

ARTICLE 7E

Public Employee Bargaining

10-7E-1. Short title.

Chapter 10, Article 7E NMSA 1978 may be cited as the "Public Employee Bargaining Act".

History: Laws 2003, ch. 4, § 1 and by Laws 2003, ch. 5, § 1; 2005, ch. 333, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, added the statutory reference to the act.

Punitive damages. — Punitive damages are available in actions for breach of the duty of fair representation where the union's conduct is malicious, willful, wanton, reckless, fraudulent or in bad faith. *Akins v. United Steel Workers of Am.*, 2010-NMSC-031, 148 N.M. 442, 237 P.3d 744, *aff'g* 2009-NMCA-051, 146 N.M. 237, 208 P.3d 457.

Where after being subjected to overt racism in the workplace, the plaintiff called upon the union to file a grievance and the union refused to do so; the plaintiff was the only African-American working in the plaintiff's department; the plaintiff's coworkers refused to speak English to the plaintiff and the plaintiff's supervisor would only issue orders in Spanish, a language which the plaintiff did not speak; when the plaintiff complained to the defendant's supervisor that the plaintiff could not speak or understand Spanish, the supervisor continued to give orders in Spanish; when the plaintiff asked the union to file a grievance on his behalf, the plaintiff was told by the union president that the plaintiff was of the "wrong color" and that the plaintiff needed to learn to speak Spanish, the union's conduct was sufficiently reprehensible to allow the issue of punitive damages to be considered by the jury. *Akins v. United Steel Workers of Am.*, 2009-NMCA-051, 146 N.M. 237, 208 P.3d 457, *aff'd*, 2010-NMSC-031, 148 N.M. 442, 237 P.3d 744.

Duty of fair representation. — Public employee unions owe union members a duty of fair representation. When a complaint arises from a union's representation of employees in a grievance proceeding, the cause of action is for breach of the duty of fair representation, not for breach of a fiduciary duty. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

Proof of breach of duty of fair representation. — Breach of the duty of fair representation requires a showing of arbitrary, fraudulent, or bad faith conduct, not a simple showing of negligent representation. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

Covenant of good faith and fair dealing. — Breach of implied covenant of good faith and fair dealing is subsumed within claims for breach of duty of fair representation. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

Third-party beneficiary claims. — In order to state a claim against union for breach of collective

bargaining agreement as third-party beneficiaries, union members must assert a promise that union made to employer and to union members as third-party beneficiaries, which union subsequently broke. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

Exhaustion of administrative remedies. — Because breach of duty of fair representation is not listed as a prohibited practice, union members are not required to bring their claims of breach of the duty of fair representation before the public employees labor relations board or the local labor relations board in order to exhaust their administrative remedies. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

Law reviews. — For article, "Correcting the Imbalance — The New Mexico Public Employee Bargaining Act and the Statutory Rights Provided to Public Employees", see 37 N. M. L. Rev. 357 (2007).

10-7E-2. Purpose of act.

The purpose of the Public Employee Bargaining Act is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

History: [Laws 2003, ch. 4, § 2](#) and by [Laws 2003, ch. 5, § 2](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 2](#) and [Laws 2003, ch. 5, § 2](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-2 NMSA 1978](#).

Consistency of local ordinance with act's purpose. — City ordinance that allows a public employer to select two members of the three-member local board to adjudicate labor-management disputes does not productively allow employees to collectively bargain, and, as such, violates the purpose of the Public Employee Bargaining Act as stated in Section [10-7E-2 NMSA 1978](#). *City of Deming v. Deming Firefighters Local 4521*, 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595.

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 rules; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act [[6-6-11 NMSA 1978](#)], the Personnel Act [Chapter [10](#), Article [9 NMSA 1978](#)], the Group Benefits Act [Chapter [10](#), Article [7B NMSA 1978](#)], the Per Diem and Mileage Act [[10-8-1](#) to [10-8-8 NMSA 1978](#)], the Retiree Health Care Act [[10-7C-1](#) to [10-7C-16 NMSA 1978](#)], public employee retirement laws or the Tort Claims Act [[41-4-1](#) to [41-4-27 NMSA 1978](#)].

History: Laws 2003, ch. 4, § 3; 2003, ch. 5, § 3; 2020, ch. 48, § 1.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, removed a provision providing that, in the event of a conflict, the provisions of the Public Employee Bargaining Act shall not supersede the provisions of Sections 10-7-1 through 10-7-19 NMSA 1978; after "legislation and", deleted "regulations" and added "rules"; and after "the Personnel Act", deleted "Sections 10-7-1 through 10-7-19 NMSA 1978".

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 10-7E-7 NMSA 1978;
- C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;
- D. "board" means the public employee labor relations board;
- E. "certification" means the designation by the board or local board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;
- F. "collective bargaining" means the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;
- G. "confidential employee" means a person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;
- H. "emergency" means a one-time crisis that was unforeseen and unavoidable;
- I. "exclusive representative" means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;
- J. "impasse" means failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;
- K. "labor organization" means an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and

conferring with employers on matters pertaining to employment relations;

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

M. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

N. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical;

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

P. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

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

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

S. "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or the willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; and

T. "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the individual's subordinates and does not include

a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

History: [Laws 2003, ch. 4, § 4](#); [2003, ch. 5, § 4](#); [2020, ch. 48, § 2](#).

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, removed the definition of "fair share" and revised the meanings of certain terms as used in the Public Employee Bargaining Act; in Subsection B, changed "Section 7 of the Public Employee Bargaining Act" to "[10-7E-7 NMSA 1978](#)"; deleted former Subsection J, which defined "fair share", and redesignated former Subsections K through U as Subsections J through T, respectively; in Subsection L, after "charter amendment", added "and which continues to exist by virtue of the election described in Subsection B of Section [10-7E-10 NMSA 1978](#)"; in Subsection N, after "decision-making programs", deleted "on an occasional basis" and added "or whose fiscal responsibilities are routine, incidental or clerical"; and in Subsection Q, after "probationary employee", added "and includes those employees whose work is funded in whole or in part by grants or other third-party sources".

A non-union member of a collective bargaining unit is subject to the Act. — Where petitioner was a regular full-time non-probationary sworn police officer employed by the municipal police department and a member of the collective bargaining unit covered by the union's collective bargaining agreement; petitioner did not join the union, did not pay union dues, and never sought assistance from the union; the municipality recognized the union as the exclusive collective bargaining representative for regular full-time non-probationary sworn police officers; and petitioner initiated a grievance procedure to challenge petitioner's termination, petitioner was a public employee, working for a public employer and was subject to the Public Employee Bargaining Act, the collective bargaining agreement, and the requirements of the collective bargain agreement and the act that petitioner's grievance challenging petitioner's termination was subject to binding arbitration. *Luginbuhl v. City of Gallup*, [2013-NMCA-053](#), [302 P.3d 751](#).

10-7E-5. Rights of public employees.

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

B. Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section [10-7E-21 NMSA 1978](#).

History: [Laws 2003, ch. 4, § 5](#); [2003, ch. 5, § 5](#); [2020, ch. 48, § 3](#).

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided public employees the right to engage in concerted activities for mutual aid or benefit; and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public defenders to join collective bargaining unit, 108 A.L.R.5th 241.

10-7E-6. Rights of public employers.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- A. direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- B. determine qualifications for employment and the nature and content of personnel examinations;
- C. take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- D. retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

History: [Laws 2003, ch. 4, § 6](#) and by [Laws 2003, ch. 5, § 6](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 6](#) and [Laws 2003, ch. 5, § 6](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-6](#) NMSA 1978.

10-7E-7. Appropriate governing body; public employer.

The appropriate governing body of a public employer is the policymaking individual or body representing the public employer. In the case of the state, the appropriate governing body is the governor or his designee or, in the case of a constitutionally created body, the constitutionally designated head of that body. At the local level, the appropriate governing body is the elected or appointed representative body or individual charged with management of the local public body. In the event of dispute, the board shall determine the appropriate governing body.

History: [Laws 2003, ch. 4, § 7](#) and by [Laws 2003, ch. 5, § 7](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 7](#) and [Laws 2003, ch. 5, § 7](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-7 NMSA 1978](#).

10-7E-8. Public employee labor relations board; created; terms; qualifications.

A. The "public employee labor relations board" is created. The board consists of three members appointed by the governor. The governor shall appoint one member recommended by organized labor representatives actively involved in representing public employees, one member recommended by public employers actively involved in collective bargaining and one member jointly recommended by the other two appointees.

B. Except for appointments made in 2003, board members shall serve for a period of three years with terms commencing on July 1. Vacancies shall be filled by appointment by the governor in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

C. During the term for which he is appointed, a board member shall not hold or seek any other political office or public employment or be an employee of a labor organization or an organization representing public employees or public employers.

D. Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [[10-8-1](#) to [10-8-8 NMSA 1978](#)].

E. For the purpose of making initial appointments to the board in 2003, the governor shall designate one member to serve a one-year term, one member to serve a two-year term and one member to serve a three-year term. Thereafter, all members shall be appointed for three-year terms.

History: [Laws 2003, ch. 4, § 8](#) and by [Laws 2003, ch. 5, § 8](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 8](#) and [Laws 2003, ch. 5, § 8](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-8 NMSA 1978](#).

Removal of board members. — The governor does not have authority under [Article V, Section 5 of the New Mexico Constitution](#) to remove members of the public employee labor relations board created by Section [10-7E-8 NMSA 1978](#). *AFSCME v. Martinez*, [2011-NMSC-018](#), [150 N.M. 132](#), [257 P.3d 952](#).

10-7E-9. Board; powers and duties.

A. The board or a local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment

of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The board or a local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) conduct studies on problems pertaining to employee-employer relations; and
- (3) request from public employers and labor organizations the information and data necessary to carry out the board's or the local board's functions and responsibilities.

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

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

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

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

G. Local board rules shall conform to the rules adopted by the board and shall not be effective until approved by an order of the board. On good cause shown, the board may approve rules proposed by a local board, which rules vary from rules of the board. All rules promulgated by a local board shall comply with state law. A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative.

H. The board shall maintain current versions of its rules and current versions of the rules of each local board on a publicly accessible website. That website shall also include a current listing of the members of the board and the members of each local board. Each local board shall notify the board,

within thirty days of revisions of its rules or changes in its membership, of any such revisions of its rules or changes in its membership.

History: Laws 2003, ch. 4, § 9; 2003, ch. 5, § 9; 2020, ch. 48, § 4.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided certain powers and duties to local labor boards, and revised certain powers and duties of the public employee labor relations board; added "or a local board" or "and local board" after each occurrence of "board" throughout the section; in Subsection E, after "functions", added "and each may delegate any or all of its authority to those third parties, subject to final review of the board or local board"; in Subsection F, after "administrative remedies", added "actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the board or local board"; in Subsection G, added the first three sentences of the subsection, and deleted "The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit."; and added Subsection H.

Retroactive application of statute of limitations. — The six-month limitation period enacted by [11.21.3.9 NMAC](#), effective March 15, 2004, did not apply retroactively to bar the plaintiff's claim of breach of the plaintiff's union's duty of fair representation that the plaintiff first became aware of in 2002 and which the plaintiff filed on March 22, 2004. *Akins v. United Steel Workers of Am.*, [2009-NMCA-051](#), [146 N.M. 237](#), [208 P.3d 457](#), *aff'd*, [2010-NMSC-031](#), [148 N.M. 442](#), [237 P.3d 744](#).

10-7E-10. Local boards; conditions of continued existence; transfer of authority upon termination; prohibition of new local boards.

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

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

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

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

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

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

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

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

G. A local board may cease to exist upon:

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

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

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

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

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

History: [Laws 2003, ch. 4, § 10](#); [2003, ch. 5, § 10](#); repealed and reenacted by [Laws 2020, ch. 48, § 5](#).

ANNOTATIONS

Repeals and reenactments. — [Laws 2020, ch. 48, § 5](#) repealed former [10-7E-10](#) NMSA 1978 and enacted a new section, effective July 1, 2020.

Local board selection. — City ordinance that allows a public employer to select two members of the

three-member local board to adjudicate labor-management disputes does not productively allow employees to collectively bargain. *City of Deming v. Deming Firefighters Local 4521*, 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595.

10-7E-11. Repealed.

History: Laws 2003, ch. 4, § 11; 2003, ch. 5, § 11; repealed by Laws 2020, ch. 48, § 13.

ANNOTATIONS

Repeals. — Laws 2020, ch. 48, § 13 repealed 10-7E-11 NMSA 1978, as enacted by Laws 2003, ch. 4, § 11 and Laws 2003, ch. 5, § 11, relating to local board, powers and duties, effective July 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

10-7E-12. Hearing procedures.

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

(1) information gathering and inquiry;

(2) adopting rules; and

(3) adjudicating disputes and enforcing the provisions of the Public Employee Bargaining Act and rules adopted pursuant to that act.

B. The board or local board shall adopt rules setting forth procedures to be followed during hearings of the board or local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions.

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

D. A rule proposed to be adopted by the board or local board that affects a person or governmental entity outside of the board or local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the board or local board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings of the board shall be held in New Mexico. All meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the

state or, in the case of a local board hearing, in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

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

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

History: Laws 2003, ch. 4, § 12 and by Laws 2003, ch. 5, § 12; 2005, ch. 137, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, deleted the requirement that all board meetings be held in Santa Fe. As amended, the section provides in Subsection D that the public employee labor relations board may hold meetings in Albuquerque.

10-7E-13. Appropriate bargaining units.

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

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

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

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

History: Laws 2003, ch. 4, § 13; 2003, ch. 5, § 13; 2020, ch. 48, § 6.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided that jobs included within a bargaining unit pursuant to a local ordinance in effect on January 1, 2020 shall remain in that bargaining unit; and added Subsection D.

Community interest. — Where the labor management board decided that the appropriate bargaining unit of the college would include full time faculty and instructional professionals with 100% instructional duties and excluded instructional professionals with less than 100% instructional duties who worked part-time performing administrative duties; faculty and instructional professionals worked under different contracts that covered different time periods, operated under different employee handbooks, had different ways of presenting grievances, received different benefits, and were subject to different lines of supervision; and instructional professionals with less than 100% instructional duties received more compensation because to their administrative duties, notwithstanding the differences between faculty and instructional professionals, faculty and instructional professionals whose exclusive job was teaching had the community of interest required to establish a proper bargaining unit and the board's decision was supported by substantial evidence. *San Juan Coll. v. San Juan Coll. Labor Mgmt. Bd.*, 2011-NMCA-117, 267 P.3d 101.

10-7E-14. Elections.

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the board or a local board shall require the public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

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

C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the

appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

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

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section **10-7E-16** NMSA 1978.

History: **Laws 2003, ch. 4, § 14; 2003, ch. 5, § 14; 2020, ch. 48, § 7.**

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, revised certain bargaining unit election procedures; in Subsection A, added "Upon acceptance of a valid petition, the board or a local board shall require the public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers."; in Subsection C, after "Subsection A of this section", deleted "a public employer and", after "appropriate bargaining unit may", deleted "establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of" and added "submit", after "an appropriate bargaining unit", deleted "The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election" and added the remainder of the subsection; and in Subsection E, changed "Section 16 of the Public Employee Bargaining Act" to "**10-7E-16** NMSA 1978".

10-7E-15. Exclusive representation.

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard

to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

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

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

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

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

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

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

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

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

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

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

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

- (1) the employee's name and date of hire;
- (2) contact information, including:
 - (a) cellular, home and work telephone numbers;
 - (b) a means of electronic communication, including work and personal electronic mail addresses; and
 - (c) home address or personal mailing address; and
- (3) employment information, including the employee's job title, salary and work site location.

G. The public employer shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978], the public employer shall not disclose the information described in Subsection F of this section, or public employees' dates of birth or social security numbers to a third party.

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

- (1) collective bargaining, including the administration of collective bargaining agreements;
- (2) the investigation of grievances or other disputes relating to employment relations; and
- (3) matters involving the governance or business of the labor organization.

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

History: Laws 2003, ch. 4, § 15; 2003, ch. 5, § 15; 2020, ch. 48, § 8.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, required public employers to grant an exclusive union representative reasonable access to and information concerning bargaining unit employees, as well as use of public employees' facilities or property; in Subsection A, added "A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation."; and added Subsections C through I.

10-7E-16. Decertification of exclusive representative.

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

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

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

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

History: Laws 2003, ch. 4, § 16; 2003, ch. 5, § 16; 2020, ch. 48, § 9.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, prohibited a competing labor organization from seeking an election within twelve months of initial certification; and in Subsection D, after "decertification election", added "or an election sought by a competing labor organization".

10-7E-17. Scope of bargaining.

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] or the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], public employers and exclusive representatives:

- (1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and
- (2) shall enter into written collective bargaining agreements covering employment relations.

Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.

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

C. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

D. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The public employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by a public employer or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

E. Public employers and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or

otherwise, on or before June 27, 2018. This subsection:

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

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

F. The scope of bargaining for the exclusive representative and the state shall include enhancements of employee rights and benefits existing pursuant to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

G. The scope of bargaining for representatives of public schools as well as educational employees in state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

H. An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the reappropriation of funds.

I. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978]; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

J. The following meetings shall be closed:

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

(2) collective bargaining sessions; and

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

History: Laws 2003, ch. 4, § 17; 2003, ch. 5, § 17; 2020, ch. 48, § 10.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, revised the scope of bargaining provisions, including allowing parties to bargain regarding a public employer assuming a portion of public employees' retirement contributions, clarifying that a collective bargaining agreement that provides greater rights, remedies and procedures than contained in a state statute shall not be considered to be in conflict with that state statute, dictating procedures regarding how and when dues deductions are determined, and providing that bargaining shall include enhancements of employee rights and benefits existing pursuant to the Personnel Act; in Subsection A, Paragraph A(2), after "written collective bargaining agreements covering employment relations", added the remainder of the paragraph; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "any other statute of this state", added "provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute", and after "In the event of", added "an actual"; in Subsection D, after "in accordance with the negotiated agreement", added "and this subsection", and added "Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The public employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by a public employer or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee"; and added new Subsections E and F and redesignated the remaining subsections accordingly.

A non-union member of a collective bargaining unit is subject to arbitration provisions of a collective bargaining agreement. — Where petitioner was a regular full-time non-probationary sworn police officer employed by the municipal police department and a member of the collective bargaining unit covered by the union's collective bargaining agreement; petitioner did not join the union, did not pay union dues, and never sought assistance from the union; the municipality recognized the union as the exclusive collective bargaining representative for regular full-time non-probationary sworn police officers; and petitioner initiated a grievance procedure to challenge petitioner's termination, petitioner was a public employee, working for a public employer and was subject to the Public Employee Bargaining Act, the collective bargaining agreement, and the requirements of the collective bargain agreement and the act that petitioner's grievance challenging petitioner's termination was subject to binding arbitration. *Luginbuhl v. City of Gallup*, 2013-NMCA-053, 302 P.3d 751.

A collective bargaining agreement was supported by adequate consideration. — Where petitioner was a police officer employed by the municipal police department, a member of the collective bargaining unit, and subject to the union's collective bargaining agreement; petitioner did not join the union, did not pay union dues, and never sought assistance from the union; and petitioner enjoyed the benefits of the collective bargaining agreement, including increased compensation for serving as a member of the municipal emergency response team, vacation and holiday pay, a clothing allowance, and seniority rights, the collective bargaining agreement was

supported by adequate consideration and the arbitration provision of the agreement was enforceable as to petitioner. *Luginbuhl v. City of Gallup*, 2013-NMCA-053, 302 P.3d 751.

A collective bargaining agreement was not vague. — Where petitioner was a police officer employed by the municipal police department and a member of the collective bargaining unit; the collective bargaining agreement provided a four-step grievance process that culminated in arbitration; the arbitration clause applied to written disputes regarding disciplinary action; the arbitration process was set forth in detail; and petitioner initiated a written dispute by engaging in the grievance process to challenge petitioner's termination, the arbitration clause was not vague or uncertain in its application to petitioner. *Luginbuhl v. City of Gallup*, 2013-NMCA-053, 302 P.3d 751.

The arbitration provision of a collective bargaining agreement provided an adequate remedy at law for disputes. — Where petitioner was a police officer employed by the municipal police department and a member of the collective bargaining unit; the collective bargaining agreement provided a four-step grievance process that culminated in arbitration; and petitioner had the statutory right to appeal any arbitration decision to the district court, arbitration provided an adequate and complete forum and remedy at law for disputes governed by the collective bargaining agreement, including petitioner's grievance challenging petitioner's termination. *Luginbuhl v. City of Gallup*, 2013-NMCA-053, 302 P.3d 751.

Failure to implement wage increase due to economic considerations. — Where a collective bargaining agreement provided for annual wage increases for the second and third fiscal years of the three year term of the agreement contingent upon city council approval pursuant to the city's labor management relations ordinance; the ordinance provided that in order for a collective bargaining agreement to be approved by the city council, the city council had to approve the economic components of the contract and adopt a resolution providing an appropriation to cover the cost of the contract; because of a revenue shortfall, the city council adopted a budget that did not include funding for wage increases for the third fiscal year as required by the agreement, and the city had sufficient funds to cover the wage increases, the city breached the agreement when it failed to implement the wage increases for the third fiscal year because the city council had appropriated the funding to cover the cost of wage increases for the third fiscal year when it initially approved the agreement pursuant to the ordinance. *Albuquerque Police Officers' Ass'n v. City of Albuquerque*, 2013-NMCA-110, cert. denied, 2013-NMCERT-011.

Management-rights clause. — A union's waiver of its right to mandatory bargaining under a management-rights clause, which gives management rights not limited by a collective bargaining agreement, will not be inferred unless it is clear and unmistakable that the union was aware of its rights and made the conscious choice to waive its rights. *County of Los Alamos v. Martinez*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 118.

Where the county and the firefighters union were parties to a collective bargaining agreement; the agreement contained a management-rights clause that gave the county certain specific operational and policy rights, as well as all rights not specifically limited by the contract; the county entered into contracts with individual firemen to provide for voluntary paramedic training which specified terms of employment during and after the training program; the paramedic training contracts were not covered by the collective bargaining agreement; and the paramedic training contracts were mandatory subjects of bargaining, the union did not clearly and unmistakably waive its right to bargain for the paramedic training contracts. *County of Los Alamos v. Martinez*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 118.

"Zipper" clause. — A "zipper" clause, which provides that a collective bargaining agreement is the complete and only agreement between the parties on all subjects and that the parties waive the right to bargain with respect to any other matter not specifically referred to in the agreement, is to be given such effect as the bargaining posture, past practices and agreements of the parties indicate. *County of Los Alamos v. Martinez*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 118.

Where the county and the firefighters union were parties to a collective bargaining agreement; the agreement contained a "zipper" clause which provided that the agreement was the complete and only agreement between the parties, that all mandatory subjects of collective bargaining had been negotiate, and that each party waived the right to bargain collectively as to any subject not specifically covered by the agreement; the county entered into contracts with individual firemen to provide for voluntary paramedic training which specified terms of employment during and after the training program; the paramedic training contracts were not covered by the collective bargaining agreement; the paramedic training contracts were mandatory subjects of bargaining; and there was no evidence about the bargaining history, expectations of the parties, past practices, or surrounding circumstances of the parties' collective bargaining, the district court did not err in finding that the union did not waive its right to bargain for the paramedic training contracts based on the "zipper" clause. *County of Los Alamos v. Martinez*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 118.

An arbitration award that requires a public employer other than the state to expend funds is contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, 2009-NMCA-097, 147 N.M. 6, 216 P.3d 256, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Arbitration decision contingent upon appropriation of funds. — Where a municipality and a union reached an impasse in their negotiations over wages; the parties entered into an agreement to resolve the impasse by arbitration and selected an arbitrator; the arbitrator entered an arbitration award pursuant to Section 10-7E-18 NMSA 1978 that awarded a wage increase to the union; and the municipality did not appropriate funds to pay the wage increase, the union could not enforce the arbitration award by an action in district court, because under Section 10-7E-17 NMSA 1978, the arbitration award was contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, 2009-NMCA-097, 147 N.M. 6, 216 P.3d 256, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Arbitration decision did not require the reappropriation of funds. — Where the state and the unions entered into collective bargaining agreements that covered salary increases for union employees in fiscal year 2009; the state determined that the legislature had not appropriated sufficient funds to cover the full salary increases for union employees and implemented salary increases for all employees that differed from those required by the agreements; the arbitrator determined that the Legislature had appropriated sufficient funds to cover the salary increases required by the agreements and that the state's pay package violated the terms of the agreements; and the arbitrator directed the state to adjust the union employee's salary levels for fiscal year 2010 to reflect the level they would have been had the salary increases been provided as required by the agreements, the arbitrator's award did not violate Subsection E of Section 10-7E-17 NMSA 1978. *State v. AFSCME Council 18*, 2012-NMCA-114, 291 P.3d 600, cert. granted, 2012-NMCERT-011.

Lack of evergreen clause. — Where the municipality and labor unions reached an impasse in negotiations to replace existing collective bargaining agreements; the municipal labor management ordinance did not require that expiring collective bargaining agreements continue in full force and

effect until replaced by subsequent agreements; and no municipal appropriation had occurred to extend the agreements and the municipality did not have available funds to fund the economic components of the extension of the agreements, the Public Employee Bargaining Act did not apply to the economic components of the existing agreements because provisions of collective bargaining agreements that require an expenditure of funds are subject to Subsection E of Section 10-7E-17 NMSA 1978, which requires the specific appropriation and availability of funds and the Act did not require the extension of the existing agreements in conflict with Subsection E of Section 10-7E-17 NMSA 1978. *AFSCME Council 18 v. City of Albuquerque*, 2013-NMCA-012, 293 P.3d 943, cert. granted, 2013-NMCERT-001.

Collective bargaining procedures were exempt from the evergreen provision. — Where the municipality's labor-management relations ordinance, which was adopted in 1974, included impasse resolution procedures through mediation and arbitration, but did not require that expired collective bargaining agreements remain in effect until successor agreements were reached; when the collective bargaining agreements between the municipality and the unions expired and the parties were unable to agree upon successor agreements, the municipality refused to honor a provision of the expired agreements that required the municipality to compensate union members for union business conducted during municipality work time; and the unions argued that the municipality was required to comply with the evergreen provision of Subsection D of Section 10-7E-18 NMSA 1978 regardless of the grandfather status of the municipality's ordinance, the municipality's collective bargaining procedures were exempt, under Subsection A of Section 10-7E-26 NMSA 1978, from compliance with the evergreen provision. *AFSCME Council 18 v. City of Albuquerque*, 2013-NMCA-063, 304 P.3d 443, cert. quashed, 2013-NMCERT-009.

Appointment of interim board member by municipality did not violate the grandfather clause requirement. — Where a municipal ordinance required the president of the city council to appoint an interim member of the municipal labor-management relations board when the board met during the absence of a regular board member; the ordinance had been grandfathered under the Public Employee Bargaining Act; the president was an elected city councilor who was elected as president by city council members; and the president did not perform any executive functions, the president did not serve in either a "management" or a "labor" capacity and the procedure by which the president appointed an interim board member during the absence of a regular board member did not violate the act's grandfather clause requirement that a local ordinance create a system of collective bargaining. *City of Albuquerque v. Montoya*, 2012-NMSC-007, 274 P.3d 108, rev'g 2010-NMCA-100, 148 N.M. 930, 242 P.3d 497.

Appointment of interim board member by municipality. — The grandfather clause does not apply to the provision of a municipal labor-management relations ordinance which provides that if one of the appointed local board members is absent, the president of the city council shall appoint an interim board member from the public at large with due regard to the representative character of the local board because the ordinance did not permit employees to bargain collectively. *City of Albuquerque v. Montoya*, 2010-NMCA-100, 148 N.M. 930, 242 P.3d 497, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, rev'd, 2012-NMSC-007, 274 P.3d 108.

10-7E-18. Impasse resolution.

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

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

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

(3) if an impasse occurs during negotiations between the parties, either party may request mediation services from the board. A mediator from the federal mediation and conciliation service shall be assigned by the board to assist in negotiations unless the parties agree to another mediator;

(4) the mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until thirty days after the mediator was requested, whichever occurs first; and

(5) if the impasse continues after the time described in Paragraph (4) of this subsection, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978] no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

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

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

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth

in the Uniform Arbitration Act.

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

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

History: [Laws 2003, ch. 4, § 18](#); [2003, ch. 5, § 18](#); [2020, ch. 48, § 11](#).

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, removed certain deadlines for resolving an impasse; in Subsection A, Paragraph A(3), after "between the parties", deleted "and if an agreement is not reached by the parties by October 1", in Paragraph A(4), after "helpful or until", deleted "November 1" and added "thirty days after the mediator was requested", in Paragraph A(5), after "impasse continues after", deleted "November 1" and added "the time described in Paragraph (4) of this subsection"; and in Paragraphs A(5) and B(2), after "Subsection", deleted "E" and added "H", and changed "Section 17 of the Public Employee Bargaining Act" to "[10-7E-17 NMSA 1978](#)".

Impasse arbitration. — In public-sector arbitration under the Public Employee Bargaining Act, the arbitrator is required to select an offer in its entirety and cannot decide particular matters on an issue-by-issue basis. *National Union of Hosp. Emps. v. Board of Regents*, [2010-NMCA-102](#), [149 N.M. 107](#), [245 P.3d 51](#), cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

Arbitrator exceeded authority by permitting modification of final offers. — Where a public sector employer and a union reached an impasse in the negotiation of a new collective bargaining agreement and the impasse was submitted to arbitration pursuant to the Public Employee Bargaining Act; during the arbitration hearing, the arbitrator permitted the union to make a revised offer and to modify the revised offer several times and asked the parties to confer in an effort to narrow the issues; and at the conclusion of the hearing, the arbitrator suggested modifications of the party's offers that would be more to the liking of the arbitrator and directed the parties to submit modified offers, the arbitrator exceeded the arbitrator's authority under the Public Employee Bargaining Act requiring the arbitrator's award to be vacated on the ground of misconduct under the Uniform Arbitration Act. *National Union of Hosp. Emps. v. Board of Regents*, [2010-NMCA-102](#), [149 N.M. 107](#), [245 P.3d 51](#), cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

An arbitration award that requires a public employer other than the state to expend funds is contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, [2009-NMCA-097](#), [147 N.M. 6](#), [216 P.3d 256](#), cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Arbitration decision contingent upon appropriation of funds. — Where a municipality and a union reached an impasse in their negotiations over wages; the parties entered into an agreement to resolve the impasse by arbitration and selected an arbitrator; the arbitrator entered an arbitration award pursuant to [Section 10-7E-18 NMSA 1978](#) that awarded a wage increase to the union; and the

municipality did not appropriate funds to pay the wage increase, the union could not enforce the arbitration award by an action in district court because, under Section 10-7E-17 NMSA 1978, the arbitration award was contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, 2009-NMCA-097, 147 N.M. 6, 216 P.3d 256, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Lack of evergreen clause. — Where the municipality and labor unions reached an impasse in negotiations to replace existing collective bargaining agreements; the municipal labor management ordinance did not require that expiring collective bargaining agreements continue in full force and effect until replaced by subsequent agreements; and no municipal appropriation had occurred to extend the agreements and the municipality did not have available funds to fund the economic components of the extension of the agreements, the Public Employee Bargaining Act did not apply to the economic components of the existing agreements because provisions of collective bargaining agreements that require an expenditure of funds are subject to Subsection E of Section 10-7E-17 NMSA 1978, which requires the specific appropriation and availability of funds and the Act did not require the extension of the existing agreements in conflict with Subsection E of Section 10-7E-17 NMSA 1978. *AFSCME Council 18 v. City of Albuquerque*, 2013-NMCA-012, 293 P.3d 943, cert. granted, 2013-NMCERT-001.

10-7E-19. Public employers; prohibited practices.

A public employer or the public employer's representative shall not:

- A. discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;
- B. interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:
 - (1) addressing a grievance or negotiating or administering a collective bargaining agreement;
 - (2) allowing a labor organization or its representatives access to the public employer's facilities or properties;
 - (3) performing an activity required by federal or state law or by a collective bargaining agreement;
 - (4) negotiating, entering into or carrying out an agreement with a labor organization;
 - (5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or

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

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

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

E. discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

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

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

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

History: [Laws 2003, ch. 4, § 19](#); [2003, ch. 5, § 19](#); [2020, ch. 48, § 12](#).

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, made it a prohibited practice for a public employer to use public funds to influence an election regarding representation; in Subsection B, after "Public Employee Bargaining Act", added "or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred", and added Paragraphs B(1) through B(6).

To constitute a prohibited practice, discriminatory treatment need only be because of the employee's membership in a labor organization. — Where the New Mexico corrections department (department) treated state employees who were members of a union differently than a state employee who was not by allowing the non-union employee to use a state vehicle to attend the same department-called policy review meeting for which the union employees' request to use a state vehicle had been denied, the district court did not err in affirming the public employee labor relations board's decision that the department had committed a prohibited practice in violation of this section by treating state employees who were union members differently than management employees regarding the use of state vehicles to attend labor-management meetings; the plain language of this section requires only that the discriminatory treatment be because of the employee's membership in a labor organization in order for such treatment to constitute a prohibited practice, and does not require proof that the action was retaliatory or motivated by anti-union animus. *N.M. Corrections Dep't v. AFSCME*, [2018-NMCA-007](#), cert. denied.

Board's decision was arbitrary and capricious because it failed to consider an important aspect of the issue. — Where the communications workers of America filed a prohibited practice complaint against the state of New Mexico, asserting that the state violated the Public Employee

Bargaining Act by refusing paid time off for bargaining unit employees for time spent preparing for and participating in grievance meetings and by providing paid union time to union officers and union stewards only, the public employee relations board (board) acted arbitrarily and capriciously in determining that the parties' past practice of granting union time or paid time to bargaining unit employees is as binding as the written provision of the collective bargaining agreement (CBA) and was therefore a mandatory subject of bargaining, because the board failed to consider the effect, if any, of the CBA's zipper clause, in which both parties waived the right to bargain collectively with respect to any subject or matter covered in the CBA. *Communication Workers of Am. v. State*, 2019-NMCA-031.

Where the communications workers of America filed a prohibited practice complaint against the state of New Mexico, asserting that the state violated the Public Employee Bargaining Act by refusing paid time off for bargaining unit employees for time spent preparing for and participating in grievance meetings and providing paid union time to union officers and union stewards only, the public employee relations board (board) acted arbitrarily and capriciously in determining that the state did not refuse to bargain collectively in good faith when it gave notice that bargaining unit employees did not have a right to meet with a union officer or steward regarding a grievance on work time, because the board failed to consider whether the state's notice constituted a *fait accompli*, that is, if the notice was too short a time before implementation or because the employer had no intention of altering its plans. *Communication Workers of Am. v. State*, 2019-NMCA-031.

Dismissal of complaint was arbitrary and capricious. — Where educational employees' union alleged that the community college had terminated two employees of the college in retaliation for their union-related activities, the college's alleged violation of the college's labor-management relations resolution gave rise to the union's claims that employees' employment was wrongfully terminated for retaliatory reasons, and where the local labor-management relations board (board) elected to dismiss the union's complaint on the ground that there was no conflict between the collective bargaining agreement's provisions requiring discharge or termination for cause and the employee handbook's provisions permitting non-renewal for no reason, the board's dismissal, being based on a ground not alleged in the union's complaint, was arbitrary and capricious. *Northern N.M. Fed'n of Educ. Emps. v. Northern N.M. Coll.*, 2016-NMCA-036, cert. denied.

10-7E-20. Public employees; labor organizations; prohibited practices.

A public employee or labor organization or its representative shall not:

- A. discriminate against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;
- B. interfere with, restrain or coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act;
- C. refuse to bargain collectively in good faith with a public employer;
- D. refuse or fail to comply with a collective bargaining or other agreement with the public employer;
- E. refuse or fail to comply with a provision of the Public Employee Bargaining Act; or

F. picket homes or private businesses of elected officials or public employees.

History: [Laws 2003, ch. 4, § 20](#) and by [Laws 2003, ch. 5, § 20](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 20](#) and [Laws 2003, ch. 5, § 20](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-20](#) NMSA 1978.

10-7E-21. Strikes and lockouts prohibited.

A. A public employee or labor organization shall not engage in a strike. A labor organization shall not cause, instigate, encourage or support a public employee strike. A public employer shall not cause, instigate or engage in a public employee lockout.

B. A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The board or local board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated a public employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation.

History: [Laws 2003, ch. 4, § 21](#) and by [Laws 2003, ch. 5, § 21](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 21](#) and [Laws 2003, ch. 5, § 21](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-21](#) NMSA 1978.

10-7E-22. Agreements valid; enforcement.

Collective bargaining agreements and other agreements between public employers and exclusive representatives shall be valid and enforceable according to their terms when entered into in accordance with the provisions of the Public Employee Bargaining Act.

History: [Laws 2003, ch. 4, § 22](#) and by [Laws 2003, ch. 5, § 22](#).

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 22](#) and [Laws 2003, ch. 5, § 22](#) enacted identical new

sections of law, effective July 1, 2003. Both were compiled as 10-7E-22 NMSA 1978.

10-7E-23. Judicial enforcement; standard of review.

A. The board or local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

B. A person or party, including a labor organization affected by a final rule, order or decision of the board or local board, may appeal to the district court for further relief. All such appeals shall be based upon the record made at the board or local board hearing. All such appeals to the district court shall be taken within thirty days of the date of the final rule, order or decision of the board or local board. Actions taken by the board or local board shall be affirmed unless the court concludes that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

History: Laws 2003, ch. 4, § 23 and by Laws 2003, ch. 5, § 23.

ANNOTATIONS

Compiler's notes. — Laws 2003, ch. 4, § 23 and Laws 2003, ch. 5, § 23 enacted identical new sections of law, effective July 1, 2003. Both were compiled as 10-7E-23 NMSA.

10-7E-24. Existing collective bargaining units.

A. Bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units for the purposes of the Public Employee Bargaining Act. Bargaining units established between July 1, 1999 and the effective date of that act shall continue in effect only if the unit is covered by a collective bargaining agreement on the date of this act.

B. A labor organization that was recognized by a public employer as the exclusive representative

of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA 1978] of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.

History: Laws 2003, ch. 4, § 24 and by Laws 2003, ch. 5, § 24.

ANNOTATIONS

Compiler's notes. — Laws 2003, ch. 4, § 24 and Laws 2003, ch. 5, § 24 enacted identical new sections of law, effective July 1, 2003. Both were compiled as 10-7E-24 NMSA 1978.

10-7E-24.1. Certain new entities created by statute.

A new entity, created by or pursuant to statute, that encompasses the same powers and duties as a previous public employer and uses essentially the same employees as the previous public employer shall be treated as if it were that previous public employer for purposes of the Public Employee Bargaining Act, including the continued applicability of existing ordinances or resolutions pursuant to Section 10-7E-26 NMSA 1978 and of existing collective bargaining units pursuant to Section 10-7E-24 NMSA 1978.

History: Laws 2005, ch. 333, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 333 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

10-7E-25. Existing collective bargaining agreements.

Nothing in the Public Employee Bargaining Act shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative prior to the effective date of the Public Employee Bargaining Act. Nor shall anything in the Public Employee Bargaining Act be construed to annul or modify the status of an existing or recognized exclusive representative.

History: Laws 2003, ch. 4, § 25 and by Laws 2003, ch. 5, § 25.

ANNOTATIONS

Compiler's notes. — [Laws 2003, ch. 4, § 25](#) and [Laws 2003, ch. 5, § 25](#) enacted identical new sections of law, effective July 1, 2003. Both were compiled as [10-7E-25](#) NMSA 1978.

10-7E-26. Repealed.

History: [Laws 2003, ch. 4, § 26](#); [2003, ch. 5, § 26](#); repealed by [Laws 2020, ch. 48, § 13](#).

ANNOTATIONS

Repeals. — [Laws 2020, ch. 48, § 13](#) repealed [10-7E-26](#) NMSA 1978, as enacted by [Laws 2003, ch. 4, § 26](#) and [Laws 2003, ch. 5, § 26](#), relating to existing ordinances providing for public employee bargaining, effective July 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on [NMOneSource.com](#).