

1 SENATE BILL 164

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Eric G. Griego

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10 AN ACT

11 RELATING TO PUBLIC OFFICERS AND EMPLOYEES; AUTHORIZING A STATE
12 EMPLOYEE WHO HAS ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT
13 TO ENTER ARBITRATION TO RESOLVE A CONTESTED DISMISSAL, DEMOTION
14 OR SUSPENSION.

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

17 Section 1. Section 10-9-1 NMSA 1978 (being Laws 1961,
18 Chapter 240, Section 1) is amended to read:

19 "10-9-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article 9
20 NMSA 1978 may be cited as the "Personnel Act"."

21 Section 2. Section 10-9-18 NMSA 1978 (being Laws 1980,
22 Chapter 47, Section 2, as amended) is amended to read:

23 "10-9-18. APPEALS BY EMPLOYEES TO THE BOARD.--

24 A. An employee who is dismissed, demoted or
25 suspended may, within thirty days after the dismissal, demotion

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1 or suspension, appeal to the board. The appealing employee and
2 the agency whose action is reviewed have the right to be heard
3 publicly and to present facts pertinent to the appeal.

4 B. An applicant denied permission to take an
5 examination or who is disqualified may appeal to the board.

6 C. The technical rules of evidence shall not apply
7 to appeals to the board.

8 D. A record shall be made of the hearing, which
9 shall be transcribed if there is an appeal to the district
10 court. Costs of the transcripts, including one copy for the
11 board, shall be paid initially by the agency. The cost of the
12 transcripts may be assessed by the court to the losing party on
13 appeal.

14 E. The board may designate a hearing officer who
15 may be a member of the board or any qualified state employee to
16 preside over and take evidence at any hearing held pursuant to
17 this section. The hearing officer shall prepare and submit to
18 the board a summary of the evidence taken at the hearing and
19 proposed findings of fact. The board shall render a decision,
20 which shall include findings of fact and conclusions of law.

21 F. If the board finds that the action taken by the
22 agency was without just cause, the board may modify the
23 disciplinary action or order the agency to reinstate the
24 appealing employee to [~~his~~] the employee's former position or
25 to a position of like status and pay. Every consideration

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1 shall be given to placing the appealing employee in the same
2 geographical location in which [~~he~~] the employee was employed
3 prior to the disciplinary action. The board may recommend that
4 the appealing employee be reinstated by an agency other than
5 the one [~~who~~] that disciplined the appealing employee. When
6 the board orders an agency to reinstate an appealing employee,
7 the reinstatement shall be effective within thirty days of the
8 board's order. The board may award back pay as of the date of
9 the dismissal, demotion or suspension or as of the later date
10 as the board may specify.

11 G. A party aggrieved by the decision of the board
12 made pursuant to this section may appeal the decision to the
13 district court pursuant to the provisions of Section 39-3-1.1
14 NMSA 1978.

15 H. An employee who has entered into a collective
16 bargaining agreement pursuant to the Personnel Act and who is
17 dismissed, demoted or suspended may, within thirty days after
18 the dismissal, demotion or suspension, irrevocably elect to
19 appeal the action through arbitration. An appeal under this
20 subsection shall be conducted in accordance with procedures and
21 requirements as set forth in Subsections A, C, D, F and G of
22 this section. The selection of an arbitrator shall be
23 conducted in accordance with selection procedures set forth in
24 the collective bargaining agreement that covers the employee."