

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 364

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ADDRESSING 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).

.217717.1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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:

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

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

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

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

B. "appropriate governing body" means the policymaking body or individual representing a public employer as designated in Section ~~[7 of the Public Employee Bargaining~~

underscored material = new  
~~[bracketed material] = delete~~

1 Act] 10-7E-7 NMSA 1978;

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

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

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

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

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

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

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

.217717.1

underscoring material = new  
[bracketed material] = delete

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

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

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

24           ~~[M.]~~ L. "local board" means a local labor relations  
25           board established by a public employer, other than the state,

1 through ordinance, resolution or charter amendment, and which  
 2 continues to exist by virtue of the election described in  
 3 Subsection B of Section 10-7E-10 NMSA 1978;

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

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

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

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

.217717.1

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

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

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

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

.217717.1

1 obligations of public employment; and

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

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

17           "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

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

24           B. Public employees have the right to engage in  
25 other concerted activities for mutual aid or benefit. This

.217717.1

1 right shall not be construed as modifying the prohibition on  
2 strikes set forth in Section 10-7E-21 NMSA 1978."

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

6 "10-7E-9. BOARD AND LOCAL BOARD--POWERS AND DUTIES.--

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

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

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

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

17 B. The board or a local board shall:

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

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

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

.217717.1



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

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

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

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

.217717.1

1 attorney fees may be awarded by the board or local board.

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

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

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

.217717.1

1 read:

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

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

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

.217717.1

underscored material = new  
 [bracketed material] = delete

1 by written order whether the requirements of this subsection  
2 have been met.

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

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

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

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

.217717.1

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

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

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

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

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

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

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

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

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

.217717.1

1 "10-7E-13. APPROPRIATE BARGAINING UNITS.--

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

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

25 C. The board or local board shall not include in an

.217717.1

1 appropriate bargaining unit supervisors, managers or  
2 confidential employees.

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

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

9 "10-7E-14. ELECTIONS.--

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

.217717.1

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

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

18 C. As an alternative to the provisions of  
19 Subsection A of this section, [~~a public employer and~~] a labor  
20 organization with a reasonable basis for claiming to represent  
21 a majority of the employees in an appropriate bargaining unit  
22 may [~~establish an alternative appropriate procedure for~~  
23 ~~determining majority status. The procedure may include a labor~~  
24 ~~organization's submission of~~] submit authorization cards from a  
25 majority of the employees in an appropriate bargaining unit

.217717.1

underscored material = new  
[bracketed material] = delete



1 ~~[The board or local board shall not certify an appropriate~~  
2 ~~bargaining unit if the public employer objects to the~~  
3 ~~certification without an election]~~ to the board or local board,  
4 which shall, upon verification that a majority of the employees  
5 in the appropriate bargaining unit have signed valid  
6 authorization cards, certify the labor organization as the  
7 exclusive representative of all public employees in the  
8 appropriate bargaining unit. The employer may challenge the  
9 verification of the board or local board; the board or local  
10 board shall hold a fact-finding hearing on the challenge to  
11 confirm that a majority of the employees in the appropriate  
12 bargaining unit have signed valid authorization cards.

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

25 E. An election shall not be conducted if an

.217717.1

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

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

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

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

.217717.1

1 have known, of the violation.

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

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

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

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

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

.217717.1

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

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

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

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

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

25                   F. If a public employer has the information in the

1 employer's records, the public employer shall provide to the  
2 exclusive representative, in an editable digital file format  
3 agreed to by the exclusive representative, the following  
4 information for each employee in an appropriate bargaining  
5 unit:

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

7 (2) contact information, including:

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

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

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

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

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

.217717.1

1 the public employer shall not disclose the information  
2 described in Subsection F of this section, or public employees'  
3 dates of birth or social security numbers to a third party.

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

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

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

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

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

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

23 "10-7E-16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

24 A. A member of a labor organization or the labor  
25 organization itself may initiate decertification of a labor

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

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

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

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

.217717.1

1 labor organization earlier than twelve months subsequent to a  
2 labor organization's certification as the exclusive  
3 representative."

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

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

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

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

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

.217717.1



1 place.

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

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

23 [~~C.~~] D. Payroll deduction of the exclusive  
24 representative's membership dues shall be a mandatory subject  
25 of bargaining if either party chooses to negotiate the issue.

.217717.1

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

.217717.1

1 invalid by this provision and shall remain valid until replaced  
2 or revoked by the public employee. During the time that a  
3 board certification is in effect for a particular appropriate  
4 bargaining unit, the public employer shall not deduct dues for  
5 any other labor organization.

6 E. Public employers and a labor organization, or  
7 their employees or agents, are not liable for, and have a  
8 complete defense to, any claims or actions under the law of  
9 this state for requiring, deducting, receiving or retaining  
10 fair share dues or fees from public employees, and current or  
11 former public employees do not have standing to pursue these  
12 claims or actions if the fair share dues or fees were permitted  
13 at the time under the laws of this state then in force and  
14 paid, through payroll deduction or otherwise, on or before June  
15 27, 2018. This subsection:

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

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

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

.217717.1

1           ~~[D.]~~ G. The scope of bargaining for representatives  
2 of public schools as well as educational employees in state  
3 agencies shall include, as a mandatory subject of bargaining,  
4 the impact of professional and instructional decisions made by  
5 the employer.

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

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

.217717.1

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

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

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

11 (2) collective bargaining sessions; and

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

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

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

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

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

.217717.1

1 shall begin no later than July 1 of that year;

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

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

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

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

.217717.1

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

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

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

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

.217717.1

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

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

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

.217717.1



1 compensation contained in the existing contract."

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

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

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

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

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

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

25 (3) performing an activity required by federal

.217717.1

underscored material = new  
[bracketed material] = delete

1 or state law or by a collective bargaining agreement;

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

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

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

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

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

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

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

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

.217717.1

1           H. refuse or fail to comply with a collective  
2 bargaining agreement."

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

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

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25