HOUSE BILL 378
54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 12 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
or assist labor organizations or to refrain from those

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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 or the state; a political subdivision of the state that includes, among other subdivisions, a municipality that has adopted a home rule charter; school districts; and post-secondary public educational institutions that include, among other institutions, state educational institutions pursuant to Article 12, Section 11 of the constitution of New Mexico; and

B. "labor organization" means a union, organization, agency or employee representation committee 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:

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

B. 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.

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.--The attorney
general and district attorneys shall investigate complaints of
violations of the Employee Preference Act and shall 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
a 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] REMEDIES.--
A. A person injured or threatened with injury as a result of a violation or threatened violation of the provisions of the Employee Preference Act shall be entitled to injunctive relief against any and all violators or persons threatening the violation.

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

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

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

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

SECTION 13. Section 10-7E-4 NMSA 1978 (being Laws 2003, Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is .212555.1
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
calculated based on United States and New Mexico statutes and
ease 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 ease 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. J. "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. K.] "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;

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

[L. 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;

[L. O.] "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;

[L. 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\textsuperscript{\text{-}}] P. "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\textsuperscript{\text{-}}] 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\textsuperscript{\text{-}}] R. "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\textsuperscript{\text{-}}] S. "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, influencing or coercing
a change in the conditions, compensation, rights, privileges or
obligations of public employment; and

[1-] T. "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
[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 14. 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. A public employer shall not require a public employee, as a condition of hiring, promotion or continued employment, to become or remain a member of a labor organization or 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."

SECTION 15. 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 16. 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 nonmembership 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

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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 17. 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 in
effect on and after July 1, 2019. 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,
10-7E-8 through 10-7E-12 NMSA 1978 and Subsection D of Section
10-7E-17 NMSA 1978 and provided further that 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 and the right to refuse those
activities, including, among other things, payment of 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 18. 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, 2019.