

HOUSE BILL 659

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Christine Trujillo

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO COLLECTIVE BARGAINING IN THE PUBLIC SECTOR;
MODIFYING THE PUBLIC EMPLOYEE BARGAINING ACT TO CLARIFY
REMEDIES AVAILABLE TO THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD
TO ENFORCE THE PUBLIC EMPLOYEE BARGAINING ACT; REQUIRING LOCAL
LABOR RELATIONS BOARDS TO ENFORCE THE SAME PROVISIONS AS IN THE
PUBLIC EMPLOYEE BARGAINING ACT.

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

SECTION 1. Section 10-7E-3 NMSA 1978 (being Laws 2003,
Chapter 4, Section 3 and Laws 2003, Chapter 5, Section 3) is

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amended to read:

"10-7E-3. CONFLICTS.--In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act and a collective bargaining agreement entered into pursuant to its provisions shall supersede other previously enacted legislation and ~~[regulations]~~ rules; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act, ~~[the Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978]~~ the Group Benefits Act, the Per Diem and Mileage Act, the Retiree Health Care Act, public employee retirement laws or the Tort Claims Act."

SECTION 2. 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

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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

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unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be 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

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resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

O. "management employee" means an employee who is engaged primarily in, and devotes a majority of the employee's work time to, 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~~] or has responsibility for fiscal decisions;

P. "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. "professional employee" means an employee whose work is predominantly intellectual and varied in character 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. "public employee" means a regular

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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 the 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 [~~his~~] 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 or 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

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role or whose duties are substantially similar to those of [his] 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 3. 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, other than management employees and confidential employees, have the right to engage in other concerted activities for mutual aid or benefit."

SECTION 4. 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:

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(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.

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E. The board may hire personnel or contract with third parties as it deems necessary to assist it in carrying out its functions and may delegate any or all of its authority to such third parties, subject to final review of the board.

F. The board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies, compensatory damages, make whole relief or any other equitable remedy, declaratory or injunctive relief, provisional remedies, such as temporary restraining orders or preliminary injunctions, or other remedies appropriate under the circumstances.

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

"10-7E-10. LOCAL BOARD--CREATED.--

A. With the approval of the board, a public employer other than the state may, by ordinance, resolution or

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charter amendment, create a local board similar to the public employee labor relations board. Once created ~~and~~, approved and fully constituted pursuant to Subsection B of this section, the local board shall assume the duties and responsibilities of the public employee labor relations board. A local board shall follow all procedures and provisions of the Public Employee Bargaining Act unless otherwise approved by the board.

B. The local board shall be composed of three members appointed by the public employer. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of individuals representing management and one member shall be appointed on the recommendation of the first two appointees.

C. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.

D. During the term for which ~~he~~ a local board member is appointed, a local board member shall not hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.

E. Each local board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem

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and Mileage Act."

SECTION 6. Section 10-7E-11 NMSA 1978 (being Laws 2003, Chapter 4, Section 11 and Laws 2003, Chapter 5, Section 11) is amended to read:

"10-7E-11. LOCAL BOARD--POWERS AND DUTIES.--

A. The local 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. Rules promulgated pursuant to this section shall conform to the greatest extent practicable with the rules adopted by the board and shall not be effective until approved by an order of the board.

~~[B-]~~ C. The local board shall:

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

(2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and

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(3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board in carrying out its functions.

~~[G.]~~ D. The local 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 local 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 local board may administer oaths and affirmations, examine witnesses and receive evidence.

~~[D.]~~ E. The local board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.

F. The local board may hire personnel or contract with third parties as it deems necessary to assist it in carrying out its functions and may delegate any or all of its authority to such third parties, subject to final review of the local board.

~~[E.]~~ G. The local board has the power to enforce provisions of the Public Employee Bargaining Act or a local collective bargaining ordinance, resolution or charter amendment through the imposition of appropriate administrative remedies, compensatory damages, make-whole relief or other

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equitable remedy, declaratory or injunctive relief, provisional remedies, including temporary restraining orders or preliminary injunctions, or other remedies appropriate under the circumstances."

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

"10-7E-12. HEARING PROCEDURES.--

A. The board or local board may hold hearings for the purposes of:

- (1) information gathering and inquiry;
- (2) adopting rules; and
- (3) adjudicating disputes and enforcing the

provisions of the Public Employee Bargaining Act and rules adopted pursuant to that act.

B. The board or local board shall adopt rules setting forth procedures to be followed during hearings of the board or local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions. Rules adopted by a local board shall conform to the greatest extent practicable with the rules adopted by the board and shall not be effective until approved by an order of the board.

C. The board or local board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the

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board or local board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the board or local board for its decision.

D. A rule proposed to be adopted by the board or local board that affects a person or governmental entity outside of the board or local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the board or local board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings of the board shall be held in New Mexico. All meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state or, in the case of a local board hearing, in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes.

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F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board."

SECTION 8. Section 10-7E-14 NMSA 1978 (being Laws 2003, Chapter 4, Section 14 and Laws 2003, Chapter 5, Section 14) is amended to read:

"10-7E-14. ELECTIONS.--

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. [~~An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.~~]

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B. Once a labor organization has filed a valid petition with the board or local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the board or the local board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which

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no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The board or local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board or local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section [~~16 of the Public Employee Bargaining Act~~] 10-7E-16 NMSA 1978."

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

"10-7E-15. EXCLUSIVE REPRESENTATION.--

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and

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negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative."

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

"10-7E-16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

A. A member of a labor organization or the labor

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organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board or local board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board or local board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board or local board shall not accept a request for a

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decertification election or an election sought by a competing labor organization earlier than twelve months subsequent to a labor organization's certification as the exclusive representative."

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

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

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

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

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

B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees

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than contained in state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

C. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

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

E. An impasse resolution or an agreement provision

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by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the [~~specific~~] appropriation of sufficient funds by the legislature [~~and the availability of funds~~]. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the [~~specific~~] appropriation of sufficient funds by the appropriate governing body [~~and the availability of funds~~]. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision [~~shall not~~] may require the appropriate governing body to consider the reappropriation of funds.

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

G. The following meetings shall be closed:

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(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."

HLVMC→SECTION 12. Section 10-7E-18 NMSA 1978 (being Laws 2003, Chapter 4, Section 18 and Laws 2003, Chapter 5, Section 18) is amended to read:

"10-7E-18. IMPASSE RESOLUTION.--

A. The following negotiations and impasse procedures shall be followed by the state and exclusive representatives for state employees:

(1) a request to the state for the commencement of initial negotiations shall be filed in writing by the exclusive representative no later than June 1 of the year in which negotiations are to take place. Negotiations shall begin no later than July 1 of that year;

(2) in subsequent years, negotiations agreed to by the parties shall begin no later than August 1 following the submission of written notice to the state by the exclusive representative no later than July 1 of the year in which negotiations are to take place;

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(3) if an impasse occurs during negotiations between the parties, ~~[and if an agreement is not reached by the parties by October 1]~~ either party may request mediation services from the board. A mediator from the federal mediation and conciliation service shall be assigned by the board to assist in negotiations unless the parties agree to another mediator;

(4) the mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until ~~[November 1]~~ thirty days after the mediator was requested, whichever occurs first; and

(5) if the impasse continues after ~~[November 1]~~ the time described in Paragraph (4) of this subsection, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section ~~[17 of the Public Employee Bargaining Act]~~ 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of ~~[his or her]~~ selection by the parties. The

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arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. The following impasse procedures shall be followed by all public employers and exclusive representatives, except the state and the state's exclusive representatives:

(1) if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board or local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render

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a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section [~~17 of the Public Employee Bargaining Act~~] 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of [~~his or her~~] selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

C. A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the public employer to increase any employees' levels, steps or grades of compensation contained in the existing contract."←HLVMC

SECTION HLVMC→~~12.~~ 13.←HLVMC Section 10-7E-26 NMSA 1978
(being Laws 2003, Chapter 4, Section 26 and Laws 2003, Chapter

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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~~] January 1, 2003 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 only continue to operate under those provisions and procedures if those provisions and procedures provide the same or greater rights to public employees and labor organizations as the Public Employee Bargaining Act, allow for the effective determination of, and remedies for, any action which would constitute a prohibited practice under the Public Employee Bargaining Act and contain impasse resolution procedures equivalent to those set forth in Section 10-7E-18 NMSA 1978. A public employer other than the state that prior to January 1, 2003 adopted provisions and procedures by ordinance, resolution or charter amendment which do not meet the conditions of the previous sentence may cure that defect within ninety days of the effective date of this 2019 act, after which time the public employer may only operate under a local board if it adopts an ordinance, resolution or charter amendment pursuant to Subsection A of Section 10-7E-10 NMSA 1978. Any substantial

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change after ~~[January 1, 2003]~~ the effective date of this 2019 act, apart from any change adopted during the ninety-day cure period specified in this section, to any ordinance, resolution or charter amendment shall ~~[subject]~~ require the public employer ~~[to full compliance with the provisions of Subsection B of 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 and provided the following 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;~~

~~(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;~~

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~~(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; 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] wishing to operate under a local board to adopt an ordinance, resolution or charter amendment pursuant to Subsection A of Section 10-7E-10 NMSA 1978."~~