AN ACT concerning education.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Educational Labor Relations Act is amended by changing Section 12 as follows:

(115 ILCS 5/12) (from Ch. 48, par. 1712)

Sec. 12. Impasse procedures.

(a) This subsection (a) applies only to collective bargaining between an educational employer that is not a public school district organized under Article 34 of the School Code and an exclusive representative of its employees. If the parties engaged in collective bargaining have not reached an agreement by 90 days before the scheduled start of the forthcoming school year, the parties shall notify the Illinois Educational Labor Relations Board concerning the status of negotiations. This notice shall include a statement on whether mediation has been used.

Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within 60 days of the date of certification of the representative by the Board, or in the case of an existing exclusive bargaining representative, within 60 days of the receipt by a party of a demand to bargain issued by the other

party. Once commenced, collective bargaining must continue for at least a 60 day period, unless a contract is entered into.

Except as otherwise provided in subsection (b) of this Section, if after a reasonable period of negotiation and within 90 days of the scheduled start of the forth-coming school year, the parties engaged in collective bargaining have reached an impasse, either party may petition the Board to initiate mediation. Alternatively, the Board on its own motion may initiate mediation during this period. However, mediation shall be initiated by the Board at any time when jointly requested by the parties and the services of the mediators shall continuously be made available to the employer and to the exclusive bargaining representative for purposes of arbitration of grievances and mediation or arbitration of contract disputes. If requested by the parties, the mediator may perform fact-finding and in so doing conduct hearings and make written findings and recommendations for resolution of the dispute. Such mediation shall be provided by the Board and shall be held before qualified impartial individuals. Nothing prohibits the use of other individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association selected by both the exclusive bargaining representative and the employer.

If the parties engaged in collective bargaining fail to reach an agreement within 45 days of the scheduled start of the forthcoming school year and have not requested mediation, the

Illinois Educational Labor Relations Board shall invoke mediation.

Whenever mediation is initiated or invoked under this subsection (a), the parties may stipulate to defer selection of a mediator in accordance with rules adopted by the Board.

(a-5) This subsection (a-5) applies only to collective bargaining between a public school district or a combination of public school districts, including, but not limited to, joint cooperatives, that is not organized under Article 34 of the School Code and an exclusive representative of its employees.

(1) Any time 15 days after mediation has commenced, either party may initiate the public posting process. The mediator may initiate the public posting process at any time 15 days after mediation has commenced during the mediation process. Initiation of the public posting process must be filed in writing with the Board, and copies must be submitted to the parties on the same day the initiation is filed with the Board.

(2) Within 7 days after the initiation of the public posting process, each party shall submit to the mediator, the Board, and the other party in writing the most recent offer of the party, including a cost summary of the offer. Seven days after receipt of the parties' offers, the Board shall make public the offers and each party's cost summary dealing with those issues on which the parties have failed

to reach agreement by immediately posting the offers on its Internet website, unless otherwise notified by the mediator or jointly by the parties that agreement has been reached. On the same day of publication by the Board, at a minimum, the school district shall distribute notice of the availability of the offers on the Board's Internet website to all news media that have filed an annual request for notices from the school district pursuant to Section 2.02 of the Open Meetings Act. The parties' offers shall remain on the Board's Internet website until the parties have reached and ratified an agreement.

(a-10) This subsection (a-10) applies only to collective bargaining between a public school district organized under Article 34 of the School Code and an exclusive representative of its employees, other than educational employees who are forbidden from striking under this Act. For educational employees who are forbidden from striking, either the employer or exclusive representative may elect to utilize the fact-finding procedures set forth in this subsection (a-10), except as otherwise specified in paragraph (5) of this subsection (a-10).

(1) For collective bargaining agreements between an educational employer to which this subsection (a-10) applies and an exclusive representative of its employees, if the parties fail to reach an agreement after a reasonable period of mediation, the dispute shall be

submitted to fact-finding in accordance with this subsection (a-10). Either the educational employer or the exclusive representative may initiate fact-finding by submitting a written demand to the other party with a copy of the demand submitted simultaneously to the Board.

(2) Within 3 days following a party's demand for fact-finding, each party shall appoint one member of the fact-finding panel, unless the parties agree to proceed without a tri-partite panel. Following these appointments, if any, the parties shall select a qualified impartial individual to serve as the fact-finder and chairperson of the fact-finding panel, if applicable. An individual shall be considered qualified to serve as the fact-finder and chairperson of the fact-finding panel, if applicable, if he or she was not the same individual who was appointed as the mediator and if he or she satisfies the following requirements: membership in good standing with the National Academy of Arbitrators, Federal Mediation and Conciliation Service, or American Arbitration Association for a minimum of 10 years; membership on the mediation roster for the Illinois Labor Relations Board or Illinois Educational Labor Relations Board; issuance of at least 5 interest arbitration awards arising under the Illinois Public Labor Relations Act; and participation in impasse resolution processes arising under private or public sector collective bargaining statutes in other states. If

the parties are unable to agree on a fact-finder, the parties shall request a panel of fact-finders who satisfy the requirements set forth in this paragraph (2) from either the Federal Mediation and Conciliation Service or the American Arbitration Association and shall select a fact-finder from such panel in accordance with the procedures established by the organization providing the panel.

(3) The fact-finder shall have the following duties and powers:

(A) to require the parties to submit a statement of disputed issues and their positions regarding each issue either jointly or separately;

(B) to identify disputed issues that are economic in nature;

(C) to meet with the parties either separately or in executive sessions;

(D) to conduct hearings and regulate the time, place, course, and manner of the hearings;

(E) to request the Board to issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence;

(F) to administer oaths and affirmations;

(G) to examine witnesses and documents;

(H) to create a full and complete written record of the hearings;

(I) to attempt mediation or remand a disputed issue to the parties for further collective bargaining;

(J) to require the parties to submit final offers for each disputed issue either individually or as a package or as a combination of both; and

(K) to employ any other measures deemed appropriate to resolve the impasse.

(4) If the dispute is not settled within 75 days after the appointment of the fact-finding panel, the fact-finding panel shall issue a private report to the parties that contains advisory findings of fact and recommended terms of settlement for all disputed issues and that sets forth a rationale for each recommendation. The fact-finding panel, acting by a majority of its members, shall base its findings and recommendations upon the following criteria as applicable:

(A) the lawful authority of the employer;

(B) the federal and State statutes or local ordinances and resolutions applicable to the employer;

(C) prior collective bargaining agreements and the bargaining history between the parties;

(D) stipulations of the parties;

(E) the interests and welfare of the public and the students and families served by the employer;

(F) the employer's financial ability to fund the

proposals based on existing available resources, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue;

(G) the impact of any economic adjustments on the employer's ability to pursue its educational mission;

(H) the present and future general economic conditions in the locality and State;

(I) a comparison of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of employees performing similar services in public education in the 10 largest U.S. cities<u>, except that for educational employees who are forbidden to strike, this comparison shall be based on comparable communities</u>;

(J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;

(K) the overall compensation presently received by the employees involved in the dispute, including direct wage compensation; vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and

stability of employment and all other benefits received; and how each party's proposed compensation structure supports the educational goals of the district, however for educational employees who are forbidden from striking, this analysis shall also include all other employees who are employed by the educational employer;

(L) changes in any of the circumstances listed in items (A) through (K) of this paragraph (4) during the fact-finding proceedings;

(M) the effect that any term the parties are at impasse on has or may have on the overall educational environment, learning conditions, and working conditions with the school district; and

(N) the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State.

(5) The fact-finding panel's recommended terms of settlement shall be deemed agreed upon by the parties as the final resolution of the disputed issues and incorporated into the collective bargaining agreement executed by the parties, unless either party tenders to the other party and the chairperson of the fact-finding panel a notice of rejection of the recommended terms of settlement with a rationale for the rejection, within 15 days after the date of issuance of the fact-finding

panel's report. With regard to educational employees who are forbidden from striking, if either party submits a notice of rejection, either party may utilize mandatory interest arbitration proceedings established in subsection (e). For all other educational employees subject to this subsection (a-10), if ~~If~~ either party submits a notice of rejection, the chairperson of the fact-finding panel shall publish the fact-finding panel's report and the notice of rejection for public information by delivering a copy to all newspapers of general circulation in the community with simultaneous written notice to the parties.

The changes made to this subsection (a-10) by this amendatory Act of the 103rd General Assembly apply only to collective bargaining agreements entered into, modified, extended, or renewed on or after the effective date of this amendatory Act of the 103rd General Assembly.

(b) (Blank).

(c) The costs of fact finding and mediation shall be shared equally between the employer and the exclusive bargaining agent, provided that, for purposes of mediation under this Act, if either party requests the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. All other costs and expenses of complying with this Section must be borne by the party incurring them.

(c-5) If an educational employer or exclusive bargaining representative refuses to participate in mediation or fact finding when required by this Section, the refusal shall be deemed a refusal to bargain in good faith.

(d) Nothing in this Act prevents an employer and an exclusive bargaining representative from mutually submitting to final and binding impartial arbitration unresolved issues concerning the terms of a new collective bargaining agreement.

(e) This subsection only applies to collective bargaining between a public school district organized under Article 34 of the School Code and an exclusive representative of educational employees who are forbidden from striking under this Act after the parties reach impasse when bargaining an initial and any successor collective bargaining agreements. Educational employees who are forbidden from striking have the right to submit negotiation disputes regarding wages, hours, and conditions of employment that are mandatory subjects of bargaining for resolution through the following mandatory arbitration procedures:

(1) For collective bargaining agreements between an educational employer and exclusive representative, mediation shall commence 30 days prior to the expiration of a collective bargaining agreement; or upon 15 days' notice from either party; or at such later time as the mediation services chosen can be provided to the parties. In mediation under this Section, if either party requests

the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. The mediator shall have a duty to keep the Board informed on the progress of the mediation. If any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties, either the exclusive representative or employer may request of the other, in writing, arbitration, and shall submit a copy of the request to the Board.

(2) Within 10 days after such a request for arbitration has been made, the educational employer shall choose a delegate and the employees' exclusive representative shall choose a delegate to a panel of arbitration as provided in this Section. The employer and employees shall forthwith advise the other and the Board of their selections. The parties may agree to waive the tripartite panel and use a sole arbitrator to resolve this issue.

(3) Within 7 days after the request of either party, the parties shall request a panel of impartial arbitrators from which they shall select the neutral chairperson, or sole arbitrator, according to the procedures provided in this Section. If the parties have agreed to a contract

that contains a grievance resolution procedure, the chairperson or sole arbitrator shall be selected using their agreed contract procedure unless they mutually agree to another procedure. If the parties fail to notify the Board of their selection of a neutral chairperson within 7 days after receipt of the list of impartial arbitrators, the Board shall appoint, at random, a neutral chairperson from the list. In the absence of an agreed contract procedure for selecting an impartial arbitrator, the parties shall submit a request to the Federal Mediation and Conciliation Service for a panel of 7 arbitrators who are members in good standing with the National Academy of Arbitrators, and have issued at least 5 interest arbitration awards arising under the Illinois Public Labor Relations Act or this Act. The parties shall conduct a coin toss to determine who strikes first, and the parties shall alternately strike arbitrators from the list until one remains. The parties shall promptly notify the Board of their selection.

(4) The chairperson or sole arbitrator shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing. The hearing shall be held at the offices of the Board or at such other location as the Board deems appropriate. The chairperson or sole arbitrator shall preside over the hearing and shall take testimony. Any oral or documentary evidence and other data

deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for a decision by the arbitration panel or sole arbitrator. The expense of the proceedings, including a fee for the chairperson or sole arbitrator, shall be borne equally by each of the parties to the dispute. The delegates, if public officers or employees, shall continue on the payroll of the public employer without loss of pay. The hearing conducted by the arbitration panel or sole arbitrator may be adjourned from time to time, but unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Majority actions and rulings shall constitute the actions and rulings of the arbitration panel. Arbitration proceedings under this Section shall not be interrupted or terminated by reason of any unfair labor practice charge filed by either party at any time.

(5) The arbitration panel or sole arbitrator may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts,

agreements, and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel or sole arbitrator may, or the Attorney General if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

(6) At any time before the rendering of an award, the chairperson of the arbitration panel or sole arbitrator, if the chairperson of the arbitration panel or sole arbitrator is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks. If the dispute is remanded for further collective bargaining, the time provisions of this Act shall be extended for a time period equal to that of the remand. The chairperson of the arbitration panel or sole arbitrator shall notify the Board of the remand.

(7) At or before the conclusion of the hearing held pursuant to paragraph (4), the arbitration panel or sole arbitrator shall identify the economic issues in dispute,

and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel or sole arbitrator and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel or sole arbitrator as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel or sole arbitrator, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and adopt a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel or sole arbitrator shall adopt the last offer of settlement which, in the opinion of the arbitration panel or sole arbitrator, more nearly complies with the applicable factors prescribed in paragraph (8). The findings, opinions, and order as to all other issues shall be based upon the applicable factors prescribed in paragraph (8).

(8) The arbitration decision shall be limited to mandatory subjects of bargaining. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the

proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:

(A) the lawful authority of the employer;

(B) the federal and State statutes or local ordinances and resolutions applicable to the employer;

(C) prior collective bargaining agreements and the bargaining history between the parties;

(D) stipulations of the parties;

(E) the interests and welfare of the public and the students and families served by the employer;

(F) the employer's financial ability to fund the proposals based on existing available resources, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue;

(G) the impact of any economic adjustments on the employer's ability to pursue its educational mission;

(H) the present and future general economic conditions in the locality and State;

(I) a comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing

similar services in public education in the 10 largest cities in the United States;

(J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;

(K) the overall compensation presently received by the employees involved in the dispute and by all other employees who are employed by the educational employer, including direct wage compensation; vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received, and how each party's proposed compensation structure supports the educational goals of the district;

(L) changes in any of the circumstances listed in items (A) through (K) of this paragraph (8) during the arbitration proceedings;

(M) the effect that any term the parties are at impasse on has or may have on the overall educational environment, learning conditions, and working conditions with the school district; and

(N) the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State.

No terms in the arbitration award or order may

conflict with any terms and conditions set forth in a collective bargaining agreement between the educational employer and another collective bargaining representative.

(9) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under paragraph (1). The commencement of a new fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or sole arbitrator or its decision. Increases in rates of compensation awarded by the arbitration panel or sole arbitrator may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

(10) Orders of the arbitration panel or sole

arbitrator shall be reviewable, upon appropriate petition by either the educational employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel or sole arbitrator was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion, or other similar and unlawful means. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel or sole arbitrator. The party against whom the final decision of any such court shall be adverse, if such court finds such appeal or petition to be frivolous, shall pay reasonable attorney's fees and costs to the successful party as determined by said court in its discretion. If said court's decision affirms the award of money, such award, if retroactive, shall bear interest at the rate of 12% per annum from the effective retroactive date.

(11) During the pendency of proceedings before the arbitration panel or sole arbitrator, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of

the other but a party may so consent without prejudice to the party's rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel or sole arbitrator upon the initiation of arbitration procedures under this Act.

(12) The educational employees covered by this Section may not withhold services, nor may educational employers lock out or prevent such employees from performing services at any time.

(13) All of the terms decided upon by the arbitration panel or sole arbitrator shall be included in an agreement to be submitted to the educational employer's governing body for ratification and adoption by law, ordinance, or the equivalent appropriate means.

The governing body shall review each term decided by the arbitration panel or sole arbitrator. If the governing body fails to reject one or more terms of the arbitration panel's or sole arbitrator's decision by a 3/5 vote of those duly elected and qualified members of the governing body, at the next regularly scheduled meeting of the governing body after issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's or sole arbitrator's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20

days of such rejection and the parties shall return to the arbitration panel or sole arbitrator for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel, sole arbitrator, or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

(14) If the governing body of the employer votes to reject the panel's or sole arbitrator's decision, the parties shall return to the panel or sole arbitrator within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the educational employer.

(15) Notwithstanding the provisions of this Section, the educational employer and exclusive representative may agree to submit unresolved disputes concerning wages,

hours, terms, and conditions of employment to an alternative form of impasse resolution.

(16) The costs of mediation and arbitration shall be shared equally between the educational employer and the exclusive bargaining agent, provided that for purposes of mediation under this Act, if either party requests the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. All other costs and expenses of complying with this Section must be borne by the party incurring them, except as otherwise expressly provided.

(17) If an educational employer or exclusive bargaining representative refuses to participate in mediation or arbitration when required by this Section, the refusal shall be deemed a refusal to bargain in good faith.

(18) Nothing in this Act prevents an employer and an exclusive bargaining representative who are not subject to mandatory arbitration under this Section from mutually submitting to final and binding impartial arbitration unresolved issues concerning the terms of a new collective bargaining agreement.

This subsection (e) applies only to collective bargaining agreements entered into, modified, extended, or renewed on or after the effective date of this amendatory Act of the 103rd

General Assembly.

(Source: P.A. 101-664, eff. 4-2-21.)