

AN ACT

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

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

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

"10-9-1. SHORT TITLE.--Chapter 10, Article 9 NMSA 1978 may be cited as the "Personnel Act"."

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

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

A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

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

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

D. A record shall be made of the hearing, which

shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

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

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which the employee was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one that disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the

board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

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

H. Where the public employer has entered into a collective bargaining agreement pursuant to the Public Employee Bargaining Act covering the employee, such an employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, irrevocably elect to appeal the action through arbitration. An appeal under this subsection shall be conducted in accordance with procedures and requirements as set forth in Subsections A, C and D of this section. The arbitrator shall have all of the powers of the board as set forth in Subsection F of this section. A party aggrieved by the decision of the arbitrator may appeal the decision pursuant to Subsection G of this section. The selection of an arbitrator shall be conducted in accordance with selection procedures set forth in the collective bargaining agreement that covers the employee."