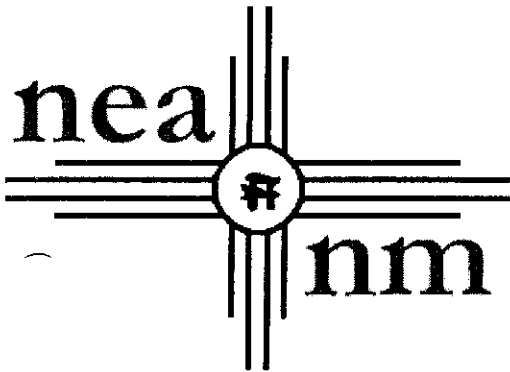


# New Mexico's Public Employee Bargaining Act



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# Public Employee Bargaining Act

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## Public Employee Bargaining Act

### 10-7E-1. Short title. (2003)

This act [10-7E-1 to 10-7E-26 NMSA 1978] may be cited as the "Public Employee Bargaining Act".

**History:** Laws 2003, ch. 4, § 1 and by Laws 2003, ch. 5, § 1.

### 10-7E-2. Purpose of act. (2003)

The purpose of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] 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.

### 10-7E-3. Conflicts. (2003)

In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] shall supersede other previously enacted legislation and regulations; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act [6-6-11 and 6-6-13 to 6-6-18 NMSA 1978], the Personnel Act [10-9-1 NMSA 1978], Sections 10-7-1 through 10-7-19 NMSA 1978, the Group Benefits Act [10-7B-1 to 10-7B-7 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 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 and by Laws 2003, ch. 5, § 3.

### 10-7E-4. Definitions. (2003)

As used in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978]:

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

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

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 his 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. "fair share" means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions;

K. "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;

L. "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;

M. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment;

N. "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;

O. "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 on an occasional basis;

P. "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;

Q. "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;

R. "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;

S. "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 state for collective bargaining purposes only;

T. "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or his 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

U. "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 his 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 and by Laws 2003, ch. 5, § 4.

#### **10-7E-5. Rights of public employees. (2003)**

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 any such activities.

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

#### **10-7E-6. Rights of public employers. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978].

**History:** Laws 2003, ch. 4, § 6 and by Laws 2003, ch. 5, § 6.

#### **10-7E-7. Appropriate governing body; public employer. (2003)**

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.

#### **10-7E-8. Public employee labor relations board; created; terms; qualifications. (2003)**

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.

#### **10-7E-9. Board; powers and duties. (2003)**

A. The board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978], 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 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 functions and responsibilities.

C. The 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 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 may administer oaths and affirmations, examine witnesses and receive evidence.

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

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

F. The board has the power to enforce provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] through the imposition of appropriate administrative remedies.

G. 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 [10-7E-1 to 10-7E-26 NMSA 1978] to pay money to a labor organization that is certified as an exclusive representative. 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.

**History:** Laws 2003, ch. 4, § 9 and by Laws 2003, ch. 5, § 9.

#### **10-7E-10. Local board; created. (2003)**

A. With the approval of the board, a public employer other than the state may, by ordinance, resolution or charter amendment, create a local board similar to the public employee labor relations board. Once created and approved, the local board shall assume the duties and responsibilities of the public employee labor relations board. A local board shall follow all procedures and provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] unless otherwise approved by the board.

B. The local board shall be composed of three members appointed by the public employer. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of individuals representing management and one member shall be appointed on the recommendation of the first two appointees.

C. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.

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

E. Each local 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].

**History:** Laws 2003, ch. 4, § 10 and by Laws 2003, ch. 5, § 10.

#### **10-7E-11. Local board; powers and duties. (2003)**

A. The local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978], 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 local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and
- (3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board in carrying out its functions.

C. The 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 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 local board may administer oaths and affirmations, examine witnesses and receive evidence.

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

E. The local board has the power to enforce provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] or a local collective bargaining ordinance, resolution or charter amendment through the imposition of appropriate administrative remedies.

**History:** Laws 2003, ch. 4, § 11 and by Laws 2003, ch. 5, § 11.

#### **10-7E-12. Hearing procedures. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978] 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 Santa Fe. 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.

### **10-7E-13. Appropriate bargaining units. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978].

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.

**History:** Laws 2003, ch. 4, § 13 and by Laws 2003, ch. 5, § 13.

### **10-7E-14. Elections. (2003)**

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. 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 public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

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 16 [10-7E-16 NMSA 1978] of the Public Employee Bargaining Act.

**History:** Laws 2003, ch. 4, § 14 and by Laws 2003, ch. 5, § 14.

#### **10-7E-15. Exclusive representation. (2003)**

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.

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.

**History:** Laws 2003, ch. 4, § 15 and by Laws 2003, ch. 5, § 15

#### **10-7E-16. Decertification of exclusive representative. (2003)**

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

**History:** Laws 2003, ch. 4, § 16 and by Laws 2003, ch. 5, § 16.

#### **10-7E-17. Scope of bargaining. (2003)**

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.

B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] 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. In the event of 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.

C. 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 for so long as the labor organization is certified as the exclusive representative. 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.

D. 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.

E. 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.

F. 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.

G. 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 and by Laws 2003, ch. 5, § 17.

#### **10-7E-18. Impasse resolution. (2003)**

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, and if an agreement is not reached by the parties by October 1, 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 November 1, whichever occurs first; and

(5) if the impasse continues after November 1, 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 E of Section 17 [10-7E-17 NMSA 1978] of the Public Employee Bargaining Act 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 his or her 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 E of Section 17 [10-7E-17 NMSA 1978] of the Public Employee Bargaining Act 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 his or her 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 and by Laws 2003, ch. 5, § 18.

**10-7E-19. Public employers; prohibited practices. (2003)**

A public employer or his 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 [10-7E-1 to 10-7E-26 NMSA 1978];

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 he 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 [10-7E-1 to 10-7E-26 NMSA 1978] 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 [10-7E-1 to 10-7E-26 NMSA 1978] or board rule; or

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

**History:** Laws 2003, ch. 4, § 19 and by Laws 2003, ch. 5, § 19.

**10-7E-20. Public employees; labor organizations; prohibited practices. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978];

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 [10-7E-1 to 10-7E-26 NMSA 1978]; 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.

**10-7E-21. Strikes and lockouts prohibited. (2003)**

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.

**10-7E-22. Agreements valid; enforcement. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978].

**History:** Laws 2003, ch. 4, § 22 and by Laws 2003, ch. 5, § 22.

**10-7E-23. Judicial enforcement; standard of review. (2003)**

A. The board or local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978], 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.

#### **10-7E-24. Existing collective bargaining units. (2003)**

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 [10-7E-1 to 10-7E-26 NMSA 1978]. 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 [10-7E-1 to 10-7E-26 NMSA 1978]; 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.

#### **10-7E-25. Existing collective bargaining agreements. (2003)**

Nothing in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] 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.

#### **10-7E-26. Existing ordinances providing for public employee bargaining. (2003)**

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

B. A public employer other than the state that subsequent to October 1, 1991 adopts by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives freely chosen by its employees may operate under those provisions and procedures rather than those set forth in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978]; provided that the employer shall comply with the provisions of Sections 8 through 12 and Subsection D of Section 17 [10-7E-17 NMSA 1978] of that act and provided the following provisions and procedures are included in each ordinance, resolution or charter amendment:

(1) the right of public employees to form, join or assist employee organizations for the purpose of achieving collective bargaining;



(2) procedures for the identification of appropriate bargaining units, certification elections and decertification elections equivalent to those set forth in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978];

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

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

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

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

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

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

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

**History:** Laws 2003, ch. 4, § 26 and by Laws 2003, ch. 5, § 26.