

## 10-7E-1. Short title.

Chapter 10, Article 7E NMSA 1978 may be cited as the "Public Employee Bargaining Act".

**History:** Laws 2003, ch. 4, § 1 and by Laws 2003, ch. 5, § 1; 2005, ch. 333, § 1.

### ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

**Punitive damages.** — Punitive damages are available in actions for breach of the duty of fair representation where the union's conduct is malicious, willful, wanton, reckless, fraudulent or in bad faith. *Akins v. United Steel Workers of Am.*, 2010-NMSC-031, 148 N.M. 442, 237 P.3d 744, *aff'g* 2009-NMCA-051, 146 N.M. 237, 208 P.3d 457.

Where after being subjected to overt racism in the workplace, the plaintiff called upon the union to file a grievance and the union refused to do so; the plaintiff was the only African-American working in the plaintiff's department; the plaintiff's coworkers refused to speak English to the plaintiff and the plaintiff's supervisor would only issue orders in Spanish, a language which the plaintiff did not speak; when the plaintiff complained to the defendant's supervisor that the plaintiff could not speak or understand Spanish, the supervisor continued to give orders in Spanish; when the plaintiff asked the union to file a grievance on his behalf, the plaintiff was told by the union president that the plaintiff was of the "wrong color" and that the plaintiff needed to learn to speak Spanish, the union's conduct was sufficiently reprehensible to allow the issue of punitive damages to be considered by the jury. *Akins v. United Steel Workers of Am.*, 2009-NMCA-051, 146 N.M. 237, 208 P.3d 457, *aff'd*, 2010-NMSC-031, 148 N.M. 442, 237 P.3d 744.

**Duty of fair representation.** — Public employee unions owe union members a duty of fair representation. When a complaint arises from a union's representation of employees in a grievance proceeding, the cause of action is for breach of the duty of fair representation, not for breach of a fiduciary duty. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

**Proof of breach of duty of fair representation.** — Breach of the duty of fair representation requires a showing of arbitrary, fraudulent, or bad faith conduct, not a simple showing of negligent representation. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

**Covenant of good faith and fair dealing.** — Breach of implied covenant of good faith and fair dealing is subsumed within claims for breach of duty of fair representation. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

**Third-party beneficiary claims.** — In order to state a claim against union for breach of collective bargaining agreement as third-party beneficiaries, union members must assert a promise that union made to employer and to union members as third-party beneficiaries, which union subsequently broke. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

**Exhaustion of administrative remedies.** — Because breach of duty of fair representation is not listed as a prohibited practice, union members are not required to bring their claims of breach of the duty of fair representation before the public employees labor relations board or the local labor relations board in order to exhaust their administrative remedies. *Callahan v. N.M. Fed'n of Teachers TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

**Law reviews.** — For article, "Correcting the Imbalance — The New Mexico Public Employee Bargaining Act and the Statutory Rights Provided to Public Employees", see 37 N. M. L. Rev. 357 (2007).