

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1205

5 By: Representative Nickels
6 By: Senator Elliott
7

For An Act To Be Entitled

9 AN ACT CONCERNING STATE AGENCY EMPLOYEE GRIEVANCES;
10 TO PROVIDE THE POSSIBILITY OF RELIEF FOR EMPLOYEES
11 WITH GROUNDS FOR A GRIEVANCE, INCLUDING WITHOUT
12 LIMITATION THE RECEIPT OF CREDIT UNDER AN APPLICABLE
13 RETIREMENT SYSTEM; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT CONCERNING STATE EMPLOYEE
16 GRIEVANCES AND POSSIBLE RELIEF FOR
17 GRIEVANCES, INCLUDING WITHOUT LIMITATION
18 CREDIT UNDER A RETIREMENT SYSTEM.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 16-7-104(8) and (9), concerning the powers
26 and duties of the Arkansas Alternative Dispute Resolution Commission, are
27 amended to read as follows:

28 (8) Apply for and accept gifts or grants from any public or
29 private source for use in maintaining and improving alternative dispute
30 resolution programs in the state; ~~and~~

31 (9) Collect fees for tuition and registration of educational
32 programs ~~and to assist in maintaining a roster of third party neutrals;~~

33 (10) Establish fees and fines by rule to assist in maintaining
34 rosters of arbitrators under § 6-7-108;

35 (11) Establish rules for the certification, professional
36 conduct, discipline, and training of persons who are eligible to arbitrate



1 appeals from the state employee grievance procedures under § 21-1-701 et
 2 seq.; and

3 (12) Collect a fee to provide arbitrators for appeals from the
 4 state employee grievance procedures under § 21-1-701 et seq.

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 6 SECTION 2. Arkansas Code Title 16, Chapter 7, Subchapter 2, is amended
 7 to add an additional section to read as follows:

8 16-7-108. Arbitrators for state employee grievance procedures.

9 (a) The Arkansas Alternative Dispute Resolution Commission shall
 10 maintain a roster of arbitrators eligible to hear appeals from state employee
 11 grievance procedures under § 21-1-701 et seq.

12 (b) The commission shall provide a panel of arbitrators from which the
 13 employee and state agency may select an arbitrator to hear the employee's
 14 appeal from the state employee grievance procedures under § 21-1-701 et seq.

15 (c) The commission may promulgate rules concerning the:

16 (1) Selection of arbitrators for appeals from the state employee
 17 grievance procedures under § 21-1-701 et seq.; and

18 (2) Establishment of fees and fines to assist in maintaining the
 19 roster of arbitrators maintained under this section.

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 21 SECTION 3. Arkansas Code Title 21, Chapter 1, is amended to add an
 22 additional subchapter to read as follows:

23 Subchapter 7 – Appeals of State Employee Grievances

24 21-1-701. Definitions.

25 As used in this subchapter:

26 (1) “Adverse action” means the same as defined at § 21-1-602;

27 (2) “Appropriate authority” means the same as defined at § 21-1-
 28 602;

29 (3) “Arbitrator” means an individual who is certified by the
 30 Arkansas Alternative Dispute Resolution Commission to hear appeals under this
 31 subchapter;

32 (4) “Communicating in good faith” means making a verbal or
 33 written report at a time and in a manner that gives a state agency reasonable
 34 notice of the need to correct a waste or violation;

35 (5)(A) “Employee” means a person regularly appointed or employed
 36 in a position of state service by a state agency for which;

1 (i) He or she is compensated on a full-time basis or
 2 on a pro rata basis; and

3 (ii) A class title and pay grade are established in
 4 the appropriation act for the agency or institution in accordance with the
 5 Uniform Classification and Compensation Act, § 21-5-201 et seq.

6 (B) "Employee" does not include a supervisory employee;

7 (6)(A) "State agency" means a board, commission, department,
 8 division, or office of state government within the executive branch.

9 (B) "State agency" does not include:

10 (i) An institution of higher education;

11 (ii) The Arkansas State Highway and Transportation
 12 Department; and

13 (iii) The Arkansas State Game and Fish Commission;

14 (7) "Supervisory employee" means an individual having:

15 (A) Authority in the interest of a state agency to hire,
 16 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or
 17 discipline other employees of the state agency; or

18 (B) If his or her exercise of authority requires the use
 19 of independent judgment and is not of a merely routine or clerical nature,
 20 the responsibility to direct other employees of the state agency by which he
 21 or she is employed;

22 (8) "Violation" means the same as defined at § 21-1-602; and

23 (9) "Waste" means the same as defined at § 21-1-602.

24
 25 21-1-702. Appeals.

26 (a)(1) Upon the completion of an employee grievance procedure mandated
 27 by the executive branch, an employee who wishes to appeal the results of the
 28 employee grievance procedure mandated by the executive branch may file an
 29 appeal with the Office of Personnel Management of the Division of Management
 30 Services of the Department of Finance and Administration if the employee has
 31 been:

32 (A) Terminated;

33 (B) Demoted;

34 (C) Suspended for fourteen (14) or more days; or

35 (D)(i) Subject to adverse action by his or her state
 36 agency for:

1 (a) Communicating in good faith to an
 2 appropriate authority:

3 (1) The existence of waste of public
 4 funds, property, or manpower, including federal funds, property, or manpower
 5 administered or controlled by a public employer; or

6 (2) A violation or suspected violation
 7 of a law, rule, or regulation adopted under the laws of this state or a
 8 political subdivision of the state;

9 (b) Participating or giving information in an
 10 investigation, hearing, court proceeding, legislative or other inquiry, or in
 11 any form of administrative review; or

12 (c) Objecting or refusing to carry out a
 13 directive that the employee reasonably believes violates a law, rule, or
 14 regulation adopted under the authority of the laws of the state or a
 15 political subdivision of the state.

16 (ii) An employee filing an appeal under this
 17 subdivision (a)(1)(D) does not waive his or her right to file a claim under
 18 the Arkansas Whistle-Blower Act, § 21-1-601 et seq.

19 (2) The employee shall file the appeal with the office within
 20 thirty (30) days of the conclusion of any employee grievance procedures
 21 mandated by the executive branch.

22 (b)(1) The employee filing the appeal and the state agency shall
 23 select an arbitrator to hear the appeal from a panel of arbitrators provided
 24 by the Arkansas Alternative Dispute Resolution Commission under § 16-7-104.

25 (2)(A) The commission shall promulgate rules concerning the
 26 qualifications and certification process of arbitrators eligible to hear
 27 appeals.

28 (B)(i) The qualifications shall include a background in
 29 employer and employee relations.

30 (ii) The qualifications shall not require a person
 31 to be an attorney to hear appeals under this subchapter.

32 (c)(1) An employee appealing to the commission may request that the
 33 appeal be conducted by:

34 (A) A de novo hearing before the arbitrator selected to
 35 hear the appeal; or

36 (B) A review of the record by the arbitrator selected to

1 hear the appeal.

2 (2)(A) A state agency decision shall be sustained only if the
3 state agency's decision is supported by:

4 (i) Substantial evidence, if the action was based on
5 an employee's unacceptable performance; or

6 (ii) A preponderance of the evidence, if the action
7 was based on factors other than an employee's unacceptable performance.

8 (B) A state agency decision shall not be upheld by the
9 arbitrator selected to hear the appeal if the employee shows:

10 (i) Harmful error in the state agency's procedures
11 in arriving at the decision;

12 (ii) That the decision was based on a prohibited
13 personnel practice; or

14 (iii) That the decision was not in accordance with
15 the law.

16 (d) An employee appealing under this subchapter may be represented by
17 an attorney or other representative in proceedings before an arbitrator
18 selected to hear the appeal.

19 (e)(1) The arbitrator shall conduct the appeal within forty-five (45)
20 days of the appeal's filing date.

21 (2) The arbitrator shall issue a final decision within twenty
22 (20) days of the date of the hearing or review of the record.

23 (3) The final decision of the arbitrator is not appealable.

24
25 21-1-703. Relief.

26 (a) If an employee is the prevailing party in an appeal under this
27 subchapter, the employee shall be granted relief deemed appropriate by the
28 arbitrator, including without limitation:

29 (1) Attorney's fees; and

30 (2) The restoration of the employee to his or her previous
31 employment position.

32 (b)(1) An employee who is found to have been affected by an
33 unjustified or unwarranted personnel action that resulted in the withdrawal
34 or reduction of all or part of the employee's pay or allowances may receive,
35 at the discretion of the arbitrator, an amount equal to all or part of the
36 pay or allowances that the employee would have earned or received during the

1 period affected by the personnel action, less any amounts earned by the
2 employee through other employment during that period.

3 (2) If the arbitrator awards an amount under subdivision (b)(1)
4 of this section, the employee shall receive the following benefits if the
5 benefits were not received due to the personnel action:

6 (A) Annual and sick leave credit that the employee would
7 have earned or received during the period affected by the personnel action;
8 and

9 (B) Credit under an applicable state retirement system
10 that the employee would have earned or received during the period affected by
11 the personnel action.

12 (3) If the arbitrator awards an amount under subdivision (b)(1)
13 of this section, he or she shall also award interest, compounded daily,
14 calculated under rules promulgated by the Office of Personnel Management of
15 the Division of Management Services of the Department of Finance and
16 Administration.

17 (4) An amount awarded under subdivision (b)(1) of this section
18 shall not be an amount that results in the employee's exceeding the total
19 compensation authorized by law for the position at issue.

20 (c)(1) If the decision of the arbitrator requires a financial award to
21 an employee, the state agency shall pay the award ordered by the arbitrator
22 if it is ten thousand dollars (\$10,000) or less.

23 (2)(A) If the award exceeds ten thousand dollars (\$10,000), the
24 award shall be referred to the General Assembly for an appropriation.

25 (B) The office shall file a written report of an award
26 exceeding ten thousand dollars (\$10,000) to the Claims Review Subcommittee of
27 the Legislative Council.

28 (C) The report shall include a concise statement of the
29 facts with an explanation of the state agency's liability.

30 (D) The report shall be filed with the Claims Review
31 Subcommittee of the Legislative Council within thirty (30) days after the
32 final decision of the arbitrator.

33 (d) If the arbitrator determines upon motion of the employee appealing
34 under this subchapter that irreparable harm or damage would result to the
35 employee in the time period pending the appeal decision, the arbitrator may
36 grant an injunction that is to remain in effect until the final decision of

1 the arbitrator.

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3 21-1-704. Alternative dispute resolution.

4 (a) In lieu of requesting an appeal under § 21-1-702, an employee may
5 request that the appeal be mediated.

6 (b) If an employee requests mediation, the Arkansas Alternative
7 Dispute Resolution Commission shall select an appropriate mediator from a
8 roster maintained by the commission of those mediators who meet the
9 commission's guidelines for that type of case.

10 (c) If the parties reach an agreement through mediation, the mediator
11 shall provide a copy of the mediation agreement to the Office of Personnel
12 Management of the Division of Management Services of the Department of
13 Finance and Administration, and the matter shall be considered resolved and
14 final.

15 (d)(1) If the parties are unable to reach an agreement through
16 mediation, the mediator shall report that information to the commission
17 within two (2) days of the unsuccessful mediation.

18 (2) An employee who is unable to reach an agreement through
19 mediation may request an appeal under § 21-1-702 within ten (10) days of the
20 unsuccessful mediation.

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22 21-1-705. Rules.

23 (a) The Department of Finance and Administration shall promulgate
24 rules governing appeals under this subchapter.

25 (b) The Arkansas Alternative Dispute Resolution Commission shall
26 promulgate rules governing the selection of arbitrators for the purpose of
27 hearing appeals under this subchapter.

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29 SECTION 4. DO NOT CODIFY. The Office of Personnel Management of the
30 Division of Management Services of the Department of Finance and
31 Administration shall begin receiving appeals under Section 3 of this act on
32 July 1, 2015.