paragraphs 1, 2 and 3 of this subsection. The recognition of such

employee organization shall be made by the local board no later than fourteen (14) days after said election. Any person who desires not to be represented by any organization may so state in writing to his board of education. Appropriate bargaining units are defined as follows; however, such definition shall not be construed, of itself, as requiring that bargaining units engage in bargaining or act to disengage from bargaining:

1. Employees who are employed and certified as principals and assistant principals and who have responsibilities for the supervision of classroom teachers shall constitute an appropriate unit;

2. All other employees who are required by the position in which employed to be licensed or certified as teachers or entry year teachers as those terms are defined in Section 1-116 of this title and who do not hold supervisory authority with respect to other teachers in the district shall constitute an appropriate unit; and

3. All support employees who do not have administrative responsibility for making written recommendations concerning the employment status of other employees in the district shall constitute an appropriate unit. Provided, however, that for the purposes of this section, supervision of employees, in and of itself, shall not constitute administrative responsibility. Provided, if employees categorized according to paragraphs 2 and 3 of this subsection were organized for bargaining as a single unit as of April 14, 1986, or are at any time employed in a district having fewer than seventy-five employees in the two categories taken together, said employees may, for such time as a majority of the employees in each category indicate by secret ballot vote they share a single community of interest, constitute a single appropriate unit. Further provided, any final judgment of the Oklahoma Supreme Court denying such community of interest in any school district shall have the effect of rendering inappropriate all units, in whatever school districts they exist, which include employees of both categories.

B. 1. Within seven (7) business days of receiving a sealed packet containing an employee petition filed by or on behalf of thirty-five percent (35%) or more of the employees in a unit, such petition calling for an election to determine which, if any, employee organization represents the employees in a bargaining unit, the board shall arrange for verification that there are a sufficient number of correct names to constitute at least thirty-five percent (35%) of the employees in the unit. Such arrangements shall include the transmitting of the sealed packet and a list of employees eligible to be included in the bargaining unit to the individual designated pursuant to the provisions of paragraph 2 of this subsection.

2. The petition calling for the secret ballot election shall contain only the names of employees of the bargaining unit who have signed and dated said petition. The Within thirty (30) days of receipt of the sealed packet by the county election board, the sealed packet shall be opened and the petition shall be verified by an individual designated by the election board of the county in which the school district has its main office. Upon verification of the number of signatures on the petition, the county election board shall notify in writing the district board of education and any employee organization that has requested notice of the verification. Under no circumstances shall the individual so designated reveal the names of employees who signed or did not sign the petition. If an employee has signed more than one petition, the name of the employee shall be removed from each petition.

3. The period of time for signing of a recognition petition shall commence upon receipt of written notification by the local school board from an organization indicating that it intends to circulate a petition and shall cease thirty (30) days thereafter. Provided, if an organization recognized as representative of a unit for bargaining is being challenged for discontinuation of representation as provided in paragraph 8 of subsection C of this section or is being challenged by another organization seeking

recognition, the period for signing shall commence on the first day of February and end on the last day of that same February.

C. 1. Not less than thirty (30) days nor more than forty-five (45) days after receipt of notification that the petition has been verified as sufficient, a secret ballot election shall be held to determine which, if any, employee organization shall represent the unit. No election shall be held for a unit within which a valid election was held in the preceding two (2) years.

The local board shall recognize within ten (10) days an organization which, on the effective date of this act, has obtained signed authorization from a majority of the employees eligible to be included in the unit but has not been recognized. No election shall be held for such unit within two (2) years of recognition. An appropriate election ballot shall be printed for this election, which contains the names of all employee organizations having presented a petition verified as signed by at least thirty-five percent (35%) of the employees eligible to be in the unit to represent or currently recognized as representing the unit; provided, no such organization shall be shown on the ballot unless the organization pays to the local board a filing fee of Two Hundred Fifty Dollars (\$250.00). The ballot shall also provide an option whereby any employee of the unit may indicate a preference that the unit not be represented by any organization. Every organization that receives at least fifteen percent (15%) of the vote in the election shall be reimbursed the Two Hundred Fifty Dollars (\$250.00) by the local board. The local board shall use any remaining filing fee money to help offset the cost of the validation process of the petition, if any, as well as any election costs incurred.

2. When none of the choices on the ballot receives a majority of the votes, a runoff election shall be conducted on the fourteenth day following the first election between the two choices which received the largest number of votes in the preceding election.

3. The employee organization or organizations and the local school board shall, by agreement, determine the method by which

each election shall be conducted. All costs incurred in an election shall be shared equally by all parties involved.

If no agreement can be reached within fourteen (14) days prior to the election, the local board of education shall notify the county election board of the county in which the board is located of such fact, and the following method for conducting the secret ballot election shall be followed and conducted by the county election board:

- a. At the time of such notice, the board of education shall provide to the county election board:
 - (1) a list of all the polling places for the election, such list to include every middle school or junior high school and the central administration office in the district~~†~~‡
 - (2) a list of names of all the persons eligible to vote in said election, such list to be in alphabetical order and duplicated in such number that there shall be one for each polling place, plus an additional five copies~~†~~‡
 - (3) the names of each organization entitled to have its name appear on the ballot~~†~~‡ and
 - (4) the date of the election.
- b. Ballots for the election shall be printed by the county election board in the same manner as for other elections conducted by the county election board, insofar as is possible. The names of organizations shall be listed on the ballot in the order in which said names are furnished to the county election board by the board of education. The option specifying that no organization shall represent the employee bargaining unit shall be listed last on the ballot, in such language as may be specified by the local board.
- c. The secretary of the county election board shall appoint an inspector, judge and clerk for each polling place. Said inspector, judge and clerk

shall be selected from among the regular precinct officials in the county.

- d. Polling places shall be open from 7:00 a.m. to 7:00 p.m. on the day of the election. Any eligible person who presents himself to vote no later than 7:00 p.m. shall be entitled to vote.
- e. Eligible voters may vote after signing their signatures beside their names on the list of names of all the persons eligible to vote in said election. The voter shall place his ballot in the ballot box in the presence of the inspector.
- f. Each organization entitled to have its name appear on the ballot shall be permitted to appoint one challenger at each polling place. Each such challenger shall be properly identified as such, and shall be limited to inquiring of a prospective voter, said prospective voter's name, address, job classification and work site. The challenger may challenge the right of any prospective voter to vote by so informing the judge. Upon being so challenged, the prospective voter may vote if, after being informed by the judge of such a challenge, the voter signs his signature beside his name on the list of names of all the persons eligible to vote in said election. If same occurs, the judge shall write the words "Challenged by _____" beside the voter's signature.
- g. The county election board shall certify in writing the results of the election to the board of education on the day following the election and on the same day shall mail a copy of the certification to all employee organizations that have requested copies of the certification.
- h. Costs of the election shall be paid to the county election board by the board of education. Said costs shall include the regular salaries of the

inspector, judge, clerk, in addition to all other necessary and reasonable costs. Such costs shall include compensation for members of the county election board, including the secretary.

- i. Anyone guilty of voting more than one time in said election will be guilty of a misdemeanor and subject to a fine of Two Hundred Dollars (\$200.00) or thirty (30) days in the county jail.

4. No employee shall use regularly scheduled duty time for campaign purposes.

5. A list of the employees eligible to vote in the election including their names, addresses, phone numbers, job classification and work site shall be provided not less than fourteen (14) days before the election to each organization listed on the official ballot.

6. No organization which at the time this act takes effect is representing a bargaining unit as a result of having gained recognition on the basis of signed authorization or secret ballot election and is in the process of collective bargaining for the 1986-87 school year shall be subject to the election provisions of this section until collective bargaining for the 1986-87 school year has ended.

7. Any local board or organization challenging the results of any election held pursuant to the provisions of this section shall post with the district court a bond of One Thousand Dollars (\$1,000.00) which shall be forfeited if the court finds that the challenge is in bad faith.

8. In any February more than two (2) years after recognition of an organization pursuant to the provisions of this section and upon the receipt of a petition calling for discontinuation of representation signed by thirty-five percent (35%) of the employees eligible to be included in the unit, a local board shall call an election to determine whether the members of a unit wish to discontinue being represented for bargaining. If a majority of the votes cast are votes to discontinue representation, efforts to gain recognition by any organization shall be prohibited for a

period of two (2) years commencing with the expiration of the contract then in force. The ballots used in such election shall, without reference to any organization by name, offer the single choice of continued representation or discontinuation of representation.

SECTION 2. AMENDATORY 70 O.S. 1991, Section 509.7, as amended by Section 1, Chapter 102, O.S.L. 1992 (70 O.S. Supp. 1993, Section 509.7), is amended to read as follows:

Section 509.7 A procedure for resolving impasses will be developed by the board of education and the representatives of the organization. Said procedure shall include the actions set forth in this section and may include such other actions as are agreed to by both parties. Unless otherwise provided for by law, "days" means calendar days. Time limits set forth herein may be extended by mutual agreement of the parties.

A. If negotiations are not successfully concluded by the first day of school, impasse shall exist. At any earlier time, either party may declare impasse. Upon reaching of impasse, the items causing the impasse shall be referred to a three-member fact-finding committee. This committee shall consist of:

1. One member who shall be selected by the representatives of the organization within five (5) days after the reaching of impasse;

2. One member who shall be selected by the local board of education within five (5) days after the reaching of impasse; and

~~3. Until July 1, 1993, one member who shall be selected by the first two members within fifteen (15) days after selection of the other two members. The member selected by the first two members shall serve as chairman of the committee; and~~

~~4. Beginning July 1, 1993, one One member who shall serve as chairperson of the committee and shall be selected as follows:~~

- a. The State Board of Education shall appoint as fact-finders not less than twenty nor more than thirty persons to be placed on the State Superintendent's list of fact-finders. The appointees must reside in Oklahoma, must be neutral and unbiased and must be

knowledgeable in the fields of school operations, school finance, personnel management, dispute resolution and hearing procedures. The appointees shall not currently be elected public officers or employees of a board of education or officers or employees of an organization of education employees. No person who is related within the second degree by consanguinity or affinity to an elected public officer, to an employee of the local board of education that is involved in the impasse, or to an employee of an organization of education employees shall be eligible to serve as a fact-finder.

- b. An appointee shall serve until such appointee resigns or is removed by the State Board of Education from the State Superintendent's list of fact-finders. An appointee must be removed immediately if he or she becomes an elected public officer or employee of a board of education or an officer or employee of an organization of education employees.
- c. Within ten (10) days of being notified that a fact-finder is needed, the State Superintendent of Public Instruction or designee shall provide the names of five potential fact-finders selected at random from the list of appointees who are available to serve as a member and the chairperson of the committee. The parties shall select the fact-finder from the five names within fifteen (15) days after receiving the list of fact-finders.
- d. It shall be the responsibility of the State Board of Education to establish rules, regulations, training, hearing procedures, and payment schedules to implement the provisions of this paragraph.

B. Within five (5) days after the selection of the ~~chairman~~ chairperson, the representatives who have been negotiating for the board and for the organization shall meet to exchange written

language on each item at impasse. The exchanged documents shall also be furnished by each party to the ~~chairman~~ chairperson and other members of the committee.

C. The ~~chairman~~ chairperson shall convene the committee for fact finding. This committee shall meet with the representatives of both parties. Within twenty (20) days after the ~~chairman~~ chairperson is selected, the committee shall present written recommendations to the local board and to the organization.

D. If either party decides it must reject one or more of the committee's recommendations, said party must, within seven (7) days after the committee has presented its recommendations, request a meeting of the representatives who have been negotiating for the board and for the organization. The parties shall meet within seven (7) days of the request, unless both parties deem it unnecessary. At such meeting, the representatives shall exchange written statements expressing each party's rationale for rejecting each recommendation found unacceptable and shall attempt to clarify any remaining differences. The representatives shall then resume good faith effort to resolve the remaining differences; provided, after fourteen (14) days after the exchange of the written statements, either party may discontinue such effort.

E. The local board shall file a copy of the fact-finding report with the office of the State Superintendent of Public Instruction. If the effort to resolve differences is successful, the parties shall draft a written agreement and present the agreement to both parties for ratification, and such agreement shall also be forwarded to the State Superintendent of Public Instruction. If the effort to resolve differences is unsuccessful, the local board of education shall forward to the State Superintendent of Public Instruction in writing its final disposition of the negotiations impasse process within thirty (30) days of the effective date of implementation.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 509.2a of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In the event of a bargaining unit determination or a bargaining election dispute, the following procedure shall apply:

1. In the event of a bargaining election dispute, within seven (7) calendar days of receipt of verification of number of signatures on the petition from the county election board or the receipt of election results from the county election board or other organization agreed upon by the parties to conduct the election, either party shall give notice in writing of a dispute and the facts on which the dispute is based to the other parties involved, and the State Superintendent of Public Instruction requesting appointment of a dispute resolution committee. In the event of a bargaining unit determination dispute either party shall give notice in writing of a dispute and the facts on which the dispute is based to the other parties involved, and the State Superintendent of Public Instruction requesting appointment of a dispute resolution committee. The status quo that existed between the parties prior to the incident giving rise to the dispute shall be maintained through the resolution of the dispute including district court proceedings unless the court orders otherwise upon proper application by a party; any election scheduled pursuant to a disputed petition shall be stayed pending resolution of the dispute including district court proceedings;

2. Within ten (10) days of receipt of notification that a dispute resolution committee is needed, the State Superintendent of Public Instruction shall form a dispute resolution committee consisting of three (3) members selected at random from the list of fact-finders maintained by the State Board of Education pursuant to Section 509.7 of Title 70 of the Oklahoma Statutes. The State Superintendent shall notify the members of the committee of their selection and set a date for the committee's first meeting to be held no later than seven (7) calendar days following selection of the committee. The committee shall elect a chair at its first meeting;

3. Within five (5) calendar days after the selection of the chair, the representatives of the parties involved in the dispute shall present to the members of the committee written comments on

the issues related to the dispute. Each party shall furnish the other parties copies of documents presented to the committee. Within fifteen (15) calendar days of selection of the chair, the chair shall convene the committee for a meeting with the representatives of the parties. Within twenty (20) calendar days of selection of the chair, the committee shall present its findings and recommendations in writing to the board of education and other parties involved in the dispute;

4. If any party decides to reject the committee's recommendations the party must, within seven (7) days after receipt of the committee's written recommendation, request a meeting of the parties involved in the dispute. At the meeting the parties shall exchange written statements expressing their rationale for rejecting any recommendation and shall attempt to clarify differences;

5. At any time following issuance of the dispute resolution committee's findings and recommendations but prior to the initiation of judicial review, the committee shall provide necessary clarification to all parties at the request of any party. The committee shall provide written clarification within ten (10) calendar days of the request;

6. The local board shall file a copy of the written findings and recommendations, including any written clarifications, of the dispute resolution committee with the Office of the State Superintendent of Public Instruction. If the effort to resolve differences is successful, the parties shall forward a copy of their agreement to the State Superintendent of Public Instruction. If the effort to resolve differences is unsuccessful, the local board of education shall notify the State Superintendent of Public Instruction in writing of the parties' inability to agree;

7. Within fifteen (15) calendar days of the date of notification of the parties' inability to agree any party may appeal for judicial review of the committee's findings and recommendations in the district court of the county in which the administrative office of the school district is located. The review shall be conducted by the court without a jury and shall be

confined to the written record consisting of the dispute resolution committee's findings and recommendations, written statements furnished to the dispute resolution committee by the parties, and written statements exchanged among the parties as required in this section. In cases of alleged irregularities in procedures required in this section, the court may take testimony. The court, upon request or upon its own motion, shall hear oral argument and receive written briefs; and

8. The court shall accept the dispute resolution committee's findings and order the parties to comply with the dispute resolution committee's recommendations if the findings and recommendations are found to be valid and the proceedings are found to be free of prejudicial error to any party. Provided the court may enter an order overruling the committee's findings and recommendations, in whole or in part, and order its resolution of the dispute, if the court finds that the committee's findings, inferences, conclusions, or decisions are:

- a. in violation of constitutional provisions,
- b. in excess of the authority of the committee,
- c. made upon unlawful procedure,
- d. affected by other error of law,
- e. clearly erroneous in view of the reliable, material, probative, and competent evidence, including matters properly noticed by the committee, upon examination and consideration of the entire record as submitted but without otherwise substituting its judgment as to the weight of the evidence for that of the committee on question of fact,
- f. arbitrary or capricious, or
- g. lacking findings of fact upon issues essential to the decision.

The court's final order shall be issued no later than sixty (60) days following the date the appeal is filed.

B. An aggrieved party without a motion for a new trial may secure a review of any final judgment of a district court under this section by appeal to the Oklahoma Supreme Court. The appeal

shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions.

SECTION 4. This act shall become effective July 1, 1994.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-L9632 MCD