

## **10-7E-18. Impasse resolution.**

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, 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 thirty days after the mediator was requested, whichever occurs first; and

(5) if the impasse continues after the time described in Paragraph (4) of this subsection, 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 H of Section 10-7E-17 NMSA 1978 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 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 H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of 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](#); [2003, ch. 5, § 18](#); [2020, ch. 48, § 11](#).

## ANNOTATIONS

**The 2020 amendment**, effective July 1, 2020, removed certain deadlines for resolving an impasse; in Subsection A, Paragraph A(3), after "between the parties", deleted "and if an agreement is not reached by the parties by October 1", in Paragraph A(4), after "helpful or until", deleted "November 1" and added "thirty days after the mediator was requested", in Paragraph A(5), after "impasse continues after", deleted "November 1" and added "the time described in Paragraph (4) of this subsection"; and in Paragraphs A(5) and B(2), after "Subsection", deleted "E" and added "H", and changed "Section 17 of the Public Employee Bargaining Act" to "[10-7E-17 NMSA 1978](#)".

**Impasse arbitration.** — In public-sector arbitration under the Public Employee Bargaining Act, the arbitrator is required to select an offer in its entirety and cannot decide particular matters on an issue-by-issue basis. *National Union of Hosp. Emps. v. Board of Regents*, [2010-NMCA-102](#), [149 N.M. 107](#), [245 P.3d 51](#), cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

**Arbitrator exceeded authority by permitting modification of final offers.** — Where a public sector employer and a union reached an impasse in the negotiation of a new collective bargaining agreement and the impasse was submitted to arbitration pursuant to the Public Employee Bargaining Act; during the arbitration hearing, the arbitrator permitted the union to make a revised offer and to modify the revised offer several times and asked the parties to confer in an effort to narrow the issues; and at the conclusion of the hearing, the arbitrator suggested modifications of the party's offers that would be more to the liking of the arbitrator and directed the parties to submit modified offers, the arbitrator exceeded the arbitrator's authority under the Public Employee Bargaining Act requiring the arbitrator's award to be vacated on the ground of misconduct under the Uniform Arbitration Act. *National Union of Hosp. Emps. v. Board of Regents*, [2010-NMCA-102](#), [149 N.M. 107](#), [245 P.3d 51](#), cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

**An arbitration award that requires a public employer other than the state** to expend funds is contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, [2009-NMCA-097](#), [147 N.M. 6](#), [216 P.3d 256](#), cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Arbitration decision contingent upon appropriation of funds.** — Where a municipality and a union reached an impasse in their negotiations over wages; the parties entered into an agreement to resolve the impasse by arbitration and selected an arbitrator; the arbitrator entered an arbitration award pursuant to [Section 10-7E-18 NMSA 1978](#) that awarded a wage increase to the union; and the municipality did not appropriate funds to pay the wage increase, the union could not enforce the

arbitration award by an action in district court because, under Section 10-7E-17 NMSA 1978, the arbitration award was contingent upon the appropriation and availability of funds. *International Assn. of Firefighters v. City of Carlsbad*, 2009-NMCA-097, 147 N.M. 6, 216 P.3d 256, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Lack of evergreen clause.** — Where the municipality and labor unions reached an impasse in negotiations to replace existing collective bargaining agreements; the municipal labor management ordinance did not require that expiring collective bargaining agreements continue in full force and effect until replaced by subsequent agreements; and no municipal appropriation had occurred to extend the agreements and the municipality did not have available funds to fund the economic components of the extension of the agreements, the Public Employee Bargaining Act did not apply to the economic components of the existing agreements because provisions of collective bargaining agreements that require an expenditure of funds are subject to Subsection E of Section 10-7E-17 NMSA 1978, which requires the specific appropriation and availability of funds and the Act did not require the extension of the existing agreements in conflict with Subsection E of Section 10-7E-17 NMSA 1978. *AFSCME Council 18 v. City of Albuquerque*, 2013-NMCA-012, 293 P.3d 943, cert. granted, 2013-NMCERT-001.