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SENATE BILL 472

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

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO LABOR; AMENDING THE PUBLIC EMPLOYEE BARGAINING ACT
TO EXEMPT CERTAIN GOVERNMENTAL ENTITIES.

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

SECTION 1. Section 10-7E-4 NMSA 1978 (being Laws 2003,
Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is
amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 through ordinance, resolution or charter amendment;

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

7 O. "management employee" means an employee who is
8 engaged primarily in executive and management functions and is
9 charged with the responsibility of developing, administering or
10 effectuating management policies. An employee shall not be
11 deemed a management employee solely because the employee
12 participates in cooperative decision-making programs on an
13 occasional basis;

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

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

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1 standardized in relation to a given period of time;

2 R. "public employee" means a regular
3 nonprobationary employee of a public employer; provided that,
4 in the public schools, "public employee" shall also include a
5 regular probationary employee;

6 S. "public employer" means the state or a political
7 subdivision [~~thereof, including a municipality~~] of the state,
8 except as otherwise provided in this subsection, including a
9 municipality with a population of five thousand or more
10 residents, as indicated in the most recent decennial census,
11 that has adopted a home rule charter; [~~and does not include a~~
12 government of an Indian nation, tribe or pueblo] provided that
13 state educational institutions as provided in Article 12,
14 Section 11 of the constitution of New Mexico shall be
15 considered public employers other than the state for collective
16 bargaining purposes only. "Public employer" does not include a
17 government of an Indian nation, tribe or pueblo, a municipality
18 with a population of fewer than five thousand residents as
19 indicated in the most recent decennial census, a county with a
20 population of fewer than five thousand residents as indicated
21 in the most recent decennial census or an agency constituted
22 pursuant to a joint powers agreement in which a majority of
23 entities to the agreement are not public employers as defined
24 in this subsection;

25 T. "strike" means a public employee's refusal, in

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1 concerted action with other public employees, to report for
2 duty or [~~his~~] the willful absence in whole or in part from the
3 full, faithful and proper performance of the duties of
4 employment for the purpose of inducing, influencing or coercing
5 a change in the conditions, compensation, rights, privileges or
6 obligations of public employment; and

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

19 SECTION 2. Section 10-7E-16 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 16 and Laws 2003, Chapter 5, Section 16) is
21 amended to read:

22 "10-7E-16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

23 A. A member of a labor organization or the labor
24 organization itself may initiate decertification of a labor
25 organization as the exclusive representative if thirty percent

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1 of the public employees in the appropriate bargaining unit make
2 a written request to the board or local board for a
3 decertification election. If there is only one or no dues-
4 paying member of a labor organization in an appropriate
5 bargaining unit, then any public employee in that bargaining
6 unit may initiate decertification of that labor organization as
7 the exclusive representative if thirty percent or more of the
8 public employees in that bargaining unit make a written request
9 to the board or local board for a decertification election.

10 Decertification elections shall be held in a manner prescribed
11 by rule of the board. An election shall only be valid if forty
12 percent of the eligible employees in the bargaining unit vote
13 in the election.

14 B. When there is a collective bargaining agreement
15 in effect, a request for a decertification election shall be
16 made to the board or local board no earlier than ninety days
17 and no later than sixty days before the expiration of the
18 collective bargaining agreement; provided, however, a request
19 for an election may be filed at any time after the expiration
20 of the third year of a collective bargaining agreement with a
21 term of more than three years or at any time if an appropriate
22 bargaining unit has only one or no public employee who is a
23 dues-paying member of the labor organization that is certified
24 as the exclusive representative of that bargaining unit.

25 C. When, within the time period prescribed in

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1 Subsection B of this section, a competing labor organization
2 files a petition containing signatures of at least thirty
3 percent of the public employees in the appropriate bargaining
4 unit, a representation election rather than a decertification
5 election shall be conducted.

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

12 SECTION 3. Section 10-7E-24 NMSA 1978 (being Laws 2003,
13 Chapter 4, Section 24 and Laws 2003, Chapter 5, Section 24) is
14 amended to read:

15 "10-7E-24. EXISTING COLLECTIVE BARGAINING UNITS.--

16 A. Bargaining units established prior to July 1,
17 1999 shall continue to be recognized as appropriate bargaining
18 units for the purposes of the Public Employee Bargaining Act.
19 Bargaining units established between July 1, 1999 and the
20 effective date of that act shall continue in effect only if the
21 unit is covered by a collective bargaining agreement on [~~the~~
22 ~~date of this act~~] July 1, 2003.

23 B. A labor organization that was recognized by a
24 public employer as the exclusive representative of an appropriate
25 bargaining unit on June 30, 1999 shall be recognized as the

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1 exclusive representative of the unit on [~~the effective date of the~~
2 ~~Public Employee Bargaining Act~~] July 1, 2003; provided, however,
3 that the public employer shall not enter into a new collective
4 bargaining agreement pursuant to this subsection unless the labor
5 organization demonstrates majority support to the public employer
6 pursuant to Section [~~14 of the Public Employee Bargaining Act~~]
7 10-7E-14 NMSA 1978. A labor organization [~~which~~] that attempts
8 and fails to show majority support shall no longer be recognized
9 as the exclusive bargaining representative of that unit.

10 C. A labor organization that was certified as the
11 exclusive representative of an appropriate bargaining unit for a
12 governmental entity that was a public employer pursuant to any
13 version of the Public Employee Bargaining Act that was in effect
14 prior to July 1, 2015 but is no longer a public employer pursuant
15 to the Public Employee Bargaining Act on and after July 1, 2015
16 shall continue to be recognized if there is a valid collective
17 bargaining agreement in effect as of June 30, 2015; provided that
18 a governmental entity that is not a public employer shall not
19 enter into a collective bargaining agreement on or after July 1,
20 2015."

21 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2015.