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.