

Public Employee Labor Relations Board: The Basics - *Advocate's Voice, May 2006*

Through this column, we try to answer common questions and to make certain that members are aware of the rights provided under New Mexico law. Questions frequently arise regarding the Public Employee Labor Relations Board – commonly referred to as the State Labor Board. This is the Board created by law that is required to hear disputes regarding labor issues and to intervene when issues are raised. Given the broad nature of “labor issues,” this article will shed light on the board’s main goals and objectives, what a “prohibited practice” is and how the prohibited practice complaint procedure works.

A. Public Employee Bargaining Act

The rules regarding the Public Employee Bargaining Act are set forth in New Mexico Statutes § 10-7E-1 - 26. The intent of the Bargaining Act is: To establish fair and expeditious procedures that further the purposes of the act, which are:

- 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 assuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

Much of the Bargaining Act relates to bargaining units, elections, exclusive representation, and scope of collective bargaining. These issues are what I would refer to as macro-labor issues. These sections affect how local units are formed and how the local unit can engage in collective bargaining with the governmental entity. The focus of this column is not on overall collective bargaining and unit formation, rather the focus is upon how the Bargaining Act relates to specific employees and specific actions by employers.

The main way that the Bargaining Act affects the individual member is through the creation of the Public Employee Labor Relations Board (“PELRB”). The PELRB is responsible for the following seven primary functions:

- Establish procedures for the filing of, hearing and determination of prohibited practice complaints.
- Hold elections for selection, certification, and decertification of exclusive bargaining agents.
- Hold hearings for determination of appropriate bargaining units.
- Approve local labor relations boards.
- Educate both public employees and employers as to their rights for the purpose of promoting harmonious relationships.
 - Assist in impasse resolution. and
 - Seek judicial enforcement of board orders

The PELRB is the entity responsible for making sure that the Bargaining Act is enforced and that both the union's and the governmental entity's rights are equally enforced. The area in which we receive the most questions about is prohibited practices and the prohibited practice complaint procedure.

B. Prohibited Practice Resolution

The Bargaining Act sets out a procedure for any public employee or any bargaining unit to file a claim for a prohibited practice. Once a complaint is filed, the PELRB carries out an investigation and may have a hearing. However, the definition of a "prohibited practice" is much narrower than many folks believe.

Sections 10-7E-19 – 21, NMSA 1978, define prohibited practices. The first type of prohibited practice involves action on the part of an employer. An employer shall not:

- Discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor union.
- Interfere with, restrain or coerce a public employee in the exercise of a right guaranteed under the Bargaining Act.
- Dominate or interfere in the formation, existence or administration of a labor organization.
- Discriminate in regards to hiring, tenure or term of employment because employee has signed, or filed an affidavit, petition, grievance or complaint or given testimony in a labor action, or because an employee is forming, joining or choosing to be represented by a labor organization.
 - Refuse to bargain collectively in good faith, with exclusive representation.
 - Refuse to comply with the Bargaining Act.
 - Refuse to comply with the collective bargaining agreement.

These are the prohibited practices that relate to union members. The other prohibitive practices relate to things that an employee or labor organization can not do; including, picketing homes or business of elected or public officials, (no marches in front of the Superintendent's house) no strikes and no discrimination by the labor organization.

Allow me to try and put some flesh on the bones of the above prohibited practices. In short, prohibited practices are interference by the administration in the union's activities. Administrations are obviously prohibited from refusing to hire or promote union members. Administrators are prohibited from attempting to stop the formation of a unit; however, they are not prohibited from campaigning for a vote against the union. Similarly, they are prohibited from refusing to negotiate in good faith with exclusive representation, but they are not prohibited from extremely tough negotiation.

The alleged prohibited practice must relate to union membership and it must result in some sort of adverse action against the individual or the union. A couple of recent prohibited practice cases we have worked on also help illustrate the types of activities that give rise to a prohibited practice complaint.

An administration was attempting to thwart an organization campaign at New Mexico State University. The administration told employees that they were not allowed to talk about union activities during work hours, that they were not allowed to post material about the union on the community boards, and prohibited union organizers from coming on campus during school hours, regardless of whether they were meeting with folks during break times. Additionally, the administration told employees that if they did not abide by these prohibitions, then they faced possible termination. These acts are all prohibited and were the focus of several prohibited practice complaints. However, it should be pointed out that the administration characterized its activities much differently. Administrations are smart enough to have a pre-textual reason for their actions. But the effect of the action is more important than the claimed reason.

C. Prohibited Practice Actions

If you experience discrimination because of your union membership or activity, the first thing to do is to contact your union representative. The representative will be able to help explain whether or not a particular action falls in the prohibited practice area. If such an act has occurred, you will file a prohibited practice complaint with your local labor relations board. The form of the complaint is fairly straightforward and must include the section of the Bargaining Act that has been violated and a description of the violation.

Filing a prohibited practice complaint with a labor board is typically an action requesting that the administration stop interfering with union activities. Frequently, prohibited practice complaints also request that adverse evaluations or similar matters in personnel files be removed. Prohibited action complaints do not often seek damages.

Once a prohibited practice complaint is filed, the labor board is charged with conducting an investigation. A hearing is only provided if the director believes that there is sufficient evidence to hold a hearing. The initial hearing is held with a hearing officer. The hearings typically include examination of witnesses and presentation of all facts that support the claim. The hearing officer then issues a decision on whether she finds a prohibited practice. The decision may be appealed for full board determination. The board may hold a new hearing or it may simply request briefs.

Although one of the main functions of the PELRB is to establish a forum for prohibited practice complaints, our experience is that the complaint process is best used sparingly. Certainly, as with the recent New Mexico State experience, when an administration is engaging in discrimination against multiple people and against the union at large, then complaints are warranted and are often very effective. Conversely, when a single individual is claiming a prohibited practice, without the ability to show similar discrimination against other union members, the ability to achieve success through the complaint process is very low.

D. Conclusion

New Mexico laws are intended to protect the integrity of the bargaining unit and to protect union members and union activity. The protection comes through the Public Employee Relation Board and

the local boards. The State Board has a straight-forward process in place to deal with prohibited practices that directly relate to union activity. When faced with discrimination or intimidation by administrations, the prohibited practice complaint process can be a safe place to protect your rights as a union member. A great resource is the Public Employee Labor Relations Board website – <http://www.state.nm.us/pelrb/>

The website includes the rules relating to the labor board, forms for filing a complaint, and links to other relevant material, including statutes. Hopefully none of you will face any adverse actions relating to union activity. But the PELRB is there in case the need arises to stop a prohibited practice.

Have a good summer.