SENNATE BILL 103

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

William E. Sharer

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 SECTIONS 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 10 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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or assist labor organizations or to refrain from any such
activities, freely and without fear of penalty or reprisal.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
Employee Preference Act:
A. "employer" means a person, firm, association,
corporation or a state or local government that employs another
person; and
B. "labor organization" means a union,
organization, agency or employee representation committee of
any kind that exists for the purpose, in whole or in part, of
dealing with employers concerning wages, rates of pay, hours of
work or other conditions of employment.

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

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

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

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

SECTION 8. [NEW MATERIAL] ENFORCEMENT.--If, as a result
of investigation, the attorney general or a district attorney
has good cause to believe that a person is violating or will
violate a provision of the Employee Preference Act, the
attorney general or district attorney may bring an action for
injunctive or other appropriate relief in the district court
for the county in which the violation is occurring or will
occur or in the district court for Santa Fe county.

SECTION 9. [NEW MATERIAL] PENALTY.--A person who violates
any provision of the Employee Preference Act is guilty of a
misdemeanor and upon conviction shall be punished by a fine of
not more than one thousand dollars ($1,000) or by imprisonment
for a definite term not to exceed ninety days, or both.

SECTION 10. [NEW MATERIAL] APPLICABILITY AND
EXCEPTIONS.--The provisions of the Employee Preference Act
shall:

A. not apply:

(1) to employers and employees covered by the
Federal Railway Labor Act;
(2) to federal employers and employees;
(3) to employers and employees on exclusive federal enclaves;
(4) where the provisions of that act would otherwise conflict with or be preempted by federal law; or
(5) to an employment contract that is entered into before the effective date of that act; and
B. apply to a renewal or extension of an employment contract that is in effect on the effective date of that act.

SECTION 11. Section 10-7E-4 NMSA 1978 (being Laws 2003, Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is amended to read:

"10-7E-4. DEFINITIONS.--As used in the Public Employee Bargaining Act:
A. "appropriate bargaining unit" means a group of public employees designated by the board or local board for the purpose of collective bargaining;
B. "appropriate governing body" means the policymaking body or individual representing a public employer as designated in Section [7 of the Public Employee Bargaining Act] 10-7E-7 NMSA 1978;
C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;
D. "board" means the public employee labor
relations board;

E. "certification" means the designation by the board or local board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;

F. "collective bargaining" means the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;

G. "confidential employee" means a person who devotes a majority of [his] the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

H. "emergency" means a one-time crisis that was unforeseen and unavoidable;

I. "exclusive representative" means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;

[J. "fair share" means the payment to a labor organization, which is the exclusive representative for an appropriate bargaining unit, by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be .198082.3]
calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions;

K. "impasse" means failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;

L. "labor organization" means an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations;

M. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment;

N. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from
the exclusive representative;

[O-] N. "management employee" means an employee who
is engaged primarily in executive and management functions and
is charged with the responsibility of developing, administering
or effectuating management policies. An employee shall not be
deemed a management employee solely because the employee
participates in cooperative decision-making programs on an
occasional basis;

[P-] O. "mediation" means assistance by an
impartial third party to resolve an impasse between a public
employer and an exclusive representative regarding employment
relations through interpretation, suggestion and advice;

[Q-] P. "professional employee" means an employee
whose work is predominantly intellectual and varied in
caracter and whose work involves the consistent exercise of
discretion and judgment in its performance and requires
knowledge of an advanced nature in a field of learning
customarily requiring specialized study at an institution of
higher education or its equivalent. The work of a professional
employee is of such character that the output or result
accomplished cannot be standardized in relation to a given
period of time;

[R-] Q. "public employee" means a regular
nonprobationary employee of a public employer; provided that,
in the public schools, "public employee" shall also include a
regular probationary employee;

[S.] "public employer" means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only;

[T.] "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or the willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; and

[U.] "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of.
the individual's subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs."

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

"10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

A. Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

B. Public employees shall not be required, as a condition of hiring, promotion or continued employment, to become or remain a member of a labor organization or to pay any dues, fees, assessments or other charges of any kind to a labor organization."

SECTION 13. Section 10-7E-9 NMSA 1978 (being Laws 2003, Chapter 4, Section 9 and Laws 2003, Chapter 5, Section 9) is amended to read:

"10-7E-9. BOARD--POWERS AND DUTIES.--

A. The board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the
establishment of procedures for:

1. the designation of appropriate bargaining units;
2. the selection, certification and decertification of exclusive representatives; and
3. the filing of, hearing on and determination of complaints of prohibited practices.

B. The board shall:

1. hold hearings and make inquiries necessary to carry out its functions and duties;
2. conduct studies on problems pertaining to employee-employer relations; and
3. request from public employers and labor organizations the information and data necessary to carry out the board's functions and responsibilities.

C. The board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The board shall decide issues by majority vote and shall issue its decisions in the form of written orders and
opinions.

E. The board may hire personnel or contract with third parties as it deems necessary to assist it in carrying out its functions.

F. The board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies.

G. A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative. [The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit.]

SECTION 14. Section 10-7E-19 NMSA 1978 (being Laws 2003, Chapter 4, Section 19 and Laws 2003, Chapter 5, Section 19) is amended to read:

"10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A public employer or [his] the public employer's representative shall not:

A. discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership or non-membership in a labor organization;
B. interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act;

C. dominate or interfere in the formation, existence or administration of a labor organization;

D. discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. discharge or otherwise discriminate against a public employee because [he] the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. refuse to bargain collectively in good faith with the exclusive representative;

G. refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule; or

H. refuse or fail to comply with a collective bargaining agreement."

SECTION 15. Section 10-7E-26 NMSA 1978 (being Laws 2003, Chapter 4, Section 26 and Laws 2003, Chapter 5, Section 26) is amended to read:

"10-7E-26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
EMPLOYEE BARGAINING.--

A. A public employer other than the state that prior to October 1, 1991 adopted by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives may continue to operate under those provisions and procedures; provided that the employer shall comply with the provisions of Section 10-7E-5 NMSA 1978. Any substantial change after January 1, 2003 to any ordinance, resolution or charter amendment shall subject the public employer to full compliance with the provisions of Subsection B of this section [26 of the Public Employee Bargaining Act].

B. A public employer other than the state that subsequent to October 1, 1991 adopts by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives freely chosen by its employees may operate under those provisions and procedures rather than those set forth in the Public Employee Bargaining Act; provided that the employer shall comply with the provisions of Sections [8 through 12 and Subsection D of Section 17 of that act] 10-7E-5 and 10-7E-8 through 10-7E-12 NMSA 1978 and Subsection D of Section 10-7E-17 NMSA 1978 and provided that the following

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provisions and procedures are included in each ordinance, resolution or charter amendment:

(1) the right of public employees to form, join or assist employee organizations for the purpose of achieving collective bargaining and the right of public employees to refuse to form, join or assist labor organizations, including refusing to pay dues, fees, assessments or other charges to a labor organization or to a charity or other third party in lieu of payment to a labor organization;

(2) procedures for the identification of appropriate bargaining units, certification elections and decertification elections equivalent to those set forth in the Public Employee Bargaining Act;

(3) the right of a labor organization to be certified as an exclusive representative;

(4) the right of an exclusive representative to negotiate all wages, hours and other terms and conditions of employment for public employees in the appropriate bargaining unit;

(5) the obligation to incorporate agreements reached by the public employer and the exclusive representative into a collective bargaining agreement;

(6) a requirement that grievance procedures culminating with binding arbitration be negotiated;
(7) a requirement that payroll deductions for the exclusive representative's membership dues be negotiated if requested by the exclusive representative;

(8) impasse resolution procedures equivalent to those set forth in Section [18 of the Public Employee Bargaining Act] 10-7E-18 NMSA 1978; and

(9) prohibited practices for the public employer, public employees and labor organizations that promote the principles established in Sections [19 through 21 of the Public Employee Bargaining Act] 10-7E-19 through 10-7E-21 NMSA 1978."

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.

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