SPONSOR: Sen. Townsend & Sen. Sturgeon & Sen. Walsh &
Rep. Osienski & Rep. Lambert
Reps. Burns, Snyder-Hall, Wilson-Anton

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 25

AN ACT TO AMEND TITLES 14 AND 19 OF THE DELAWARE CODE RELATING TO THE PUBLIC SCHOOL EMPLOYMENT RELATIONS ACT.

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

Section 1. Amend Chapter 40, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4010. Bargaining unit determination.

(a) An employee organization desiring to be certified as the exclusive representative shall file a petition with the Board, accompanied by the uncoerced signatures of at least ~~30 percent~~ 30% of the public school employees in the unit claimed to be appropriate, indicating a desire to be represented for the purpose of bargaining collectively with the public employer.

(b) If the Board or its duly authorized designee determines that a petition is properly filed and is accompanied by the requisite number of valid signatures, the Board or its designee shall proceed toward defining the appropriate bargaining unit by setting a date for hearing on the matter. If a petition is not properly filed ~~and/or~~ or if it is not accompanied by the requisite number of valid signatures, the Board or its designee shall dismiss the petition.

(c) After holding such hearings as it deems necessary the Board shall determine the appropriate bargaining unit. The Board may, by rule, delegate its unit definition authority to 1 or more of its members or to its Executive Director, provided that a unit definition order may be subject to review by the Board at the request of any party or upon the Board's own motion in accordance with rules and procedures established by the Board.

(d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall separate supervisory and nonsupervisory employees into separate appropriate bargaining units for all units created subsequent to July 18, 1990. The Board shall include positions commonly referred to as positions for extra-pay-for-

extra-responsibility in the professional bargaining unit for the sole purpose of bargaining the salary for these positions and any other provision mutually agreed to by the parties.

(e) Procedures for redefining or modifying a unit shall be set forth in the rules and procedures established by the Board.

(f) Any bargaining unit designated as appropriate prior to the effective date of this chapter, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter. The appropriateness of the unit may be challenged by the public school employer, ~~30 percent~~ 30% of the members of the unit, an employee organization, or the Board not more than 180 days nor less than 120 days prior to the expiration of any collective bargaining agreement in effect on the date of the passage of this chapter. The continued appropriateness of any bargaining unit designated as appropriate prior to the effective date of this chapter, for which an exclusive representative is not certified, may be challenged by the public school employer, ~~30 percent~~ 30% of the members of the unit, an employee organization, or the Board at any time up until 30 days prior to the holding of an election to determine representation.

§ 4011. Determination and certification of exclusive representative.

(a) Any employee organization seeking certification as exclusive representative in a designated appropriate bargaining unit shall file a petition with the Board. The petition must contain the uncoerced signatures of at least ~~30 percent~~ 30% of the employees within the designated appropriate bargaining unit. If the designated appropriate bargaining unit is sufficiently similar to the bargaining unit claimed to be appropriate in the petition filed pursuant to § 4010(a) of this title, such that the signatures submitted at that time represent at least ~~30 percent~~ 30% of the employees within the designated appropriate bargaining unit, those signatures shall be deemed sufficient for the purpose of this subsection. If the designated bargaining unit is not sufficiently similar to the bargaining unit claimed to be appropriate, the employee organization may continue to rely on the previously submitted uncoerced signatures of the employees who are in the designated bargaining unit and must supplement these signatures with uncoerced signatures of other employees within the designated appropriate bargaining unit, such that the signatures submitted represent at least ~~30 percent~~ 30% of the employees within the designated appropriate bargaining unit. No signature shall be considered valid if it was signed more than 12 months prior to the date on which the petition is filed.

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least ~~30 percent~~ 30% of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the

bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed.

(c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof of at least ~~10 percent~~ 10% representation of the public school employees within the designated appropriate bargaining unit, in accordance with rules and procedures adopted by the Board, and a choice that the public school employee does not desire to be represented by any of the named employee organization or organizations.

(d) The employee organization, if any, which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive representative. In any election where there are more than 2 choices on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes.

(e) No election shall be held pursuant to this section within 12 months from the date of a preceding valid election.

§ 4011A. Majority verification procedure.

(a) Notwithstanding any other provision of this section, an employee organization may file a petition with the Board requesting certification as the exclusive representative of an appropriate bargaining unit based on a verification that over 50% of the employees in the proposed appropriate bargaining unit wish to be represented by the petitioner. The Board shall require dated representation authorization signatures of affected employees as verification of the employee organization's claim of status.

(b) Upon receipt of an employee organization's petition, accompanied by employee authorization signatures under this section, the Board shall investigate the petition. If the Board determines that over 50% of the employees in an appropriate bargaining unit have provided authorization signatures designating the employee organization specified in the petition as their exclusive representative, the Board may not order an election but shall certify the employee organization.

Section 2. Amend Chapter 13, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1310. Bargaining unit determination.

(a) An employee organization desiring to be certified as the exclusive representative shall file a petition with the Board, accompanied by the uncoerced signatures of at least ~~30 percent~~ 30% of the public employees in the unit claimed to be appropriate, indicating a desire to be represented for the purpose of bargaining collectively with the public employer.

(b) If the Board or its duly authorized designee determines that a petition is properly filed and is accompanied by the requisite number of valid signatures, the Board or its designee shall proceed toward defining the appropriate bargaining unit by setting a date for hearing on the matter. If a petition is not properly filed ~~and/or~~ or if it is not accompanied by the requisite number of valid signatures, the Board or its designee shall dismiss the petition.

(c) After holding such hearings as it deems necessary the Board shall determine the appropriate bargaining unit. The Board may, by rule, delegate its unit definition authority to 1 or more of its members or to its executive director, provided that a unit definition order may be subject to review by the Board at the request of any party or upon the Board's own motion in accordance with rules and procedures established by the Board.

(d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.

(e) Procedures for redefining or modifying a unit shall be set forth in the rules and procedures established by the Board.

(f) Any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter. The appropriateness of the unit may be challenged by the public employer, ~~30 percent~~ 30% of the members of the unit, an employee organization, or the Board not more than 180 days nor less than 120 days prior to the expiration of any collective bargaining agreement in effect on September 23, 1994. The continued appropriateness of any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative is not certified, may be challenged by the public employer, ~~30 percent~~ 30% of the members of the unit, an employee organization, or the Board at any time up until 30 days prior to the holding of an election to determine representation.

(g) (1) Two or more certified exclusive representatives of the same public employer may file a joint petition to transfer certain positions between their units. Said joint petition shall be accompanied by the uncoerced signatures of at

least ~~30 percent~~ of 30% the public employees in the positions sought to be transferred, indicating a desire to be represented by the proposed new representative for the purpose of collective bargaining.

(2) The Board shall make a determination as to the appropriateness of the bargaining unit into which the public employees are to be transferred. If the Board determines that the bargaining unit into which the employees are to be transferred is not appropriate, the joint petition shall be denied and the status quo ante shall remain. If the Board determines that the bargaining unit is appropriate, the Board shall hold an election on such joint petition to transfer in which only the public employees in each position who would be transferred shall be entitled to vote. The election ballot shall contain 2 options:

a. Continue to be represented by the present exclusive bargaining representative; or

b. Transfer to the proposed exclusive bargaining representative, who shall be named.

(3) The exclusive bargaining representative that receives the majority of the votes of those voting in the elections shall be declared the exclusive bargaining representative for those positions.

§ 1311. Determination and certification of exclusive representative.

(a) Any employee organization seeking certification as exclusive representative in a designated appropriate bargaining unit shall file a petition with the Board. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the designated appropriate bargaining unit. If the designated appropriate bargaining unit is sufficiently similar to the bargaining unit claimed to be appropriate in the petition filed pursuant to § 1310(a) of this title, such that the signatures submitted at that time represent ~~30 percent~~ 30% of the employees within the designated appropriate bargaining unit, those signatures shall be deemed sufficient for the purpose of this subsection. If the designated bargaining unit is not sufficiently similar to the bargaining unit claimed to be appropriate, the employee organization may continue to rely on the previously submitted uncoerced signatures of the employees who are in the designated bargaining unit and must supplement these signatures with uncoerced signatures of other employees within the designated appropriate bargaining unit, such that the signatures submitted represent at least ~~30 percent~~ 30% of the employees within the designated appropriate bargaining unit. No signature shall be considered valid if it was signed more than 12 months prior to the date on which the petition is filed.

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least ~~30 percent~~ 30% of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall

be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed, and the procedures for mediation and fact-finding have been invoked and completed as provided in this chapter.

(c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning employee organization and the certified employee organization, the name or names of any other employee organization showing written proof of at least ~~10 percent~~ 10% representation of the public employees within the designated appropriate bargaining unit, in accordance with rules and procedures adopted by the Board, and a choice that the public employee does not desire to be represented by any of the named employee ~~organization(s).~~ organizations.

(d) The employee organization, if any, which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive representative. In any election where there are more than 2 choices on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes.

(e) No election shall be held pursuant to this section within 12 months from the date of a preceding valid election.

§ 1311B. Majority verification procedure.

(a) Notwithstanding any other provision of this section, an employee organization may file a petition with the Board requesting certification as the exclusive representative of an appropriate bargaining unit based on a verification that over 50% of the employees in the proposed appropriate bargaining unit wish to be represented by the petitioner. The Board shall require dated representation authorization signatures of affected employees as verification of the employee organization's claim of status.

(b) Upon receipt of an employee organization's petition, accompanied by employee authorization signatures under this section, the Board shall investigate the petition. If the Board determines that over 50% of the employees in an appropriate bargaining unit have provided authorization signatures designating the employee organization specified in the petition as their exclusive representative, the Board may not order an election but shall certify the employee organization.

SYNOPSIS

This Act allows an employee organization to file a petition with the Board to become the exclusive representative of an appropriate bargaining unit for the purpose of collective bargaining. In the event an employee organization provides over 50% of the employees' approval, through their authorized signatures, then the Board may not order an election but must certify the employee organization.

This Act also makes technical corrections to confirm existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Townsend