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HOUSE BILL 351

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE EMPLOYEE PREFERENCE ACT;
PROHIBITING MEMBERSHIP IN A LABOR ORGANIZATION AS A CONDITION
OF EMPLOYMENT; PROHIBITING THE DEDUCTION OF DUES OR FEES TO A
LABOR ORGANIZATION FROM THE COMPENSATION OF EMPLOYEES WITHOUT
WRITTEN AUTHORIZATION; PROVIDING FOR INVESTIGATION AND
ENFORCEMENT; AMENDING A SECTION OF THE PUBLIC EMPLOYEE
BARGAINING ACT; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 11 of this act may be cited as the "Employee Preference
Act".

SECTION 2. [NEW MATERIAL] PUBLIC POLICY.--It is the
public policy of New Mexico that all persons shall have, and
shall be protected in the exercise of, the right to form, join

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1 or assist labor organizations or to refrain from any such
2 activities, freely and without fear of penalty or reprisal.

3 SECTION 3. [NEW MATERIAL] DEFINITION.--As used in the
4 Employee Preference Act, "labor organization" means a union,
5 organization, agency or employee representation committee of
6 any kind that exists for the purpose, in whole or in part, of
7 dealing with employers concerning wages, rates of pay, hours of
8 work or other conditions of employment.

9 SECTION 4. [NEW MATERIAL] MANDATORY MEMBERSHIP AND FEES
10 PROHIBITED.--A person shall not be required, as a condition of
11 hiring, promotion or continued employment, to become or remain
12 a member of a labor organization or to pay any dues, fees,
13 assessments or other charges of any kind to a labor
14 organization.

15 SECTION 5. [NEW MATERIAL] ORGANIZATION APPROVAL
16 PROHIBITED.--An employer shall not require a person to be
17 recommended or approved by or to be cleared through a labor
18 organization as a condition of hiring, promotion or continued
19 employment.

20 SECTION 6. [NEW MATERIAL] CERTAIN AGREEMENTS ILLEGAL.--An
21 agreement, understanding or practice, written or oral, implied
22 or expressed, between an employer and a labor organization that
23 is in violation of the Employee Preference Act is unlawful.

24 SECTION 7. [NEW MATERIAL] VOLUNTARY CHECKOFF.--An
25 employer shall not deduct from the wages, earnings or

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1 compensation of an employee any dues, fees, assessments or
2 other charges to be held for or paid to a labor organization
3 unless the employer has first received a written authorization
4 for the deduction signed by the employee, which authorization
5 may be revoked by the employee at any time by giving written
6 notice of the revocation to the employer.

7 SECTION 8. [NEW MATERIAL] INVESTIGATION.--It is the duty
8 of the attorney general and of every district attorney to
9 investigate complaints of violations of the Employee Preference
10 Act and to prosecute a person suspected of violating that act.

11 SECTION 9. [NEW MATERIAL] ENFORCEMENT.--If, as a result
12 of investigation, the attorney general or a district attorney
13 has good cause to believe that a person is violating or will
14 violate a provision of the Employee Preference Act, the
15 attorney general or district attorney may bring an action for
16 injunctive or other appropriate relief in the district court
17 for the county in which the violation is occurring or will
18 occur or in the district court for Santa Fe county.

19 SECTION 10. [NEW MATERIAL] PENALTY.--A person who
20 violates any provision of the Employee Preference Act is guilty
21 of a misdemeanor and upon conviction shall be punished by a
22 fine of not more than one thousand dollars (\$1,000) or by
23 imprisonment for a definite term not to exceed ninety days or
24 both.

25 SECTION 11. [NEW MATERIAL] APPLICATION OF ACT.--The

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1 provisions of the Employee Preference Act shall not apply to
2 any contract or agreement between an employer and a labor
3 organization in force on the effective date of that act but
4 shall apply to a renewal or extension of the contract or
5 agreement or to a new contract or agreement entered into after
6 the effective date of that act.

7 SECTION 12. Section 10-7E-17 NMSA 1978 (being Laws 2003,
8 Chapter 4, Section 17 and Laws 2003, Chapter 5, Section 17) is
9 amended to read:

10 "10-7E-17. SCOPE OF BARGAINING.--

11 A. Except for retirement programs provided pursuant
12 to the Public Employees Retirement Act or the Educational
13 Retirement Act, public employers and exclusive representatives:

14 (1) shall bargain in good faith on wages,
15 hours and all other terms and conditions of employment and
16 other issues agreed to by the parties. However, neither the
17 public employer nor the exclusive representative shall be
18 required to agree to a proposal or to make a concession; and

19 (2) shall enter into written collective
20 bargaining agreements covering employment relations.

21 B. The obligation to bargain collectively imposed
22 by the Public Employee Bargaining Act shall not be construed as
23 authorizing a public employer and an exclusive representative
24 to enter into an agreement that is in conflict with the
25 provisions of any other statute of this state. In the event of

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1 conflict between the provisions of any other statute of this
2 state and an agreement entered into by the public employer and
3 the exclusive representative in collective bargaining, the
4 statutes of this state shall prevail.

5 C. Payroll deduction of the exclusive
6 representative's membership dues shall be a mandatory subject
7 of bargaining if either party chooses to negotiate the issue.
8 The amount of dues shall be certified in writing by an official
9 of the labor organization and shall not include special
10 assessments, penalties or fines of any type. The public
11 employer shall not honor payroll deductions unless the employer
12 has received a written authorization for the deduction signed
13 by the public employee. Once written authorization is
14 received, the public employer shall honor payroll deductions
15 until the authorization is revoked in writing by the public
16 employee in accordance with the negotiated agreement and for so
17 long as the labor organization is certified as the exclusive
18 representative. During the time that a board certification is
19 in effect for a particular appropriate bargaining unit, the
20 public employer shall not deduct dues for any other labor
21 organization.

22 D. The scope of bargaining for representatives of
23 public schools as well as educational employees in state
24 agencies shall include, as a mandatory subject of bargaining,
25 the impact of professional and instructional decisions made by

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1 the employer.

2 E. An impasse resolution or an agreement provision
3 by the state and an exclusive representative that requires the
4 expenditure of funds shall be contingent upon the specific
5 appropriation of funds by the legislature and the availability
6 of funds. An impasse resolution or an agreement provision by a
7 public employer other than the state or the public schools and
8 an exclusive representative that requires the expenditure of
9 funds shall be contingent upon the specific appropriation of
10 funds by the appropriate governing body and the availability of
11 funds. An agreement provision by a local school board and an
12 exclusive representative that requires the expenditure of funds
13 shall be contingent upon ratification by the appropriate
14 governing body. An arbitration decision shall not require the
15 reappropriation of funds.

16 F. An agreement shall include a grievance procedure
17 to be used for the settlement of disputes pertaining to
18 employment terms and conditions and related personnel matters.
19 The grievance procedure shall provide for a final and binding
20 determination. The final determination shall constitute an
21 arbitration award within the meaning of the Uniform Arbitration
22 Act; such award shall be subject to judicial review pursuant to
23 the standard set forth in the Uniform Arbitration Act. The
24 costs of an arbitration proceeding conducted pursuant to this
25 subsection shall be shared equally by the parties.

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G. The following meetings shall be closed:

(1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public employer and the exclusive representative of the public employees of the public employer;

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present."

SECTION 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.