

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.