

1 HOUSE BILL 169

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LABOR; ENACTING THE EMPLOYEE PREFERENCE ACT;
12 PROVIDING FOR ENFORCEMENT OF AND PENALTIES FOR VIOLATION OF THE
13 EMPLOYEE PREFERENCE ACT; AMENDING SECTIONS OF THE PUBLIC
14 EMPLOYEE BARGAINING ACT; PROHIBITING MANDATORY LABOR
15 ORGANIZATION MEMBERSHIP OR PAYMENT TO A LABOR ORGANIZATION AS A
16 CONDITION OF PUBLIC EMPLOYMENT; PROVIDING FOR SEVERABILITY.

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

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
20 through 12 of this act may be cited as the "Employee Preference
21 Act".

22 SECTION 2. [NEW MATERIAL] PUBLIC POLICY.--It is the
23 public policy of New Mexico that all persons shall have, and
24 shall be protected in the exercise of, the right to form, join
25 or assist labor organizations or to refrain from those

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1 activities, freely and without fear of penalty or reprisal.

2 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Employee Preference Act:

4 A. "employer" means a person or the state; a
5 political subdivision of the state that includes, among other
6 subdivisions, a municipality that has adopted a home rule
7 charter; school districts; and post-secondary public
8 educational institutions that include, among other
9 institutions, state educational institutions pursuant to
10 Article 12, Section 11 of the constitution of New Mexico; and

11 B. "labor organization" means a union,
12 organization, agency or employee representation committee that
13 exists for the purpose, in whole or in part, of dealing with
14 employers concerning wages, rates of pay, hours of work or
15 other conditions of employment.

16 SECTION 4. [NEW MATERIAL] MANDATORY MEMBERSHIP AND FEES
17 PROHIBITED.--A person shall not be required, as a condition of
18 hiring, promotion or continued employment, to:

19 A. become or remain a member of a labor
20 organization; or

21 B. pay dues, fees, assessments or other charges to
22 a labor organization or to a charity or other third party in
23 lieu of payment to a labor organization.

24 SECTION 5. [NEW MATERIAL] ORGANIZATION APPROVAL
25 PROHIBITED.--An employer shall not require a person to be

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1 recommended or approved by or to be cleared through a labor
2 organization as a condition of hiring, promotion or continued
3 employment.

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

8 SECTION 7. [NEW MATERIAL] INVESTIGATION.--The attorney
9 general and district attorneys shall investigate complaints of
10 violations of the Employee Preference Act and shall prosecute a
11 person suspected of violating that act.

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

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

25 SECTION 10. [NEW MATERIAL] REMEDIES.--

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1 A. A person injured or threatened with injury as a
2 result of a violation or threatened violation of the provisions
3 of the Employee Preference Act shall be entitled to injunctive
4 relief against any and all violators or persons threatening the
5 violation.

6 B. A person injured as a result of a violation or
7 threatened violation of the provisions of the Employee
8 Preference Act may recover any and all damages, including costs
9 and reasonable attorney fees, of any character resulting from
10 the violation or threatened violation.

11 C. Remedies pursuant to this section shall be
12 independent of and in addition to any other penalty or remedy
13 prescribed in the Employee Preference Act.

14 **SECTION 11. [NEW MATERIAL] EXCEPTIONS.**--The provisions of
15 the Employee Preference Act shall not apply to employers and
16 employees covered by the federal Railway Labor Act; federal
17 employers and employees; employers and employees on exclusive
18 federal enclaves; or where they would otherwise conflict with,
19 or be preempted by, federal law.

20 **SECTION 12. [NEW MATERIAL] SEVERABILITY.**--If any part or
21 application of the Employee Preference Act is held invalid, the
22 remainder or its application to other situations and persons
23 shall not be affected.

24 **SECTION 13.** Section 10-7E-4 NMSA 1978 (being Laws 2003,
25 Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is

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1 amended to read:

2 "10-7E-4. DEFINITIONS.--As used in the Public Employee
3 Bargaining Act:

4 A. "appropriate bargaining unit" means a group of
5 public employees designated by the board or local board for the
6 purpose of collective bargaining;

7 B. "appropriate governing body" means the
8 policymaking body or individual representing a public employer
9 as designated in Section [~~7 of the Public Employee Bargaining~~
10 ~~Act~~] 10-7E-7 NMSA 1978;

11 C. "authorization card" means a signed affirmation
12 by a member of an appropriate bargaining unit designating a
13 particular organization as exclusive representative;

14 D. "board" means the public employee labor
15 relations board;

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

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

25 G. "confidential employee" means a person who

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1 devotes a majority of [~~his~~] the person's time to assisting and
2 acting in a confidential capacity with respect to a person who
3 formulates, determines and effectuates management policies;

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

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

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

24 ~~K.]~~ J. "impasse" means failure of a public employer
25 and an exclusive representative, after good-faith bargaining,

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1 to reach agreement in the course of negotiating a collective
2 bargaining agreement;

3 ~~[H-]~~ K. "labor organization" means an employee
4 organization, one of whose purposes is the representation of
5 public employees in collective bargaining and in otherwise
6 meeting, consulting and conferring with employers on matters
7 pertaining to employment relations;

8 ~~[M-]~~ L. "local board" means a local labor relations
9 board established by a public employer, other than the state,
10 through ordinance, resolution or charter amendment;

11 ~~[N-]~~ M. "lockout" means an act by a public employer
12 to prevent its employees from going to work for the purpose of
13 resisting the demands of the employees' exclusive
14 representative or for the purpose of gaining a concession from
15 the exclusive representative;

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

23 ~~[P-]~~ O. "mediation" means assistance by an
24 impartial third party to resolve an impasse between a public
25 employer and an exclusive representative regarding employment

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1 relations through interpretation, suggestion and advice;

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

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

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

24 ~~[T-]~~ S. "strike" means a public employee's refusal,
25 in concerted action with other public employees, to report for

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1 duty or [~~his~~] the willful absence in whole or in part from the
2 full, faithful and proper performance of the duties of
3 employment for the purpose of inducing, influencing or coercing
4 a change in the conditions, compensation, rights, privileges or
5 obligations of public employment; and

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

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

21 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

22 A. Public employees, other than management
23 employees and confidential employees, may form, join or assist
24 a labor organization for the purpose of collective bargaining
25 through representatives chosen by public employees without

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1 interference, restraint or coercion and shall have the right to
2 refuse any such activities.

3 B. A public employer shall not require a public
4 employee, as a condition of hiring, promotion or continued
5 employment, to become or remain a member of a labor
6 organization or to pay dues, fees, assessments or other charges
7 to a labor organization or to a charity or other third party,
8 in lieu of payment to a labor organization."

9 SECTION 15. Section 10-7E-9 NMSA 1978 (being Laws 2003,
10 Chapter 4, Section 9 and Laws 2003, Chapter 5, Section 9) is
11 amended to read:

12 "10-7E-9. BOARD--POWERS AND DUTIES.--

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

17 (1) the designation of appropriate bargaining
18 units;

19 (2) the selection, certification and
20 decertification of exclusive representatives; and

21 (3) the filing of, hearing on and
22 determination of complaints of prohibited practices.

23 B. The board shall:

24 (1) hold hearings and make inquiries necessary
25 to carry out its functions and duties;

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1 (2) conduct studies on problems pertaining to
2 employee-employer relations; and

3 (3) request from public employers and labor
4 organizations the information and data necessary to carry out
5 the board's functions and responsibilities.

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

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

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

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

23 G. A rule promulgated by the board or a local board
24 shall not require, directly or indirectly, as a condition of
25 continuous employment, a public employee covered by the Public

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1 Employee Bargaining Act to pay money to a labor organization
2 that is certified as an exclusive representative. [~~The issue~~
3 ~~of fair share shall be left a permissive subject of bargaining~~
4 ~~by the public employer and the exclusive representative of each~~
5 ~~bargaining unit.]"~~

6 SECTION 16. Section 10-7E-19 NMSA 1978 (being Laws 2003,
7 Chapter 4, Section 19 and Laws 2003, Chapter 5, Section 19) is
8 amended to read:

9 "10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
10 public employer or [~~his~~] the public employer's representative
11 shall not:

12 A. discriminate against a public employee with
13 regard to terms and conditions of employment because of the
14 employee's membership or nonmembership in a labor organization;

15 B. interfere with, restrain or coerce a public
16 employee in the exercise of a right guaranteed pursuant to the
17 Public Employee Bargaining Act;

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

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

23 E. discharge or otherwise discriminate against a
24 public employee because [~~he~~] the employee has signed or filed
25 an affidavit, petition, grievance or complaint or given

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1 information or testimony pursuant to the provisions of the
2 Public Employee Bargaining Act or because a public employee is
3 forming, joining or choosing to be represented by a labor
4 organization;

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

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

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

11 SECTION 17. Section 10-7E-26 NMSA 1978 (being Laws 2003,
12 Chapter 4, Section 26 and Laws 2003, Chapter 5, Section 26) is
13 amended to read:

14 "10-7E-26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
15 EMPLOYEE BARGAINING.--

16 A. A public employer other than the state that
17 prior to October 1, 1991 adopted by ordinance, resolution or
18 charter amendment a system of provisions and procedures
19 permitting employees to form, join or assist a labor
20 organization for the purpose of bargaining collectively through
21 exclusive representatives may continue to operate under those
22 provisions and procedures; provided that the employer shall
23 comply with the provisions of Section 10-7E-5 NMSA 1978 in
24 effect on and after the effective date of this 2018 act. Any
25 substantial change after January 1, 2003 to any ordinance,

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1 resolution or charter amendment shall subject the public
2 employer to full compliance with the provisions of Subsection B
3 of this section [~~26 of the Public Employee Bargaining Act~~].

4 B. A public employer other than the state that
5 subsequent to October 1, 1991 adopts by ordinance, resolution
6 or charter amendment a system of provisions and procedures
7 permitting employees to form, join or assist a labor
8 organization for the purpose of bargaining collectively through
9 exclusive representatives freely chosen by its employees may
10 operate under those provisions and procedures rather than those
11 set forth in the Public Employee Bargaining Act; provided that
12 the employer shall comply with the provisions of Sections [~~8~~
13 ~~through 12 and Subsection D of Section 17 of that act~~] 10-7E-5,
14 10-7E-8 through 10-7E-12 NMSA 1978 and Subsection D of Section
15 10-7E-17 NMSA 1978 and provided further that the following
16 provisions and procedures are included in each ordinance,
17 resolution or charter amendment:

18 (1) the right of public employees to form,
19 join or assist employee organizations for the purpose of
20 achieving collective bargaining and the right to refuse those
21 activities, including, among other things, payment of dues,
22 fees, assessments or other charges to a labor organization or
23 to a charity or other third party in lieu of payment to a labor
24 organization;

25 (2) procedures for the identification of

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1 appropriate bargaining units, certification elections and
2 decertification elections equivalent to those set forth in the
3 Public Employee Bargaining Act;

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

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

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

13 (6) a requirement that grievance procedures
14 culminating with binding arbitration be negotiated;

15 (7) a requirement that payroll deductions for
16 the exclusive representative's membership dues be negotiated if
17 requested by the exclusive representative;

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

21 (9) prohibited practices for the public
22 employer, public employees and labor organizations that promote
23 the principles established in Sections [~~19 through 21 of the~~
24 ~~Public Employee Bargaining Act~~] 10-7E-19 through 10-7E-21 NMSA
25 1978."

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SECTION 18. A new section of the Public Employee Bargaining Act is enacted to read:

"~~[NEW MATERIAL]~~ SEVERABILITY.--If any part or application of the Public Employee Bargaining Act is held invalid, the remainder or its application to other situations and persons shall not be affected."

SECTION 19. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.