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SENATE BILL 103

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE EMPLOYEE PREFERENCE ACT;
PROHIBITING MEMBERSHIP IN A LABOR ORGANIZATION AS A CONDITION
OF EMPLOYMENT; PROHIBITING THE DEDUCTION OF DUES OR FEES TO A
LABOR ORGANIZATION FROM THE COMPENSATION OF EMPLOYEES WITHOUT
WRITTEN AUTHORIZATION; PROVIDING FOR INVESTIGATION AND
ENFORCEMENT; AMENDING SECTIONS OF THE PUBLIC EMPLOYEE
BARGAINING ACT; PROVIDING A PENALTY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 10 of this act may be cited as the "Employee Preference
Act".

SECTION 2. [NEW MATERIAL] PUBLIC POLICY.--It is the
public policy of New Mexico that all persons shall have, and
shall be protected in the exercise of, the right to form, join

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1 or assist labor organizations or to refrain from any such
2 activities, freely and without fear of penalty or reprisal.

3 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Employee Preference Act:

5 A. "employer" means a person, firm, association,
6 corporation or a state or local government that employs another
7 person; and

8 B. "labor organization" means a union,
9 organization, agency or employee representation committee of
10 any kind that exists for the purpose, in whole or in part, of
11 dealing with employers concerning wages, rates of pay, hours of
12 work or other conditions of employment.

13 SECTION 4. [NEW MATERIAL] MANDATORY MEMBERSHIP AND FEES
14 PROHIBITED.--A person shall not be required, as a condition of
15 hiring, promotion or continued employment, to become or remain
16 a member of a labor organization or to pay any dues, fees,
17 assessments or other charges of any kind to a labor
18 organization.

19 SECTION 5. [NEW MATERIAL] ORGANIZATION APPROVAL
20 PROHIBITED.--An employer shall not require a person to be
21 recommended or approved by or to be cleared through a labor
22 organization as a condition of hiring, promotion or continued
23 employment.

24 SECTION 6. [NEW MATERIAL] CERTAIN AGREEMENTS ILLEGAL.--An
25 agreement, understanding or practice, written or oral, implied

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1 or expressed, between an employer and a labor organization that
2 is in violation of the Employee Preference Act is unlawful.

3 SECTION 7. [NEW MATERIAL] INVESTIGATION.--It is the duty
4 of the attorney general and of every district attorney to
5 investigate complaints of violations of the Employee Preference
6 Act and to prosecute a person suspected of violating that act.

7 SECTION 8. [NEW MATERIAL] ENFORCEMENT.--If, as a result
8 of investigation, the attorney general or a district attorney
9 has good cause to believe that a person is violating or will
10 violate a provision of the Employee Preference Act, the
11 attorney general or district attorney may bring an action for
12 injunctive or other appropriate relief in the district court
13 for the county in which the violation is occurring or will
14 occur or in the district court for Santa Fe county.

15 SECTION 9. [NEW MATERIAL] PENALTY.--A person who violates
16 any provision of the Employee Preference Act is guilty of a
17 misdemeanor and upon conviction shall be punished by a fine of
18 not more than one thousand dollars (\$1,000) or by imprisonment
19 for a definite term not to exceed ninety days, or both.

20 SECTION 10. [NEW MATERIAL] APPLICABILITY AND
21 EXCEPTIONS.--The provisions of the Employee Preference Act
22 shall:

23 A. not apply:

24 (1) to employers and employees covered by the
25 Federal Railway Labor Act;

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- 1 (2) to federal employers and employees;
2 (3) to employers and employees on exclusive
3 federal enclaves;
4 (4) where the provisions of that act would
5 otherwise conflict with or be preempted by federal law; or
6 (5) to an employment contract that is entered
7 into before the effective date of that act; and

8 B. apply to a renewal or extension of an employment
9 contract that is in effect on the effective date of that act.

10 SECTION 11. 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;

22 ~~[N.]~~ M. "lockout" means an act by a public employer
23 to prevent its employees from going to work for the purpose of
24 resisting the demands of the employees' exclusive
25 representative or for the purpose of gaining a concession from

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1 the exclusive representative;

2 ~~[O-]~~ N. "management employee" means an employee who
3 is engaged primarily in executive and management functions and
4 is charged with the responsibility of developing, administering
5 or effectuating management policies. An employee shall not be
6 deemed a management employee solely because the employee
7 participates in cooperative decision-making programs on an
8 occasional basis;

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

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

23 ~~[R-]~~ Q. "public employee" means a regular
24 nonprobationary employee of a public employer; provided that,
25 in the public schools, "public employee" shall also include a

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1 regular probationary employee;

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

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

17 [~~U-~~] T. "supervisor" means an employee who devotes
18 a majority of work time to supervisory duties, who customarily
19 and regularly directs the work of two or more other employees
20 and who has the authority in the interest of the employer to
21 hire, promote or discipline other employees or to recommend
22 such actions effectively, but "supervisor" does not include an
23 individual who performs merely routine, incidental or clerical
24 duties or who occasionally assumes a supervisory or directory
25 role or whose duties are substantially similar to those of

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1 [his] the individual's subordinates and does not include a lead
2 employee or an employee who participates in peer review or
3 occasional employee evaluation programs."

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

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

8 A. Public employees, other than management
9 employees and confidential employees, may form, join or assist
10 a labor organization for the purpose of collective bargaining
11 through representatives chosen by public employees without
12 interference, restraint or coercion and shall have the right to
13 refuse any such activities.

14 B. Public employees shall not be required, as a
15 condition of hiring, promotion or continued employment, to
16 become or remain a member of a labor organization or to pay any
17 dues, fees, assessments or other charges of any kind to a labor
18 organization."

19 SECTION 13. Section 10-7E-9 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 9 and Laws 2003, Chapter 5, Section 9) is
21 amended to read:

22 "10-7E-9. BOARD--POWERS AND DUTIES.--

23 A. The board shall promulgate rules necessary to
24 accomplish and perform its functions and duties as established
25 in the Public Employee Bargaining Act, including the

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1 establishment of procedures for:

2 (1) the designation of appropriate bargaining
3 units;

4 (2) the selection, certification and
5 decertification of exclusive representatives; and

6 (3) the filing of, hearing on and
7 determination of complaints of prohibited practices.

8 B. The board shall:

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

11 (2) conduct studies on problems pertaining to
12 employee-employer relations; and

13 (3) request from public employers and labor
14 organizations the information and data necessary to carry out
15 the board's functions and responsibilities.

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

24 D. The board shall decide issues by majority vote
25 and shall issue its decisions in the form of written orders and

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1 opinions.

2 E. The board may hire personnel or contract with
3 third parties as it deems necessary to assist it in carrying
4 out its functions.

5 F. The board has the power to enforce provisions of
6 the Public Employee Bargaining Act through the imposition of
7 appropriate administrative remedies.

8 G. A rule promulgated by the board or a local board
9 shall not require, directly or indirectly, as a condition of
10 continuous employment, a public employee covered by the Public
11 Employee Bargaining Act to pay money to a labor organization
12 that is certified as an exclusive representative. [~~The issue
13 of fair share shall be left a permissive subject of bargaining
14 by the public employer and the exclusive representative of each
15 bargaining unit.]~~"]

16 SECTION 14. Section 10-7E-19 NMSA 1978 (being Laws 2003,
17 Chapter 4, Section 19 and Laws 2003, Chapter 5, Section 19) is
18 amended to read:

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

22 A. discriminate against a public employee with
23 regard to terms and conditions of employment because of the
24 employee's membership or non-membership in a labor
25 organization;

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1 B. interfere with, restrain or coerce a public
2 employee in the exercise of a right guaranteed pursuant to the
3 Public Employee Bargaining Act;

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

6 D. discriminate in regard to hiring, tenure or a
7 term or condition of employment in order to encourage or
8 discourage membership in a labor organization;

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

16 F. refuse to bargain collectively in good faith
17 with the exclusive representative;

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

20 H. refuse or fail to comply with a collective
21 bargaining agreement."

22 **SECTION 15.** Section 10-7E-26 NMSA 1978 (being Laws 2003,
23 Chapter 4, Section 26 and Laws 2003, Chapter 5, Section 26) is
24 amended to read:

25 "10-7E-26. EXISTING ORDINANCES PROVIDING FOR PUBLIC

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1 EMPLOYEE BARGAINING.--

2 A. A public employer other than the state that
3 prior to October 1, 1991 adopted by ordinance, resolution or
4 charter amendment a system of provisions and procedures
5 permitting employees to form, join or assist a labor
6 organization for the purpose of bargaining collectively through
7 exclusive representatives may continue to operate under those
8 provisions and procedures; provided that the employer shall
9 comply with the provisions of Section 10-7E-5 NMSA 1978. Any
10 substantial change after January 1, 2003 to any ordinance,
11 resolution or charter amendment shall subject the public
12 employer to full compliance with the provisions of Subsection B
13 of this section [~~26 of the Public Employee Bargaining Act~~].

14 B. A public employer other than the state that
15 subsequent to October 1, 1991 adopts by ordinance, resolution
16 or charter amendment a system of provisions and procedures
17 permitting employees to form, join or assist a labor
18 organization for the purpose of bargaining collectively through
19 exclusive representatives freely chosen by its employees may
20 operate under those provisions and procedures rather than those
21 set forth in the Public Employee Bargaining Act; provided that
22 the employer shall comply with the provisions of Sections [~~8~~
23 ~~through 12 and Subsection D of Section 17 of that act~~] 10-7E-5
24 and 10-7E-8 through 10-7E-12 NMSA 1978 and Subsection D of
25 Section 10-7E-17 NMSA 1978 and provided that the following

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1 provisions and procedures are included in each ordinance,
2 resolution or charter amendment:

3 (1) the right of public employees to form,
4 join or assist employee organizations for the purpose of
5 achieving collective bargaining and the right of public
6 employees to refuse to form, join or assist labor
7 organizations, including refusing to pay dues, fees,
8 assessments or other charges to a labor organization or to a
9 charity or other third party in lieu of payment to a labor
10 organization;

11 (2) procedures for the identification of
12 appropriate bargaining units, certification elections and
13 decertification elections equivalent to those set forth in the
14 Public Employee Bargaining Act;

15 (3) the right of a labor organization to be
16 certified as an exclusive representative;

17 (4) the right of an exclusive representative
18 to negotiate all wages, hours and other terms and conditions of
19 employment for public employees in the appropriate bargaining
20 unit;

21 (5) the obligation to incorporate agreements
22 reached by the public employer and the exclusive representative
23 into a collective bargaining agreement;

24 (6) a requirement that grievance procedures
25 culminating with binding arbitration be negotiated;

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1 (7) a requirement that payroll deductions for
2 the exclusive representative's membership dues be negotiated if
3 requested by the exclusive representative;

4 (8) impasse resolution procedures equivalent
5 to those set forth in Section [~~18 of the Public Employee~~
6 ~~Bargaining Act~~] 10-7E-18 NMSA 1978; and

7 (9) prohibited practices for the public
8 employer, public employees and labor organizations that promote
9 the principles established in Sections [~~19 through 21 of the~~
10 ~~Public Employee Bargaining Act~~] 10-7E-19 through 10-7E-21 NMSA
11 1978."

12 SECTION 16. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2015.