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SENATE BILL 110

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

INTRODUCED BY

Mimi Stewart

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; ELIMINATING LOCAL LABOR BOARDS WITH EXCEPTIONS;
REPEALING AND REENACTING SECTIONS 10-7E-10 AND 10-7E-26 NMSA
1978 (BEING LAWS 2003, CHAPTER 4, SECTION 10 AND LAWS 2003,
CHAPTER 5, SECTION 10; AND LAWS 2003, CHAPTER 4, SECTION 26 AND
LAWS 2003, CHAPTER 5, SECTION 26); REPEALING SECTION 10-7E-11
NMSA 1978 (BEING LAWS 2003, CHAPTER 4, SECTION 11 AND LAWS
2003, CHAPTER 5, SECTION 11).

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
amended to read:

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

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

13 "10-7E-4. DEFINITIONS.--As used in the Public Employee
14 Bargaining Act:

15 A. "appropriate bargaining unit" means a group of
16 public employees designated by the board or local board for the
17 purpose of collective bargaining;

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

22 C. "authorization card" means a signed affirmation
23 by a member of an appropriate bargaining unit designating a
24 particular organization as exclusive representative;

25 D. "board" means the public employee labor

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1 relations board;

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

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

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

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

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

21 ~~[J. "fair share" means the payment to a labor~~
22 ~~organization, which is the exclusive representative for an~~
23 ~~appropriate bargaining unit, by an employee of that bargaining~~
24 ~~unit who is not a member of that labor organization equal to a~~
25 ~~certain percentage of membership dues. Such figure is to be~~

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1 ~~calculated based on United States and New Mexico statutes and~~
2 ~~case law identifying those expenditures by a labor organization~~
3 ~~which are permissibly chargeable to all employees in the~~
4 ~~appropriate bargaining unit under United States and New Mexico~~
5 ~~statutes and case law, including but not limited to all~~
6 ~~expenditures incurred by the labor organization in negotiating~~
7 ~~the contract applicable to all employees in the appropriate~~
8 ~~bargaining unit, servicing such contract and representing all~~
9 ~~such employees in grievances and disciplinary actions;~~

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

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

19 ~~[M.]~~ L. "local board" means a local labor relations
20 board established by a public employer, other than the state,
21 through ordinance, resolution or charter amendment, and which
22 continues to exist by virtue of the election described in
23 Subsection B of Section 10-7E-10 NMSA 1978;

24 ~~[N.]~~ M. "lockout" means an act by a public employer
25 to prevent its employees from going to work for the purpose of

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

4 ~~[Θ-]~~ N. "management employee" means an employee who
5 is engaged primarily in and devotes a majority of the
6 employee's work time to executive and management functions and
7 is charged with the responsibility of developing, administering
8 or effectuating management policies. An employee shall not be
9 deemed a management employee solely because the employee
10 participates in cooperative decision-making programs ~~[on an~~
11 ~~occasional basis]~~ or has responsibility for fiscal decisions;

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

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

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1 [~~R-~~] Q. "public employee" means a regular
2 nonprobationary employee of a public employer; provided that,
3 in the public schools, "public employee" shall also include a
4 regular probationary employee. "Public employee" includes
5 employees whose work is funded in whole or in part by grants or
6 other third-party sources;

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

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

22 [~~U-~~] T. "supervisor" means an employee who devotes
23 a majority of work time to supervisory duties, who customarily
24 and regularly directs the work of two or more other employees
25 and who has the authority in the interest of the employer to

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1 hire, promote or discipline other employees or to recommend
2 such actions effectively, but "supervisor" does not include an
3 individual who performs merely routine, incidental or clerical
4 duties or who occasionally assumes a supervisory or directory
5 role or whose duties are substantially similar to those of
6 ~~[his]~~ the individual's subordinates and does not include a lead
7 employee or an employee who participates in peer review or
8 occasional employee evaluation programs."

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

12 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

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

19 B. Public employees have the right to engage in
20 other concerted activities for mutual aid or benefit."

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

24 "10-7E-9. BOARD AND LOCAL BOARD--POWERS AND DUTIES.--

25 A. The board or a local board shall promulgate

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1 rules necessary to accomplish and perform its functions and
2 duties as established in the Public Employee Bargaining Act,
3 including the establishment of procedures for:

4 (1) the designation of appropriate bargaining
5 units;

6 (2) the selection, certification and
7 decertification of exclusive representatives; and

8 (3) the filing of, hearing on and
9 determination of complaints of prohibited practices.

10 B. The board or a local board shall:

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

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

15 (3) request from public employers and labor
16 organizations the information and data necessary to carry out
17 the board's or the local board's functions and
18 responsibilities.

19 C. The board or a local board may issue subpoenas
20 requiring, upon reasonable notice, the attendance and testimony
21 of witnesses and the production of evidence, including books,
22 records, correspondence or documents relating to the matter in
23 question. The board or a local board may prescribe the form of
24 subpoena, but it shall adhere insofar as practicable to the
25 form used in civil actions in the district court. The board or

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1 a local board may administer oaths and affirmations, examine
2 witnesses and receive evidence.

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

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

11 F. The board or a local board each has the power to
12 enforce provisions of the Public Employee Bargaining Act
13 through the imposition of appropriate administrative remedies,
14 compensatory damages, make-whole relief or any other equitable
15 remedy, declaratory or injunctive relief, provisional remedies,
16 including temporary restraining orders or preliminary
17 injunctions, or other remedies appropriate under the
18 circumstances.

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

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1 ~~bargaining unit.]"~~

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

6 "10-7E-10. [NEW MATERIAL] LOCAL BOARDS ABOLISHED--
7 EXCEPTION--ELECTION.--

8 A. With the exception of local boards approved by
9 the election described in Subsection B of this section, local
10 boards created pursuant to a former version of Section 10-7E-10
11 NMSA 1978 prior to the effective date of this 2020 act by a
12 public employer, other than the state, by ordinance, resolution
13 or charter amendment are hereby abolished, and the board has
14 jurisdiction over all public employers, public employees and
15 labor organizations. All matters pending before those local
16 boards upon the effective date of this 2020 act are transferred
17 to the board for resolution.

18 B. A local board existing as of the effective date
19 of this 2020 act shall only continue to operate if:

20 (1) the public employer subject to the local
21 board submits written notice to the board that it affirmatively
22 elects to continue to operate under the local board within
23 ninety days of the effective date of this 2020 act;

24 (2) each labor organization representing
25 employees of the public employer subject to the local board

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1 submits written notice to the board that it affirmatively
2 elects to continue to operate under the local board within
3 ninety days of the effective date of this 2020 act;

4 (3) the local ordinance, resolution or charter
5 amendment creating the local board meets or exceeds all of the
6 requirements of Subsection B of Section 10-7E-26 NMSA 1978 or,
7 if it does not meet those requirements, that defect is cured as
8 provided in Subsection B of Section 10-7E-26 NMSA 1978; and

9 (4) the board certifies by written order that
10 Paragraphs (1) through (3) of this subsection have been met for
11 that local board.

12 C. A public employer electing to operate under
13 Subsection B of this section shall be subject to the
14 jurisdiction of the public employee labor relations board until
15 the public employer's local ordinance, resolution or charter
16 amendment meets the requirements described in Subsection B of
17 this section. The local board shall function in accordance
18 with the Public Employee Bargaining Act. The public employer
19 shall be subject to the jurisdiction of the public employee
20 labor relations board during periods in which the local board
21 is not functioning in accordance with the Public Employee
22 Bargaining Act."

23 **SECTION 6.** Section 10-7E-12 NMSA 1978 (being Laws 2003,
24 Chapter 4, Section 12 and Laws 2003, Chapter 5, Section 12, as
25 amended) is amended to read:

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1 "10-7E-12. HEARING PROCEDURES.--

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

- 4 (1) information gathering and inquiry;
5 (2) adopting rules; and
6 (3) adjudicating disputes and enforcing the
7 provisions of the Public Employee Bargaining Act and rules
8 adopted pursuant to that act.

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

17 C. The board or local board may appoint a hearing
18 examiner to conduct any adjudicatory hearing authorized by the
19 board or local board. At the conclusion of the hearing, the
20 examiner shall prepare a written report, including findings and
21 recommendations, all of which shall be submitted to the board
22 or local board for its decision.

23 D. A rule proposed to be adopted by the board or
24 local board that affects a person or governmental entity
25 outside of the board or local board and its staff shall not be

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1 adopted, amended or repealed without public hearing and comment
2 on the proposed action before the board or local board. The
3 public hearing shall be held after notice of the subject matter
4 of the rule, the action proposed to be taken, the time and
5 place of the hearing, the manner in which interested persons
6 may present their views and the method by which copies of the
7 proposed rule, proposed amendment or repeal of an existing rule
8 may be obtained. All meetings of the board shall be held in
9 New Mexico. All meetings of local boards shall be held in the
10 county of residence of the local public employer. Notice shall
11 be published once at least thirty days prior to the hearing
12 date in a newspaper of general circulation in the state or, in
13 the case of a local board hearing, in a newspaper of general
14 circulation in the county, and notice shall be mailed at least
15 thirty days prior to the hearing date to all persons who have
16 made a written request for advance notice of hearings.

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

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

24 SECTION 7. Section 10-7E-14 NMSA 1978 (being Laws 2003,
25 Chapter 4, Section 14 and Laws 2003, Chapter 5, Section 14) is

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1 amended to read:

2 "10-7E-14. ELECTIONS.--

3 A. Whenever, in accordance with rules prescribed by
4 the board or local board, a petition is filed by a labor
5 organization containing the signatures of at least thirty
6 percent of the public employees in an appropriate bargaining
7 unit, the board or local board shall conduct a secret ballot
8 representation election to determine whether and by which labor
9 organization the public employees in the appropriate bargaining
10 unit shall be represented. Upon acceptance of a valid
11 petition, the board or a local board shall require the public
12 employer to provide the labor organization within ten business
13 days the names, job titles, work locations, home addresses,
14 personal email addresses and home or cellular telephone numbers
15 of any public employee in the proposed bargaining unit. This
16 information shall be kept confidential by the labor
17 organization and its employees or officers. The ballot shall
18 contain the name of any labor organization submitting a
19 petition containing signatures of at least thirty percent of
20 the public employees in the appropriate bargaining unit. The
21 ballot shall also contain a provision allowing public employees
22 to indicate whether they do not desire to be represented by a
23 labor organization. [~~An election shall only be valid if forty~~
24 ~~percent of the eligible employees in the bargaining unit vote~~
25 ~~in the election.]~~

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

11 C. As an alternative to the provisions of
12 Subsection A of this section, [~~a public employer and~~] a labor
13 organization with a reasonable basis for claiming to represent
14 a majority of the employees in an appropriate bargaining unit
15 may [~~establish an alternative appropriate procedure for~~
16 ~~determining majority status. The procedure may include a labor~~
17 ~~organization's submission of~~] submit authorization cards from a
18 majority of the employees in an appropriate bargaining unit
19 [~~The board or local board shall not certify an appropriate~~
20 ~~bargaining unit if the public employer objects to the~~
21 ~~certification without an election~~] to the board or local board,
22 which shall, upon verification that a majority of the employees
23 in the appropriate bargaining unit have signed valid
24 authorization cards, certify the labor organization as the
25 exclusive representative of all public employees in the

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1 appropriate bargaining unit.

2 D. If a labor organization receives a majority of
3 votes cast, it shall be certified as the exclusive
4 representative of all public employees in the appropriate
5 bargaining unit. Within fifteen days of an election in which
6 no labor organization receives a majority of the votes cast, a
7 runoff election between the two choices receiving the largest
8 number of votes cast shall be conducted. The board or local
9 board shall certify the results of the election, and, when a
10 labor organization receives a majority of the votes cast, the
11 board or local board shall certify the labor organization as
12 the exclusive representative of all public employees in the
13 appropriate bargaining unit.

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

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

24 "10-7E-15. EXCLUSIVE REPRESENTATION.--

25 A. A labor organization that has been certified by

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1 the board or local board as representing the public employees
2 in the appropriate bargaining unit shall be the exclusive
3 representative of all public employees in the appropriate
4 bargaining unit. The exclusive representative shall act for
5 all public employees in the appropriate bargaining unit and
6 negotiate a collective bargaining agreement covering all public
7 employees in the appropriate bargaining unit. The exclusive
8 representative shall represent the interests of all public
9 employees in the appropriate bargaining unit without
10 discrimination or regard to membership in the labor
11 organization. A claim by a public employee that the exclusive
12 representative has violated this duty of fair representation
13 shall be forever barred if not brought within six months of the
14 date on which the public employee knew, or reasonably should
15 have known, of the violation.

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

25 C. A public employer shall provide an exclusive

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1 representative of an appropriate bargaining unit reasonable
2 access to employees within the bargaining unit, including the
3 following:

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

6 (a) the right to meet with new
7 employees, without loss of employee compensation or leave
8 benefits; and

9 (b) the right to meet with new employees
10 within thirty calendar days from the date of hire for a period
11 of at least thirty minutes but not more than one hundred twenty
12 minutes, during new employee orientation or, if the public
13 employer does not conduct new employee orientations, at
14 individual or group meetings; and

15 (2) for purposes of employees in the
16 bargaining unit who are not new employees, reasonable access
17 includes:

18 (a) the right to meet with employees
19 during the employees' regular work hours at the employees'
20 regular work location to investigate and discuss grievances,
21 workplace-related complaints and other matters relating to
22 employment relations; and

23 (b) the right to conduct meetings at the
24 employees' regular work location before or after the employees'
25 regular work hours, during meal periods and during any other

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1 break periods.

2 D. A public employer shall permit an exclusive
3 representative to use the public employer's facilities or
4 property, whether owned or leased by the employer, for purposes
5 of conducting meetings with the represented employees in the
6 bargaining unit. An exclusive representative may hold the
7 meetings described in this section at a time and place set by
8 the exclusive representative, provided that the meetings do not
9 interfere with the employer's operations. The exclusive
10 representative shall have the right to conduct the meetings
11 without undue interference and may establish reasonable rules
12 regarding appropriate conduct for meeting attendees.

13 E. If a public employer has the information in the
14 employer's records, the public employer shall provide to the
15 exclusive representative, in an editable digital file format
16 agreed to by the exclusive representative, the following
17 information for each employee in an appropriate bargaining
18 unit:

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

20 (2) contact information, including:

21 (a) cellular, home and work telephone
22 numbers;

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

25 (c) home address or personal mailing

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1 address; and

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

4 F. The public employer shall provide the
5 information described in Subsection E of this section to the
6 exclusive representative within ten calendar days from the date
7 of hire for newly hired employees in an appropriate bargaining
8 unit, and every one hundred twenty calendar days for employees
9 in the bargaining unit who are not newly hired employees. The
10 information shall be kept confidential by the labor
11 organization and its employees or officers. Apart from the
12 disclosure required by this subsection, and notwithstanding any
13 provision contained in the Inspection of Public Records Act,
14 the public employer shall not disclose the information
15 described in Subsection E of this section, or public employees'
16 dates of birth or social security numbers to a third party.

17 G. An exclusive representative shall have the right
18 to use the electronic mail systems or other similar
19 communication systems of a public employer to communicate with
20 the employees in the bargaining unit regarding:

21 (1) collective bargaining, including the
22 administration of collective bargaining agreements;

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

25 (3) matters involving the governance or

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1 business of the labor organization.

2 H. Nothing in this section prevents a public
3 employer from providing an exclusive representative access to
4 employees within the bargaining unit beyond the reasonable
5 access required under this section, or limits any existing
6 right of a labor organization to communicate with public
7 employees."

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

11 "10-7E-16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

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

21 B. When there is a collective bargaining agreement
22 in effect, a request for a decertification election shall be
23 made to the board or local board no earlier than ninety days
24 and no later than sixty days before the expiration of the
25 collective bargaining agreement; provided, however, a request

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1 for an election may be filed at any time after the expiration
2 of the third year of a collective bargaining agreement with a
3 term of more than three years.

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

10 D. When an exclusive representative has been
11 certified but no collective bargaining agreement is in effect,
12 the board or local board shall not accept a request for a
13 decertification election or an election sought by a competing
14 labor organization earlier than twelve months subsequent to a
15 labor organization's certification as the exclusive
16 representative."

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

20 "10-7E-17. SCOPE OF BARGAINING.--

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

24 (1) shall bargain in good faith on wages,
25 hours and all other terms and conditions of employment and

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1 other issues agreed to by the parties. However, neither the
2 public employer nor the exclusive representative shall be
3 required to agree to a proposal or to make a concession; and

4 (2) shall enter into written collective
5 bargaining agreements covering employment relations. Entering
6 into a collective bargaining agreement shall not obviate the
7 duty to bargain in good faith during the term of the collective
8 bargaining agreement regarding changes to wages, hours and all
9 other terms and conditions of employment, unless it can be
10 demonstrated that the parties clearly and unmistakably waived
11 the right to bargain regarding those subjects. In regard to
12 the Public Employees Retirement Act and the Educational
13 Retirement Act, a public employer in a written collective
14 bargaining agreement may agree to assume any portion of a
15 public employee's contribution obligation to retirement
16 programs provided pursuant to the Public Employees Retirement
17 Act or the Educational Retirement Act.

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

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1 in conflict with that state statute. In the event of an actual
2 conflict between the provisions of any other statute of this
3 state and an agreement entered into by the public employer and
4 the exclusive representative in collective bargaining, the
5 statutes of this state shall prevail.

6 C. Payroll deduction of the exclusive
7 representative's membership dues shall be a mandatory subject
8 of bargaining if either party chooses to negotiate the issue.
9 The amount of dues shall be certified in writing by an official
10 of the labor organization and shall not include special
11 assessments, penalties or fines of any type. The public
12 employer shall honor payroll deductions until the authorization
13 is revoked in writing by the public employee in accordance with
14 the negotiated agreement and this subsection and for so long as
15 the labor organization is certified as the exclusive
16 representative. Public employees who have authorized the
17 payroll deduction of dues to a labor organization may revoke
18 that authorization by providing written notice to their labor
19 organization during a window period not to exceed ten days per
20 year for each employee. The public employer and the labor
21 organization shall negotiate when the commencement of that
22 period will begin annually for each employee. If no agreement
23 is reached, the period shall be during the ten days following
24 the anniversary date of each employee's employment. Within ten
25 days of receipt of notice from a public employee of revocation

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1 of authorization for the payroll deduction of dues, the labor
2 organization shall provide notice to the public employer of a
3 public employee's revocation of that authorization. A public
4 employee's notice of revocation for the payroll deduction of
5 dues shall be effective on the thirtieth day after the notice
6 provided to the public employer by the labor organization. No
7 authorized payroll deduction of dues held by a public employer
8 or a labor organization on the effective date of this 2020 act
9 shall be rendered invalid by this provision and shall remain
10 valid until replaced or revoked by the public employee. During
11 the time that a board certification is in effect for a
12 particular appropriate bargaining unit, the public employer
13 shall not deduct dues for any other labor organization.

14 D. Public employers and a labor organization, or
15 their employees or agents, are not liable for, and have a
16 complete defense to, any claims or actions under the law of
17 this state for requiring, deducting, receiving or retaining
18 fair share dues or fees from public employees, and current or
19 former public employees do not have standing to pursue these
20 claims or actions if the fair share dues or fees were permitted
21 at the time under the laws of this state then in force and
22 paid, through payroll deduction or otherwise, on or before June
23 27, 2018. This subsection:

24 (1) applies to all claims and actions pending
25 on the effective date of this 2020 act and to claims and

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1 actions filed on or after the effective date of this 2020 act;

2 and

3 (2) shall not be interpreted to infer that any
4 relief made unavailable by this section would otherwise be
5 available.

6 ~~[D-]~~ E. The scope of bargaining for representatives
7 of public schools as well as educational employees in state
8 agencies shall include, as a mandatory subject of bargaining,
9 the impact of professional and instructional decisions made by
10 the employer.

11 ~~[E-]~~ F. An impasse resolution or an agreement
12 provision by the state and an exclusive representative that
13 requires the expenditure of funds shall be contingent upon the
14 ~~[specific]~~ sufficient funds by the legislature
15 ~~[and the availability of funds]~~. An impasse resolution or an
16 agreement provision by a public employer other than the state
17 or the public schools and an exclusive representative that
18 requires the expenditure of funds shall be contingent upon the
19 ~~[specific]~~ sufficient funds by the appropriate
20 governing body ~~[and the availability of funds]~~. An agreement
21 provision by a local school board and an exclusive
22 representative that requires the expenditure of funds shall be
23 contingent upon ratification by the appropriate governing body.
24 An arbitration decision ~~[shall not]~~ may require the appropriate
25 governing body to consider the reappropriation of funds.

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1 ~~[F-]~~ G. An agreement shall include a grievance
2 procedure to be used for the settlement of disputes pertaining
3 to employment terms and conditions and related personnel
4 matters. The grievance procedure shall provide for a final and
5 binding determination. The final determination shall
6 constitute an arbitration award within the meaning of the
7 Uniform Arbitration Act; such award shall be subject to
8 judicial review pursuant to the standard set forth in the
9 Uniform Arbitration Act. The costs of an arbitration
10 proceeding conducted pursuant to this subsection shall be
11 shared equally by the parties.

12 ~~[G-]~~ H. The following meetings shall be closed:

13 (1) meetings for the discussion of bargaining
14 strategy preliminary to collective bargaining negotiations
15 between the public employer and the exclusive representative of
16 the public employees of the public employer;

17 (2) collective bargaining sessions; and

18 (3) consultations and impasse resolution
19 procedures at which the public employer and the exclusive
20 representative of the appropriate bargaining unit are present."

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

24 "10-7E-18. IMPASSE RESOLUTION.--

25 A. The following negotiations and impasse

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1 procedures shall be followed by the state and exclusive
2 representatives for state employees:

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

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

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

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

25 (5) if the impasse continues after [~~November~~

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

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

23 (1) if an impasse occurs, either party may
24 request from the board or local board that a mediator be
25 assigned to the negotiations unless the parties can agree on a

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1 mediator. A mediator with the federal mediation and
2 conciliation service shall be assigned by the board or local
3 board to assist negotiations unless the parties agree to
4 another mediator; and

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

24 C. A public employer other than the state may enter
25 into a written agreement with the exclusive representative

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1 setting forth an alternative impasse resolution procedure.

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

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

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

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

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

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

3 (2) allowing a labor organization or its
4 representatives access to the public employer's facilities or
5 properties;

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

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

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

13 (6) representing the public employer in a
14 proceeding before the board or a local board or in a judicial
15 review of that proceeding;

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

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

21 E. discharge or otherwise discriminate against a
22 public employee because ~~[he]~~ the employee has signed or filed
23 an affidavit, petition, grievance or complaint or given
24 information or testimony pursuant to the provisions of the
25 Public Employee Bargaining Act or because a public employee is

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1 forming, joining or choosing to be represented by a labor
2 organization;

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

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

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

9 SECTION 13. Section 10-7E-26 NMSA 1978 (being Laws 2003,
10 Chapter 4, Section 26 and Laws 2003, Chapter 5, Section 26) is
11 repealed and a new Section 10-7E-26 NMSA 1978 is enacted to
12 read:

13 "10-7E-26. [NEW MATERIAL] PREEMPTION OF EXISTING PUBLIC
14 EMPLOYEE BARGAINING ORDINANCES--EXCEPTION.--

15 A. With the exception of an ordinance, resolution
16 or charter amendment creating a local board that continues to
17 exist by virtue of the election described in Subsection B of
18 Section 10-7E-10 NMSA 1978, an ordinance, resolution or charter
19 amendment adopted by a public employer other than the state
20 that contains a system of provisions and procedures permitting
21 employees to form, join or assist a labor organization for the
22 purpose of bargaining collectively through exclusive
23 representatives is preempted by the Public Employee Bargaining
24 Act and is null and void upon the effective date of this 2020
25 act.

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