

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 110

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO COLLECTIVE BARGAINING IN THE PUBLIC SECTOR;
ADDRESSING BARGAINING UNIT ELECTION PROCEDURES, REASONABLE
ACCESS TO EMPLOYEES, SCOPE OF BARGAINING AND EMPLOYER
PROHIBITED PRACTICES; MODIFYING THE PUBLIC EMPLOYEE BARGAINING
ACT TO CLARIFY REMEDIES AVAILABLE TO THE PUBLIC EMPLOYEE LABOR
RELATIONS BOARD; IMPOSING REQUIREMENTS ON LOCAL LABOR BOARDS;
REQUIRING NOTICE OF RULES AND MEMBERSHIP; PROVIDING FOR
RETENTION OF JOBS WITHIN A BARGAINING UNIT; REPEALING AND
REENACTING SECTION 10-7E-10 NMSA 1978 (BEING LAWS 2003, CHAPTER
4, SECTION 10 AND LAWS 2003, CHAPTER 5, SECTION 10); REPEALING
SECTIONS 10-7E-11 AND 10-7E-26 NMSA 1978 (BEING LAWS 2003,
CHAPTER 4, SECTION 11 AND LAWS 2003, CHAPTER 5, SECTION 11; AND
LAWS 2003, CHAPTER 4, SECTION 26 AND LAWS 2003, CHAPTER 5,
SECTION 26).

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

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

5 "10-7E-3. CONFLICTS.--In the event of conflict with other
6 laws, the provisions of the Public Employee Bargaining Act
7 shall supersede other previously enacted legislation and
8 [~~regulations~~] rules; provided that the Public Employee
9 Bargaining Act shall not supersede the provisions of the
10 Bateman Act, the Personnel Act, [~~Sections 10-7-1 through~~
11 ~~10-7-19 NMSA 1978~~] the Group Benefits Act, the Per Diem and
12 Mileage Act, the Retiree Health Care Act, public employee
13 retirement laws or the Tort Claims Act."

14 SECTION 2. Section 10-7E-4 NMSA 1978 (being Laws 2003,
15 Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is
16 amended to read:

17 "10-7E-4. DEFINITIONS.--As used in the Public Employee
18 Bargaining Act:

19 A. "appropriate bargaining unit" means a group of
20 public employees designated by the board or local board for the
21 purpose of collective bargaining;

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

1 C. "authorization card" means a signed affirmation
2 by a member of an appropriate bargaining unit designating a
3 particular organization as exclusive representative;

4 D. "board" means the public employee labor
5 relations board;

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

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

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

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

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

25 [~~J. "fair share" means the payment to a labor~~

1 ~~organization, which is the exclusive representative for an~~
2 ~~appropriate bargaining unit, by an employee of that bargaining~~
3 ~~unit who is not a member of that labor organization equal to a~~
4 ~~certain percentage of membership dues. Such figure is to be~~
5 ~~calculated based on United States and New Mexico statutes and~~
6 ~~case law identifying those expenditures by a labor organization~~
7 ~~which are permissibly chargeable to all employees in the~~
8 ~~appropriate bargaining unit under United States and New Mexico~~
9 ~~statutes and case law, including but not limited to all~~
10 ~~expenditures incurred by the labor organization in negotiating~~
11 ~~the contract applicable to all employees in the appropriate~~
12 ~~bargaining unit, servicing such contract and representing all~~
13 ~~such employees in grievances and disciplinary actions;~~

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

18 ~~[L.]~~ K. "labor organization" means an employee
19 organization, one of whose purposes is the representation of
20 public employees in collective bargaining and in otherwise
21 meeting, consulting and conferring with employers on matters
22 pertaining to employment relations;

23 ~~[M.]~~ L. "local board" means a local labor relations
24 board established by a public employer, other than the state,
25 through ordinance, resolution or charter amendment, and which

1 continues to exist by virtue of the election described in
2 Subsection B of Section 10-7E-10 NMSA 1978;

3 [N.] M. "lockout" means an act by a public employer
4 to prevent its employees from going to work for the purpose of
5 resisting the demands of the employees' exclusive
6 representative or for the purpose of gaining a concession from
7 the exclusive representative;

8 [O.] N. "management employee" means an employee who
9 is engaged primarily in executive and management functions and
10 is charged with the responsibility of developing, administering
11 or effectuating management policies. An employee shall not be
12 deemed a management employee solely because the employee
13 participates in cooperative decision-making programs [~~on an~~
14 ~~occasional basis~~] or whose fiscal responsibilities are routine,
15 incidental or clerical;

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

20 [Q.] P. "professional employee" means an employee
21 whose work is predominantly intellectual and varied in
22 character and whose work involves the consistent exercise of
23 discretion and judgment in its performance and requires
24 knowledge of an advanced nature in a field of learning
25 customarily requiring specialized study at an institution of

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1 higher education or its equivalent. The work of a professional
2 employee is of such character that the output or result
3 accomplished cannot be standardized in relation to a given
4 period of time;

5 [R.] Q. "public employee" means a regular
6 nonprobationary employee of a public employer; provided that,
7 in the public schools, "public employee" shall also include a
8 regular probationary employee and includes those employees
9 whose work is funded in whole or in part by grants or other
10 third-party sources;

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

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

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

13 SECTION 3. Section 10-7E-5 NMSA 1978 (being Laws 2003,
 14 Chapter 4, Section 5 and Laws 2003, Chapter 5, Section 5) is
 15 amended to read:

16 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

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

23 B. Public employees have the right to engage in
 24 other concerted activities for mutual aid or benefit. This
 25 right shall not be construed as modifying the prohibition on

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1 strikes set forth in Section 10-7E-21 NMSA 1978."

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

5 "10-7E-9. BOARD AND LOCAL BOARD--POWERS AND DUTIES.--

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

10 (1) the designation of appropriate bargaining
11 units;

12 (2) the selection, certification and
13 decertification of exclusive representatives; and

14 (3) the filing of, hearing on and
15 determination of complaints of prohibited practices.

16 B. The board or a local board shall:

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

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

21 (3) request from public employers and labor
22 organizations the information and data necessary to carry out
23 the board's or the local board's functions and
24 responsibilities.

25 C. The board or a local board may issue subpoenas

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1 requiring, upon reasonable notice, the attendance and testimony
2 of witnesses and the production of evidence, including books,
3 records, correspondence or documents relating to the matter in
4 question. The board or a local board may prescribe the form of
5 subpoena, but it shall adhere insofar as practicable to the
6 form used in civil actions in the district court. The board or
7 a local board may administer oaths and affirmations, examine
8 witnesses and receive evidence.

9 D. The board or a local board shall decide issues
10 by majority vote and each shall issue its decisions in the form
11 of written orders and opinions.

12 E. The board or a local board may hire personnel or
13 contract with third parties as [~~it deems~~] each deems necessary
14 to assist it in carrying out its functions and each may
15 delegate any or all of its authority to those third parties,
16 subject to final review of the board or local board.

17 F. The board or a local board each has the power to
18 enforce provisions of the Public Employee Bargaining Act
19 through the imposition of appropriate administrative remedies,
20 actual damages related to dues, back pay including benefits,
21 reinstatement with the same seniority status that the employee
22 would have had but for the violation, declaratory or injunctive
23 relief or provisional remedies, including temporary restraining
24 orders or preliminary injunctions. No punitive damages or
25 attorney fees may be awarded by the board or local board.

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1 G. Local board rules shall conform to the rules
2 adopted by the board and shall not be effective until approved
3 by an order of the board. On good cause shown, the board may
4 approve rules proposed by a local board, which rules vary from
5 rules of the board. All rules promulgated by a local board
6 shall comply with state law. A rule promulgated by the board
7 or a local board shall not require, directly or indirectly, as
8 a condition of continuous employment, a public employee covered
9 by the Public Employee Bargaining Act to pay money to a labor
10 organization that is certified as an exclusive representative.
11 [~~The issue of fair share shall be left a permissive subject of~~
12 ~~bargaining by the public employer and the exclusive~~
13 ~~representative of each bargaining unit.~~]

14 H. The board shall maintain current versions of its
15 rules and current versions of the rules of each local board on
16 a publicly accessible website. That website shall also include
17 a current listing of the members of the board and the members
18 of each local board. Each local board shall notify the board,
19 within thirty days of revisions of its rules or changes in its
20 membership, of any such revisions of its rules or changes in
21 its membership."

22 SECTION 5. Section 10-7E-10 NMSA 1978 (being Laws 2003,
23 Chapter 4, Section 10 and Laws 2003, Chapter 5, Section 10) is
24 repealed and a new Section 10-7E-10 NMSA 1978 is enacted to
25 read:

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1 "10-7E-10. [NEW MATERIAL] LOCAL BOARDS--CONDITIONS OF
2 CONTINUED EXISTENCE--TRANSFER OF AUTHORITY UPON TERMINATION--
3 PROHIBITION OF NEW LOCAL BOARDS.--

4 A. All local boards shall continue to exist except
5 as provided in Subsections B through J of this section.

6 B. No later than December 31, 2020, each local
7 board shall submit to the board copies of a revised local
8 ordinance, resolution or charter amendment authorizing
9 continuation of the local board. A local board that fails to
10 meet the submission deadline set forth in this subsection shall
11 cease to exist on January 1, 2021. No later than February 15,
12 2021, the board shall determine whether the local ordinance,
13 resolution or charter amendment authorizing continuation of a
14 local board provides the same or greater rights to public
15 employees and labor organizations as the Public Employee
16 Bargaining Act, allows for the determination of, and remedies
17 for, an action that would constitute a prohibited practice
18 under the Public Employee Bargaining Act and contains impasse
19 resolution procedures equivalent to those set forth in Section
20 10-7E-18 NMSA 1978. If the board determines that a local
21 ordinance, resolution or charter amendment authorizing
22 continuation of a local board does not satisfy the requirements
23 of this subsection, defects may be cured by June 30, 2021 or
24 the local board will cease to exist. The board shall certify
25 by written order whether the requirements of this subsection

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1 have been met.

2 C. No later than April 30, 2021, each local board
3 shall submit to the board copies of its rules. A local board
4 that fails to meet the submission deadline set forth in this
5 subsection shall cease to exist on July 1, 2021. No later than
6 May 30, 2021, the board shall determine whether the rules of a
7 local board conform to the rules of the board, or for good
8 cause shown, any variances meet the requirements of the Public
9 Employee Bargaining Act. If the board determines that the
10 rules of a local board do not meet the requirements of this
11 subsection, the local board may cure any defects by June 30,
12 2021, or it will cease to exist. The board shall certify by
13 written order whether the requirements of this subsection have
14 been met by a local board.

15 D. A local board existing as of July 1, 2021 shall
16 continue to exist after December 31, 2021 only if it has
17 submitted to the board an affirmation that:

18 (1) the public employer subject to the local
19 board has affirmatively elected to continue to operate under
20 the local board; and

21 (2) each labor organization representing
22 employees of the public employer subject to the local board has
23 submitted a written notice to the board that it affirmatively
24 elects to continue to operate under the local board.

25 E. The affirmation required pursuant to Subsection

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1 D of this section shall be submitted to the board by each local
 2 board between November 1 and December 31 of each odd-numbered
 3 year. A local board that fails to timely submit the
 4 affirmation required by this subsection shall cease to exist as
 5 of January 1 of the next even-numbered year.

6 F. Beginning on July 1, 2020, if at any time
 7 thereafter a local board has a membership vacancy exceeding
 8 sixty days in length, the local board shall cease to exist.

9 G. A local board may cease to exist upon:

10 (1) a repeal of the local ordinance,
 11 resolution or charter amendment authorizing continuation of the
 12 local board; or

13 (2) a vote of a local board, which vote is
 14 filed with the board.

15 H. Once a local board ceases to exist for any
 16 reason, it may not be revived.

17 I. Whenever a local board ceases to exist, all
 18 matters pending before such local board shall be transferred to
 19 the board for resolution.

20 J. After June 30, 2020, no new local board may be
 21 created."

22 **SECTION 6.** Section 10-7E-13 NMSA 1978 (being Laws 2003,
 23 Chapter 4, Section 13 and Laws 2003, Chapter 5, Section 13) is
 24 amended to read:

25 "10-7E-13. APPROPRIATE BARGAINING UNITS.--

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1 A. The board or local board shall, upon receipt of
2 a petition for a representation election filed by a labor
3 organization, designate the appropriate bargaining units for
4 collective bargaining. Appropriate bargaining units shall be
5 established on the basis of occupational groups or clear and
6 identifiable communities of interest in employment terms and
7 conditions and related personnel matters among the public
8 employees involved. Occupational groups shall generally be
9 identified as blue-collar, secretarial clerical, technical,
10 professional, paraprofessional, police, fire and corrections.
11 The parties, by mutual agreement, may further consolidate
12 occupational groups. Essential factors in determining
13 appropriate bargaining units shall include the principles of
14 efficient administration of government, the history of
15 collective bargaining and the assurance to public employees of
16 the fullest freedom in exercising the rights guaranteed by the
17 Public Employee Bargaining Act.

18 B. Within thirty days of a disagreement arising
19 between a public employer and a labor organization concerning
20 the composition of an appropriate bargaining unit, the board or
21 local board shall hold a hearing concerning the composition of
22 the bargaining unit before designating an appropriate
23 bargaining unit.

24 C. The board or local board shall not include in an
25 appropriate bargaining unit supervisors, managers or

1 confidential employees.

2 D. Jobs included within a bargaining unit pursuant
3 to a local ordinance in effect on January 1, 2020 shall remain
4 in that bargaining unit."

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

8 "10-7E-14. ELECTIONS.--

9 A. Whenever, in accordance with rules prescribed by
10 the board or local board, a petition is filed by a labor
11 organization containing the signatures of at least thirty
12 percent of the public employees in an appropriate bargaining
13 unit, the board or local board shall conduct a secret ballot
14 representation election to determine whether and by which labor
15 organization the public employees in the appropriate bargaining
16 unit shall be represented. Upon acceptance of a valid
17 petition, the board or a local board shall require the public
18 employer to provide the labor organization within ten business
19 days the names, job titles, work locations, home addresses,
20 personal email addresses and home or cellular telephone numbers
21 of any public employee in the proposed bargaining unit. This
22 information shall be kept confidential by the labor
23 organization and its employees or officers. The ballot shall
24 contain the name of any labor organization submitting a
25 petition containing signatures of at least thirty percent of

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1 the public employees in the appropriate bargaining unit. The
2 ballot shall also contain a provision allowing public employees
3 to indicate whether they do not desire to be represented by a
4 labor organization. An election shall only be valid if forty
5 percent of the eligible employees in the bargaining unit vote
6 in the election.

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

17 C. As an alternative to the provisions of
18 Subsection A of this section, [~~a public employer and~~] a labor
19 organization with a reasonable basis for claiming to represent
20 a majority of the employees in an appropriate bargaining unit
21 may [~~establish an alternative appropriate procedure for~~
22 ~~determining majority status. The procedure may include a labor~~
23 ~~organization's submission of~~] submit authorization cards from a
24 majority of the employees in an appropriate bargaining unit
25 [~~The board or local board shall not certify an appropriate~~

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1 ~~bargaining unit if the public employer objects to the~~
2 ~~certification without an election]~~ to the board or local board,
3 which shall, upon verification that a majority of the employees
4 in the appropriate bargaining unit have signed valid
5 authorization cards, certify the labor organization as the
6 exclusive representative of all public employees in the
7 appropriate bargaining unit. The employer may challenge the
8 verification of the board or local board; the board or local
9 board shall hold a fact-finding hearing on the challenge to
10 confirm that a majority of the employees in the appropriate
11 bargaining unit have signed valid authorization cards.

12 D. If a labor organization receives a majority of
13 votes cast, it shall be certified as the exclusive
14 representative of all public employees in the appropriate
15 bargaining unit. Within fifteen days of an election in which
16 no labor organization receives a majority of the votes cast, a
17 runoff election between the two choices receiving the largest
18 number of votes cast shall be conducted. The board or local
19 board shall certify the results of the election, and, when a
20 labor organization receives a majority of the votes cast, the
21 board or local board shall certify the labor organization as
22 the exclusive representative of all public employees in the
23 appropriate bargaining unit.

24 E. An election shall not be conducted if an
25 election or runoff election has been conducted in the twelve-

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1 month period immediately preceding the proposed representation
2 election. An election shall not be held during the term of an
3 existing collective bargaining agreement, except as provided in
4 Section [~~16 of the Public Employee Bargaining Act~~] 10-7E-16
5 NMSA 1978."

6 SECTION 8. Section 10-7E-15 NMSA 1978 (being Laws 2003,
7 Chapter 4, Section 15 and Laws 2003, Chapter 5, Section 15) is
8 amended to read:

9 "10-7E-15. EXCLUSIVE REPRESENTATION.--

10 A. A labor organization that has been certified by
11 the board or local board as representing the public employees
12 in the appropriate bargaining unit shall be the exclusive
13 representative of all public employees in the appropriate
14 bargaining unit. The exclusive representative shall act for
15 all public employees in the appropriate bargaining unit and
16 negotiate a collective bargaining agreement covering all public
17 employees in the appropriate bargaining unit. The exclusive
18 representative shall represent the interests of all public
19 employees in the appropriate bargaining unit without
20 discrimination or regard to membership in the labor
21 organization. A claim by a public employee that the exclusive
22 representative has violated this duty of fair representation
23 shall be forever barred if not brought within six months of the
24 date on which the public employee knew, or reasonably should
25 have known, of the violation.

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

10 C. A public employer shall provide an exclusive
11 representative of an appropriate bargaining unit reasonable
12 access to employees within the bargaining unit, including the
13 following:

14 (1) for purposes of newly hired employees in
15 the bargaining unit, reasonable access includes:

16 (a) the right to meet with new
17 employees, without loss of employee compensation or leave
18 benefits; and

19 (b) the right to meet with new employees
20 within thirty days from the date of hire for a period of at
21 least thirty minutes but not more than one hundred twenty
22 minutes, during new employee orientation or, if the public
23 employer does not conduct new employee orientations, at
24 individual or group meetings; and

25 (2) for purposes of employees in the

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1 bargaining unit who are not new employees, reasonable access
2 includes:

3 (a) the right to meet with employees
4 during the employees' regular work hours at the employees'
5 regular work location to investigate and discuss grievances,
6 workplace-related complaints and other matters relating to
7 employment relations; and

8 (b) the right to conduct meetings at the
9 employees' regular work location before or after the employees'
10 regular work hours, during meal periods and during any other
11 break periods.

12 D. A public employer shall permit an exclusive
13 representative to use the public employer's facilities or
14 property, whether owned or leased by the employer, for purposes
15 of conducting meetings with the represented employees in the
16 bargaining unit. An exclusive representative may hold the
17 meetings described in this section at a time and place set by
18 the exclusive representative. The exclusive representative
19 shall have the right to conduct the meetings without undue
20 interference and may establish reasonable rules regarding
21 appropriate conduct for meeting attendees.

22 E. The meetings described in this section shall not
23 interfere with the public employer's operations.

24 F. If a public employer has the information in the
25 employer's records, the public employer shall provide to the

1 exclusive representative, in an editable digital file format
2 agreed to by the exclusive representative, the following
3 information for each employee in an appropriate bargaining
4 unit:

5 (1) the employee's name and date of hire;

6 (2) contact information, including:

7 (a) cellular, home and work telephone
8 numbers;

9 (b) a means of electronic communication,
10 including work and personal electronic mail addresses; and

11 (c) home address or personal mailing
12 address; and

13 (3) employment information, including the
14 employee's job title, salary and work site location.

15 G. The public employer shall provide the
16 information described in Subsection F of this section to the
17 exclusive representative within ten days from the date of hire
18 for newly hired employees in an appropriate bargaining unit,
19 and every one hundred twenty days for employees in the
20 bargaining unit who are not newly hired employees. The
21 information shall be kept confidential by the labor
22 organization and its employees or officers. Apart from the
23 disclosure required by this subsection, and notwithstanding any
24 provision contained in the Inspection of Public Records Act,
25 the public employer shall not disclose the information

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1 described in Subsection F of this section, or public employees'
2 dates of birth or social security numbers to a third party.

3 H. An exclusive representative shall have the right
4 to use the electronic mail systems or other similar
5 communication systems of a public employer to communicate with
6 the employees in the bargaining unit regarding:

7 (1) collective bargaining, including the
8 administration of collective bargaining agreements;

9 (2) the investigation of grievances or other
10 disputes relating to employment relations; and

11 (3) matters involving the governance or
12 business of the labor organization.

13 I. Nothing in this section prevents a public
14 employer from providing an exclusive representative access to
15 employees within the bargaining unit beyond the reasonable
16 access required under this section, or limits any existing
17 right of a labor organization to communicate with public
18 employees."

19 SECTION 9. Section 10-7E-16 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 16 and Laws 2003, Chapter 5, Section 16) is
21 amended to read:

22 "10-7E-16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

23 A. A member of a labor organization or the labor
24 organization itself may initiate decertification of a labor
25 organization as the exclusive representative if thirty percent

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1 of the public employees in the appropriate bargaining unit make
2 a written request to the board or local board for a
3 decertification election. Decertification elections shall be
4 held in a manner prescribed by rule of the board. An election
5 shall only be valid if forty percent of the eligible employees
6 in the bargaining unit vote in the election.

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

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

21 D. When an exclusive representative has been
22 certified but no collective bargaining agreement is in effect,
23 the board or local board shall not accept a request for a
24 decertification election or an election sought by a competing
25 labor organization earlier than twelve months subsequent to a

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1 labor organization's certification as the exclusive
2 representative."

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

6 "10-7E-17. SCOPE OF BARGAINING.--

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

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

15 (2) shall enter into written collective
16 bargaining agreements covering employment relations. Entering
17 into a collective bargaining agreement shall not obviate the
18 duty to bargain in good faith during the term of the collective
19 bargaining agreement regarding changes to wages, hours and all
20 other terms and conditions of employment, unless it can be
21 demonstrated that the parties clearly and unmistakably waived
22 the right to bargain regarding those subjects. However, no
23 party may be required, by this provision, to renegotiate the
24 existing terms of collective bargaining agreements already in
25 place.

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1 B. In regard to the Public Employees Retirement Act
2 and the Educational Retirement Act, a public employer in a
3 written collective bargaining agreement may agree to assume any
4 portion of a public employee's contribution obligation to
5 retirement programs provided pursuant to the Public Employees
6 Retirement Act or the Educational Retirement Act. Such
7 agreements are subject to the limitations set forth in this
8 section.

9 ~~[B.]~~ C. The obligation to bargain collectively
10 imposed by the Public Employee Bargaining Act shall not be
11 construed as authorizing a public employer and an exclusive
12 representative to enter into an agreement that is in conflict
13 with the provisions of any other statute of this state;
14 provided, however, that a collective bargaining agreement that
15 provides greater rights, remedies and procedures to public
16 employees than contained in a state statute shall not be
17 considered to be in conflict with that state statute. In the
18 event of an actual conflict between the provisions of any other
19 statute of this state and an agreement entered into by the
20 public employer and the exclusive representative in collective
21 bargaining, the statutes of this state shall prevail.

22 ~~[C.]~~ D. Payroll deduction of the exclusive
23 representative's membership dues shall be a mandatory subject
24 of bargaining if either party chooses to negotiate the issue.
25 The amount of dues shall be certified in writing by an official

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1 of the labor organization and shall not include special
2 assessments, penalties or fines of any type. The public
3 employer shall honor payroll deductions until the authorization
4 is revoked in writing by the public employee in accordance with
5 the negotiated agreement and this subsection and for so long as
6 the labor organization is certified as the exclusive
7 representative. Public employees who have authorized the
8 payroll deduction of dues to a labor organization may revoke
9 that authorization by providing written notice to their labor
10 organization during a window period not to exceed ten days per
11 year for each employee. The public employer and the labor
12 organization shall negotiate when the commencement of that
13 period will begin annually for each employee. If no agreement
14 is reached, the period shall be during the ten days following
15 the anniversary date of each employee's employment. Within ten
16 days of receipt of notice from a public employee of revocation
17 of authorization for the payroll deduction of dues, the labor
18 organization shall provide notice to the public employer of a
19 public employee's revocation of that authorization. A public
20 employee's notice of revocation for the payroll deduction of
21 dues shall be effective on the thirtieth day after the notice
22 provided to the public employer by the labor organization. No
23 authorized payroll deduction of dues held by a public employer
24 or a labor organization on July 1, 2020 shall be rendered
25 invalid by this provision and shall remain valid until replaced

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1 or revoked by the public employee. During the time that a
2 board certification is in effect for a particular appropriate
3 bargaining unit, the public employer shall not deduct dues for
4 any other labor organization.

5 E. Public employers and a labor organization, or
6 their employees or agents, are not liable for, and have a
7 complete defense to, any claims or actions under the law of
8 this state for requiring, deducting, receiving or retaining
9 fair share dues or fees from public employees, and current or
10 former public employees do not have standing to pursue these
11 claims or actions if the fair share dues or fees were permitted
12 at the time under the laws of this state then in force and
13 paid, through payroll deduction or otherwise, on or before June
14 27, 2018. This subsection:

15 (1) applies to all claims and actions pending
16 on July 1, 2020 and to claims and actions filed on or after
17 July 1, 2020; and

18 (2) shall not be interpreted to infer that any
19 relief made unavailable by this section would otherwise be
20 available.

21 F. The scope of bargaining for the exclusive
22 representative and the state shall include enhancements of
23 employee rights and benefits existing pursuant to the Personnel
24 Act.

25 ~~[D.]~~ G. The scope of bargaining for representatives

1 of public schools as well as educational employees in state
2 agencies shall include, as a mandatory subject of bargaining,
3 the impact of professional and instructional decisions made by
4 the employer.

5 ~~[E.]~~ H. An impasse resolution or an agreement
6 provision by the state and an exclusive representative that
7 requires the expenditure of funds shall be contingent upon the
8 specific appropriation of funds by the legislature and the
9 availability of funds. An impasse resolution or an agreement
10 provision by a public employer other than the state or the
11 public schools and an exclusive representative that requires
12 the expenditure of funds shall be contingent upon the specific
13 appropriation of funds by the appropriate governing body and
14 the availability of funds. An agreement provision by a local
15 school board and an exclusive representative that requires the
16 expenditure of funds shall be contingent upon ratification by
17 the appropriate governing body. An arbitration decision shall
18 not require the reappropriation of funds.

19 ~~[F.]~~ I. An agreement shall include a grievance
20 procedure to be used for the settlement of disputes pertaining
21 to employment terms and conditions and related personnel
22 matters. The grievance procedure shall provide for a final and
23 binding determination. The final determination shall
24 constitute an arbitration award within the meaning of the
25 Uniform Arbitration Act; such award shall be subject to

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1 judicial review pursuant to the standard set forth in the
2 Uniform Arbitration Act. The costs of an arbitration
3 proceeding conducted pursuant to this subsection shall be
4 shared equally by the parties.

5 [~~G.~~] J. The following meetings shall be closed:

6 (1) meetings for the discussion of bargaining
7 strategy preliminary to collective bargaining negotiations
8 between the public employer and the exclusive representative of
9 the public employees of the public employer;

10 (2) collective bargaining sessions; and

11 (3) consultations and impasse resolution
12 procedures at which the public employer and the exclusive
13 representative of the appropriate bargaining unit are present."

14 **SECTION 11.** Section 10-7E-18 NMSA 1978 (being Laws 2003,
15 Chapter 4, Section 18 and Laws 2003, Chapter 5, Section 18) is
16 amended to read:

17 "10-7E-18. IMPASSE RESOLUTION.--

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

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

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

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

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

18 (5) if the impasse continues after [~~November~~
19 ~~1~~] the time described in Paragraph (4) of this subsection,
20 either party may request a list of seven arbitrators from the
21 federal mediation and conciliation service. One arbitrator
22 shall be chosen by the parties by alternately striking names
23 from such list. Who strikes first shall be determined by coin
24 toss. The arbitrator shall render a final, binding, written
25 decision resolving unresolved issues pursuant to Subsection [E]

1 ~~H~~ of Section ~~[17 of the Public Employee Bargaining Act]~~
2 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later
3 than thirty days after the arbitrator has been notified of [~~his~~
4 ~~or her~~] selection by the parties. The arbitrator's decision
5 shall be limited to a selection of one of the two parties'
6 complete, last, best offer. The costs of an arbitrator and the
7 arbitrator's related costs conducted pursuant to this
8 subsection shall be shared equally by the parties. Each party
9 shall be responsible for bearing the cost of presenting its
10 case. The decision shall be subject to judicial review
11 pursuant to the standard set forth in the Uniform Arbitration
12 Act.

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

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

23 (2) if the impasse continues after a thirty-
24 day mediation period, either party may request a list of seven
25 arbitrators from the federal mediation and conciliation

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1 service. One arbitrator shall be chosen by the parties by
2 alternately striking names from such list. Who strikes first
3 shall be determined by coin toss. The arbitrator shall render
4 a final, binding, written decision resolving unresolved issues
5 pursuant to Subsection ~~[E]~~ H of Section ~~[17 of the Public~~
6 ~~Employee Bargaining Act]~~ 10-7E-17 NMSA 1978 and the Uniform
7 Arbitration Act no later than thirty days after the arbitrator
8 has been notified of ~~[his or her]~~ selection by the parties.
9 The arbitrator's decision shall be limited to a selection of
10 one of the two parties' complete, last, best offer. The costs
11 of an arbitrator and the arbitrator's related costs conducted
12 pursuant to this subsection shall be shared equally by the
13 parties. Each party shall be responsible for bearing the cost
14 of presenting its case. The decision shall be subject to
15 judicial review pursuant to the standard set forth in the
16 Uniform Arbitration Act.

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

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

1 SECTION 12. Section 10-7E-19 NMSA 1978 (being Laws 2003,
2 Chapter 4, Section 19 and Laws 2003, Chapter 5, Section 19) is
3 amended to read:

4 "10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
5 public employer or [~~his~~] the public employer's representative
6 shall not:

7 A. discriminate against a public employee with
8 regard to terms and conditions of employment because of the
9 employee's membership in a labor organization;

10 B. interfere with, restrain or coerce a public
11 employee in the exercise of a right guaranteed pursuant to the
12 Public Employee Bargaining Act or use public funds to influence
13 the decision of its employees or the employees of its
14 subcontractors regarding whether to support or oppose a labor
15 organization that represents or seeks to represent those
16 employees, or whether to become a member of any labor
17 organization; provided, however, that this subsection does not
18 apply to activities performed or expenses incurred:

19 (1) addressing a grievance or negotiating or
20 administering a collective bargaining agreement;

21 (2) allowing a labor organization or its
22 representatives access to the public employer's facilities or
23 properties;

24 (3) performing an activity required by federal
25 or state law or by a collective bargaining agreement;

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1 (4) negotiating, entering into or carrying out
2 an agreement with a labor organization;

3 (5) paying wages to a represented employee
4 while the employee is performing duties if the payment is
5 permitted under a collective bargaining agreement; or

6 (6) representing the public employer in a
7 proceeding before the board or a local board or in a judicial
8 review of that proceeding;

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

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

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

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

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

25 H. refuse or fail to comply with a collective

underscoring material = new
[bracketed material] = delete

1 bargaining agreement."

2 SECTION 13. REPEAL.--Sections 10-7E-11 and 10-7E-26 NMSA
3 1978 (being Laws 2003, Chapter 4, Section 11 and Laws 2003,
4 Chapter 5, Section 11; and Laws 2003, Chapter 4, Section 26 and
5 Laws 2003, Chapter 5, Section 26) are repealed.

6 SECTION 14. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2020.

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underscored material = new
[bracketed material] = delete

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