

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

2267

2007 SENATE POLITICAL SUBDIVISIONS

SB 2267

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2267**

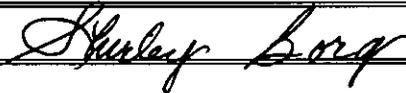
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2549**

Committee Clerk Signature



Minutes:

**Chairman Cook** called the Senate Political Subdivisions committee to order. All members(5) present.

**Chairman Cook** opened the hearing on SB 2267 relating to the definition of employer for labor-management relations purposes.

**Representative Schneider**, District 21, Fargo, ND. Introduced SB 2267 as an attorney representing ND Public Employees Association. I see first hand the need for collective bargaining in the state. What this bill does simply forces in this session, why is North Dakota not recognizing as an employer for collective bargaining purposes. Collective bargaining in North Dakota already exists but the state of North Dakota and its political subdivisions are excluded from participating.

**Jodee Buhr**, Executive Director of the ND Public Employees Association, testified in support of SB 2267. (See attachment #1)

**Senator Heitkamp**, District 26, testified in support of SB 2267. This bill is in front of the committee because, first off if you take a look at what it does; it restricts ND from an exemption. Does it need an exemption? What we are saying is they are an employer and so

that is what the bill does, it recognizes that fact. Compared with other states and take a look at where they are at and where we are at. (See attachment #2)

**Chairman Cook** asked how our roll as legislatures would change.

**Senator Heitkamp** answered it would empower the employees more. They would have the right to set at the table and make their case.

**Nick Whitman**, Executive Director, North Dakota Education Association, testified in support of SB 2267. (Attachment #3)

**Gary Feist**, President, North Dakota Public Employees Association and also a member of the State Employee Compensation Commission. The commission is set up for the employees to give a voice and recommend what they would like for salary increases. What we are asking for in the collective bargaining is to have a voice in the process, not only about salaries but about working conditions we are facing as state employees and social subdivisions people.

**David Kemnitz**, President of ND AFL-CIO testified in support of SB 2267. He discussed subsection 3 of sections 34-12-01. He had a concern with the fiscal note and challenges it. It disturbs him that \$1,055,161 can be applied to something that is already in law. If human resource directors don't understand now they should have. The human resource departments can go to the Supreme Court library and find information on any thing they want to know on labor management. He asks the committee to challenges the fiscal note and ask in detail and where that fiscal note would apply and how did those numbers be put to something as simple as 34-12 that is already in existence.

**Teresa Schafer**, Correction Officer, ND State Penitentiary, speaking for herself, testified in support of SB 2267. (See Attachment # 4)

**John Risch**, United Transportation Union Railroad Worker across the state testified in support of SB 2267. Collective bargaining is not just something that benefits employees. It is a

positive thing and is a means of working out disputes or issues in the work place that is beneficial to not just employees but to employers as well. They support our public employees. He feels the fiscal note is out of hand.

**Christopher Dobson**, North Dakota Catholic Conference, testified in support of SB 2267. He presented a different perspective on this issue. It's been for over one hundred years that the church has called it its mission to promote the dignity of workers including the right to unionize and collectively bargain. The rights are bases on the human person and the person's transcendent dignity and that includes the right to negotiate with employers collectively. That right is an indispensable right of social life.

Testimony in opposition.

**Bob Frantsrog**, representing ND League of Cities in opposition to SB2267. The city of Minot had two active unions, one with police and one with fire. About 15 years ago we were sued by the union. Every ten years the city of Minot has a pay study. Our pay plan for our employees is market driven. We survey comparable political subdivision and based on the responses we determine the salaries for the coming year. Political subdivisions can operate without collective bargaining.

No further testimony in favor, opposed or neutral to SB 2267.

**Chairman Cook** closed the hearing on SB 2267.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2267**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 2, 2007**

**Recorder Job Number: 2716**

Committee Clerk Signature

*Shirley Long*

Minutes:

**Chairman Cook** called the Senate Political Subdivisions to order. All members (5) present.

**Chairman Cook:** We have before us SB 2267.

**Senator Warner** moved a Do Pass.

**Senator Anderson** seconded the motion.

Discussion:

**Senator Hacker:** In the as is condition on SB 2267 I would have to oppose this motion. It would take a lot of amendments for me to support the bill.

**Chairman Cook:** Said it would take a few amendments on it for me to support the bill.

Roll call vote: Yes 3 No 2 Absent 0

**Senator Olafson** moved a **Do Not Pass**.

**Senator Hacker** seconded the motion.

Discussion :

**Senator Hacker:** It would take a lot of amendments but I think there are areas in our state that I think it would be very good.

**Senator Warner:** If we did amend it, a lot of areas would have to be carved out.

**Chairman Cook:** I support that public servants can not strike. That is what makes it difficult for collective bargaining to be successful.

Roll call vote: Yes 3 No 2 Absent 0

Carrier: **Senator Hacker**

# FISCAL NOTE

Requested by Legislative Council

01/19/2007

Bill/Resolution No.: SB 2267

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$1,055,161	\$58,594	\$1,459,618	\$60,937
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill removes the provision excepting the state and political subdivisions from the ND Labor-Management Relations Act.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This act would necessitate adding labor relations staff to the Labor Commissioners Office for administration of the act. It would also necessitate staff in the HRMS Division of OMB and in the Attorney General's Office to work with agencies and any bargaining units formed. In order to avoid conflict of interest, legal services for the Labor Commissioner would either be separate Attorney General staff or outside labor relations counsel.

Coverage would include up to 14,000 state employees (incl Higher Ed) and up to 36,000 employees of political subdivisions (source: Job Service 2006 Area Profiles – Statewide).

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimates include:

Labor Department: 4 positions (2 professional, 2 support), Office Equipment, Reference resources. \$567,781 for 07-09.

HRMS – OMB: 3 positions (2 professional, 1 support), Office Equipment, Reference resources. \$311,600 for 07-09.

Attorney General: 1 staff attorney. \$234,374 for 07-09.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

<b>Name:</b>	Ken Purdy	<b>Agency:</b>	HR Management Services
<b>Phone Number:</b>	328-4739	<b>Date Prepared:</b>	01/25/2007





**REPORT OF STANDING COMMITTEE**

**SB 2267: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO NOT PASS (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2267 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

SB 2267



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PUBLIC EMPLOYEES ASSOCIATION

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TESTIMONY OF JODEE BUHR  
ON SB 2267  
BEFORE SENATE POLITICAL SUBDIVISIONS COMMITTEE  
FEBRUARY 1, 2007

Good morning Chairman Cook and Committee Members. My name is Jodee Buhr, Executive Director of the North Dakota Public Employees Association, AFT Local #4660. I would like to begin by thanking the sponsors of this bill: Senators Heitkamp, Bakke, and Potter and Representatives Amerman, Delmore, and Schneider. NDPEA strongly supports SB 2267, a bill which would bring collective bargaining rights to state employees and political subdivisions, a right afforded all other workers in the state of North Dakota.

Chairman Cook and Committee members, we are asking that you update the definition of "employer" in the North Dakota Labor-Management Relations Act (NDCC Section 34-12-01). The change proposed in SB 2267 is to remove the exclusion of state employees and political subdivisions from the existing definition of "employer" in Section 34-12-01. This change would grant state employees and political subdivisions the same right extended to all other North Dakota workers.

*Quality Services from Quality People*

# Testimony

What is collective bargaining and why do we need it? Simply stated, **collective bargaining is a democratic process used by an employer and employees to discuss and determine wages, hours of work, and conditions of employment.** Collective bargaining helps ensure the efficient deliverance of quality services to the citizens of North Dakota through the use of a written agreement between the employee and the employer. Collective bargaining will give our public employees a voice in the decisions that affect their jobs by allowing us to negotiate as equals with the state in determining our salary, benefits, and conditions of employment. The voice of employees in the workplace is a vital component to the successful operation of every agency!

In addition to a right that is granted to ALL other North Dakota workers, collective bargaining is allowed for public employees in every state surrounding North Dakota. In fact, thirty states currently allow collective bargaining for their public employees. Attached to my testimony please find copies of collective bargaining "policy statements" from Montana, Washington, New Mexico, and Minnesota. It is my hope that this information will help you understand why other states have implemented collective bargaining for their public employees. As stated in the handout from the state of Washington, the intention behind collective bargaining is ultimately "...to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services." (Washington State "Intent - Construction" RCS 41.58.005). Some of the most innovative and effective worker involvement programs in this country are in the organized workplace. Through the collective

bargaining process, government can be more efficient, more responsive, and work-quality assured.

As you know, we have been working with legislators on both sides of the aisle on other critical public employee issues throughout this Legislative Session and we have worked hard to convey the message that public employees are valuable and essential to our State and that they need to be a priority this Session! If we truly want to convey this message and empower our employees, we will afford them the right to be involved in discussions on how to make government more efficient, more responsive and customer driven.

We are here today in support of SB 2267 because we strongly believe that state employees and political subdivisions deserve the same right as all other North Dakota workers! A right afforded to North Dakotans in the private sector, federal employees and K-12 educators. I challenge you to trust our public employees and allow them to have access to this democratic process.

SB 2267 is the first step in accomplishing this. The next step would be to work together, in a collaborative effort, with all necessary parties – the Governor's office, legislators, agency heads, the Labor Department, etc. to develop the parameters of collective bargaining for state employees and political subdivisions. We are not here today to deliberate what exactly the parameters would be – this step would need to take place AFTER the passage of this bill. However, it is important to remember that the Legislature retains the final authority over the funds necessary to implement an

agreement. Chairman Cook and Committee members, all we are asking of you today is to take the first step – and grant public employees the same right that has been given to ALL other North Dakota workers.

The passage of SB 2267 would allow us to take the next step and begin developing the parameters through discussions and negotiations between the involved parties. This process would take time and consequently, we believe the fiscal note submitted is premature. After all parties involved have discussed the parameters, we would then have a more accurate idea of what resources may be needed to move forward and most likely, these resources would be considerably less than the fiscal note reflects. Please remember that we currently have human resource personnel in almost every state agency who are trained, or capable of being trained, in employer-employee relations. These employees are an existing resource and would be critical in the implementation and maintenance of the collective bargaining process. As mentioned, it will take time for all parties involved to meet and develop the parameters. Only after these discussions have occurred and the parameters have been developed will we know what, if any, additional resources may be needed for implementation. Based on the timeline necessary for planning and discussion, we believe that any additional resources would not be needed until the 2009-2011 biennium at the earliest.

On behalf of public employees, NDPEA is asking you to open the door to the democratic process for our hard-working, dedicated public employees! NDPEA supports SB 2267

and urges a DO PASS. Thank you for your consideration of SB 2267. I would be happy to answer any questions you may have.

## Montana Code Annotated 2005

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**39-31-101. Policy.** In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

**History:** En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

*Provided by Montana Legislative Services*

[RCWs > Title 41 > Chapter 41.58 > Section 41.58.005](#)

Beginning of Chapter << [41.58.005](#) >> [41.58.010](#)

### RCW 41.58.005 Intent — Construction.

(1) It is the intent of the legislature by the adoption of chapter 296, Laws of 1975 1st ex. sess. to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the public employment relations commission from other boards and commissions. It is further the intent of the legislature, by such transfer, to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services.

(2) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any existing collective bargaining unit or the provisions of any existing bargaining agreement.

(3) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any power or authority regarding the scope of collective bargaining in the employment areas affected by chapter 296, Laws of 1975 1st ex. sess., but chapter 296, Laws of 1975 1st ex. sess. shall be construed as transferring existing jurisdiction and authority to the public employment relations commission.

(4) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to prohibit the consideration or adjustment of complaints or grievances by the public employer.

[1975 1st ex.s. c 296 § 1.]

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## New Mexico Statutes

Statutory Chapters in New Mexico Statutes Annotated 1978  
CHAPTER 10 PUBLIC OFFICERS AND EMPLOYEES  
ARTICLE 7E PUBLIC EMPLOYEE BARGAINING  
10-7E-2. Purpose of act. (2003)

## 10-7E-2. Purpose of act. (2003)

The purpose of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] is 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 ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

History: Laws 2003, ch. 4, § 2 and by Laws 2003, ch. 5, § 2.

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**179A.01, Minnesota Statutes 2006**

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**179A.01 PUBLIC POLICY.**

It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.

The relationships between the public, public employees, and employer governing bodies involve responsibilities to the public and a need for cooperation and employment protection which are different from those found in the private sector. The importance or necessity of some services to the public can create imbalances in the relative bargaining power between public employees and employers. As a result, unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary.

Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution. Within these limitations and considerations, the legislature has determined that overall policy is best accomplished by:

- (1) granting public employees certain rights to organize and choose freely their representatives;
- (2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing that the result of bargaining be in written agreements; and
- (3) establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large.

Nothing in sections 179A.01 to 179A.25 impairs, modifies, or alters the authority of the legislature to establish rates of pay, or retirement or other benefits for its employees.

**History:** 1984 c 462 s 2

**CHAPTER 34-12**  
**NORTH DAKOTA LABOR-MANAGEMENT RELATIONS ACT**

**34-12-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the North Dakota labor commissioner, the labor commissioner's successor, or the labor commissioner's duly authorized deputy.
2. "Employee" includes any employee, and is not limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but does not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at that family's or person's home, or any individual employed by that individual's parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor or guard, or any individual employed by an employer subject to the Railway Labor Act [Pub. L. 69-257; 44 Stat. 577; 45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.
3. "Employer" includes any person acting as an agent of an employer, directly or indirectly, but does not include the United States or any wholly owned government corporation, or any federal reserve bank, or any state or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act [Pub. L. 69-257; 44 Stat. 577; 45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any farmer.
4. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
5. "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, or receivers.
6. "Representatives" includes any individual or labor organization.
7. "Unfair labor practice" means any unfair labor practice as provided in section 34-12-03.

**34-12-02. Right of employees as to organization, collective bargaining.** Employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also have the right to refrain from any or all of such activities and are free to decline to associate with their fellows and are free to obtain employment wherever possible without interference or being hindered in any way.

**34-12-03. Unfair labor practices.**

1. It is an unfair labor practice for any employer:

- a. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 34-12-02.
  - b. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. This may not be construed to prohibit an employer from conferring with employees or their bona fide representatives and including, but not by way of limitation, explaining the position of management in connection with the problems of the employer during working hours without the loss of pay.
  - c. By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
  - d. To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony under this chapter.
  - e. To refuse to bargain collectively with the representatives of the employer's employees, subject to section 34-12-02.
2. It is an unfair labor practice for a labor organization or its agents:
- a. To restrain or coerce employees in the exercise of rights guaranteed in section 34-12-02, provided that a labor organization may prescribe its own rules for the acquisition and maintenance of membership in said labor organization.
  - b. To cause or attempt to cause an employer to discriminate or restrain or coerce employees in the exercise of rights set forth in section 34-12-02.
  - c. To restrain or coerce an employer in the selection of the employer's representatives or to refuse to bargain with an employer if the labor organization or its agent is the representative of the employer's employees.
  - d. To force or attempt to force an employer or self-employed person to join any organization.
  - e. To engage in, or to induce or encourage any employee to engage in, a strike or a refusal in the course of the employee's employment to use or work on any goods, articles, materials or commodities, or to perform any services, or to threaten, coerce, or restrain any person for the purpose of forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any employer to recognize or bargain with a labor organization as the representative of the employer's employees unless the labor organization has been certified as the representative of the employer's employees under the provisions of section 34-12-05; but nothing in this subsection may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing, and nothing contained in this subsection may be construed to make unlawful a refusal by any person to enter upon the premises of any employer, other than the person's own employer, if the employees of the other employer are engaged in a lawful strike.
  - f. To require of employees as a condition for membership the payment of fees found by the commissioner to be excessive or discriminatory.
  - g. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

- h. To make, circulate, or cause to be circulated a black list.
  - i. To coerce or intimidate an employee in the enjoyment of the employee's legal rights, or to intimidate the employee's family or any member thereof, picket the employee's domicile, or injure the person or property of the employee or the employee's family or of any member thereof.
  - j. To hinder or prevent by unlawful picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
3. It is unfair labor practice for a person:
- a. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 34-12-02.
  - b. To coerce or intimidate an employee in the enjoyment of the employee's legal rights, or to intimidate the employee's family or any member thereof, picket the employee's domicile, or injure the person or property of the employee, the employee's family, or any member thereof.
  - c. To hinder or prevent by unlawful picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or exit from any place of employment, or to obstruct or interfere with free and uninterrupted use of entrances, public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
4. The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of an unfair labor practice under this chapter if the expression contains no threat of reprisal or force or promise of benefit.

**34-12-04. Collective bargaining.**

- 1. For the purposes of this chapter, to bargain collectively means the performance of the mutual obligations of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation or renegotiation of an agreement, or any question thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- 2. When there is in effect a collective bargaining contract, the duty to bargain also means that no party to such contract may terminate or modify such contract at the conclusion of its term until sixty days after either party mails notice of a desire to terminate or to modify. A strike or lockout for economic purposes is unlawful until the end of the sixty-day period. The duty to bargain collectively continues despite termination of a collective bargaining contract unless the employee bargaining representative has lost its majority status.

**34-12-05. Exclusive representation - Employees' adjustment of grievances directly with employer.**

- 1. Representatives designated or selected for the purpose of collective bargaining of the employees in a unit appropriate for such purposes are exclusive representatives

of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

2. Any individual employee or group of employees has the right at any time to present grievances to the individual's or group's employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative must be given an opportunity to be present at such adjustment.

**34-12-06. Determination of bargaining unit by commissioner.** The commissioner shall decide in each case whether in order to assure to employees the fullest freedom in exercising rights guaranteed by this chapter, the unit appropriate for the purposes of collective bargaining is the employer unit, craft unit, plant unit, or subdivision thereof. The commissioner may not:

1. Decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit.
2. Decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior commissioner determination, unless a majority of the employees in the proposed craft unit vote against separate representation.
3. Decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization may be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

In determining whether a unit is appropriate, the extent to which the employees have organized is not controlling.

**34-12-07. Informal conference - Hearing on representation questions - Election requirements.**

1. The commissioner shall promptly fix a date for an informal conference upon due notice to all parties whenever a petition has been filed, in accordance with this chapter:
  - a. By an employee or group of employees or any individual or labor organization acting in the employee's or group's behalf alleging that at least thirty percent of employees wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 34-12-05, or assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 34-12-05; or
  - b. By an employer, alleging that one or more individuals or labor organizations have presented to the employer a claim to be recognized as the representative defined in section 34-12-05.
2. If upon the informal conference:

- a. All parties agree that a question of representation exists and consent to an election, the commissioner shall conduct an election upon secret ballot forthwith.
- b. The parties cannot agree that a question of representation exists, the commissioner shall hold a hearing and if upon such hearing the commissioner finds a question of representation exists, the commissioner shall conduct an election by secret ballot and shall certify the results thereof.

No election may be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period a valid election has been held. Employees on strike who are not entitled to reinstatement are not eligible to vote. In any election in which none of the choices on the ballot receives a majority, a runoff must be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

3. When a petition is filed as above provided, or the bargaining representative has been questioned, or a strike is to be called by the bargaining representative certified to represent employees, and the issue cannot be determined informally, the commissioner shall notify the employees, the employer, and such other persons as the commissioner deems necessary, requiring employees and the employer to each appoint a representative to act with the commissioner in the conduct of an impartial and secret ballot election to determine a bargaining agent, or whether a strike shall be had, or determine whether the present bargaining agent is no longer the representative bargaining agent. If any party shall decline or neglect to appoint a representative, the commissioner shall appoint some fair and impartial person to act as such party's representative. Such election board, consisting of a representative of the employees, a representative of the employer, and the commissioner shall thereupon designate a reasonable time within ten days after such board is constituted when such vote must be held, which election must be upon the premises of the employer during working hours. The board shall conduct an impartial secret ballot in which all employees of the appropriate bargaining unit involved have the right to cast a vote. Within twenty-four hours immediately after the completion of the election, such election board shall make an accurate and complete tabulation of the votes cast in such election and shall prepare a written certificate, which must bear the signature of the commissioner, and a copy of such certificate must be delivered to the employer and to the employees or their bargaining agent.
4. No election is valid unless at least fifty-one percent of the employees in the appropriate bargaining unit cast valid ballots. If fifty-one percent of the employees in the appropriate bargaining unit fail to cast valid ballots at such election, a second election must be held forthwith. If on such second election fifty-one percent participation is not obtained, no further elections may be held for a period of one year.

**34-12-08. Authority of commissioner.** Whenever it is charged that any person is engaged in or has engaged in any unfair labor practice, the commissioner shall investigate the charges informally and if it appears that an unfair labor practice is occurring or has occurred, the commissioner has power to issue and cause to be served upon such person a written specification of the issues which are to be considered and determined. If, upon the evidence, the commissioner is of the opinion that any person named in the written specifications has engaged in or is engaging in any such unfair labor practice, the commissioner shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without backpay, as will effectuate the policies of this chapter. When an order requires reinstatement of an employee, backpay may be required of the employer or employee organization, as the case may be, responsible for the discrimination suffered by the employee. No order of the commissioner may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the individual of any backpay, if such

individual was suspended or discharged for cause. If the order is not obeyed, the commissioner has the authority to apply to the appropriate district court for such action as is necessary to enforce the commissioner's order, including injunction and mandamus proceedings. The commissioner may act as a conciliator in any labor dispute.

**34-12-09. Power to promulgate regulations.** The commissioner has the authority to promulgate reasonable regulations to effectuate the purposes of this chapter.

**34-12-10. Applicability of chapter 28-32.** All proceedings hereunder and all appeals to the courts are governed by the provisions of chapter 28-32.

**34-12-11. Right of suit for damages preserved.** Any person injured in person or property by reason of the commission of an unfair labor practice as defined in this chapter may sue therefor in the district court and shall recover the damages sustained by that person and the cost of the suit.

**34-12-12. Reporting by labor organization.** The commissioner is hereby designated as the official of the state of North Dakota authorized to receive copies of reports made to the secretary of labor of the United States by virtue of the Labor-Management Reporting and Disclosure Act of 1959 [Pub. L. 86-257; 73 Stat. 525; 29 U.S.C. 432], as amended from time to time. In the event such reports have not been made to the secretary of labor of the United States by a labor organization, such labor organization shall file with the commissioner, within ninety days after the close of its fiscal year, a report giving the name of the labor organization, its mailing address, and the name, title, and address of each of its officers. The governor shall request copies of all reports filed by labor organizations subject to the jurisdiction of the state of North Dakota from the United States secretary of labor.

**34-12-13. Severability clause.** Repealed by S.L. 1983, ch. 82, § 154.

**34-12-14. Short title.** This chapter may be cited as the North Dakota Labor-Management Relations Act.

SENATE BILL 2267  
EXPLANATION OF CHAPTER 34-12:  
NORTH DAKOTA LABOR-MANAGEMENT RELATIONS ACT

**34-12-01. Definitions.**

This section outlines the definitions of Chapter 34-12. It is in this section that the term "employer" is defined.

**34-12-02. Right of employees as to organization, collective bargaining.**

This section addresses an employee's rights and specifically protects employees in their decision to join or not to join an employee organization.

**34-12-03. Unfair labor practices.**

This section identifies those activities that are unfair labor practices for both the employer and employee organization. This section specifically prohibits a labor organization or its agents from engaging in, or encouraging any employee to engage in, a strike or work stoppages. However, nothing in this subsection may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

**34-12-04. Collective bargaining.**

This section addresses the right to bargain. This section sets out the requirement of the employer and the exclusive representative to meet and negotiate, in good faith, with respect to wages, hours, and other terms and conditions of employment.

**34-12-05. Exclusive representation – Employees' adjustment of grievances directly with employer.**

This section identifies as the exclusive representative that organization which has been recognized as the representative of the majority of employees.

This section also identifies the right of an employee, or group of employees, to present grievances to the employer and to have such grievance adjusted.

**34-12-06. Determination of bargaining unit by commissioner.**

This section establishes that the Labor Commissioner shall determine the labor units and outlines the requirements to follow in establishing said units. The section requires the

Labor Commissioner to establish the units in a manner that assures to employees the fullest freedom in exercising rights guaranteed under this chapter.

**34-12-07. Informal conference – Hearing on representation questions – Election requirements.**

This section relates to elections and possible recognition of an exclusive representative. This section provides for a democratic process of elections to determine if employees want an employee organization to represent them for the purposes of collective bargaining. Employees are guaranteed the option of “no representation” on the secret ballot election.

**34-12-08. Authority of commissioner.**

This section requires the Labor Commissioner to investigate unfair labor practice charges.

**34-12-09. Power to promulgate regulations.**

This section sets forth the authority of the Labor Commissioner to promulgate reasonable regulations, as necessary, to carry out the provisions of this chapter.

**34-12-10. Applicability of chapter 28-32.**

This section states that all proceedings and all appeals to the courts, relative to this chapter, are governed by the provisions of chapter 28-32 (Administrative Agencies Practice Act).

**34-12-11. Right of suit for damages preserved.**

This section specifically addresses the right of any person injured in person or property under the unfair labor practices set forth in this chapter, to sue in the district court and shall recover the damages sustained.

**34-12-12. Reporting by labor organization.**

This section sets forth that the Labor Commissioner is authorized to receive reports made to the secretary of labor of the United States and requires the Governor to request copies of reports filed by labor organizations.

**34-12-13. Severability clause.**

Repealed by S.L. 1983, ch. 82, section 154.

**32-12-14. Short title.**

This section provides that the chapter may be cited as the North Dakota Labor-  
Management Relations Act.



**AFSCME**  
IN THE PUBLIC SERVICE

Attachment # ~~2~~ <sup>2</sup>

## Collective Bargaining

Home > Collective Bargaining > Public Sector Collective Bargaining Laws

### Public Sector Collective Bargaining Laws

NOTE: These links go to the most current version of the law available on the Web. They may not be the most current law and should be used with caution.

#### Alaska

Public Employment Relations Act — Alaska Statutes Title 23, Ch. 40, § 23.40.070 et seq.

Employees of the Alaska Railroad Corporation — Alaska Statutes Title 42, Ch. 40, § 42.40.720 et seq.

#### California

State Employer-Employee Relations (Ralph C. Dills Act) — Government Code §§ 3512-3524

Excluded Employees Bill of Rights — Government Code §§ 3525 - 3539.5

Local Public Employee Organizations (Meyers-Milias-Brown Act) — Government Code §§ 3500-3510

Public Educational Employer-Employee Relations Act — Government Code §§ 3540 - 3549.3

Higher Education Employer-Employee Relations — Government Code §§ 3560-3599

Fire Fighters: Right to Bargain Collectively — Labor Code §§ 1960-1964

#### Connecticut

Municipal Employee Relations Act — Conn. Gen. Stats., Title 7, § 7-467 et seq.

Employee Collective Bargaining Act — Conn. Gen. Stats., Title 5, § 5-270 et seq.

Teachers' bargaining rights — Conn. Gen. Stats., Title 10, Ch. 166, § 10-153a et seq.

#### Delaware

Public Employment Relations Act — Del. Code Ann. Title 19, §§ 1301-1318

Police Officers' and Firefighters' Employment Relations Act — Del. Code Ann. Title 19, §§ 1601-1618

Public School Employment Relations Act — Del. Code Ann. Title 14, §§ 4001-4018

#### District of Columbia

Public employee bargaining rights — D.C. Code Ann. § 1-617.01 et seq.

#### Florida

Public Employees Act — Fla. Stats., Ch. 447, § 447.201 et seq.

#### Georgia

Firefighters' bargaining rights — Ga. Code Ann. §§ 45-19-1 to 45-19-5

#### Hawaii

Public employee bargaining rights — Hawaii Rev. Stats., Ch. 89, § 89-1 et seq.

#### Idaho

Teachers' bargaining rights — Idaho Code §§ 33-1271 to 33-1276

Firefighters' bargaining rights — Idaho Code §§ 44-1801 to 44-1811

#### Illinois

Illinois Public Labor Relations Act — 5 Ill. Comp. Stat. Ann. 315/1 - 315/27

Illinois Educational Labor Relations Act — 115 Ill. Comp. Stat. Ann. 5/1 - 5/20

#### Iowa

Public Employment Relations Act — Iowa Code §§ 20.1 - 20.26

Child care providers: Executive Order No. 45 and Executive Order No. 46, 2006

**Kansas**

*Look up acts in the Kansas Statutes:*

Public Employer-Employee Relations Act — Kan. Stat. Ann. §§ 75-4321 to 75-4337

Teachers' bargaining rights — Kan. Stat. Ann. §§ 72-5410 to 72-5437

**Kentucky**

Firefighters' bargaining rights — Kentucky Rev. Statutes, Ch. 345, § 345.010 et seq.

Police bargaining rights — Kentucky Rev. Statutes, Ch. 78, § 78.400 et seq.

**Maine**

Judicial Employees Labor Relations Act — Me. Rev. Stat. Ann., Title 26, §§ 1281-1294

State Employee Labor Relations Act — Me. Rev. Stat. Ann., Title 26, §§ 979-979-Q

University of Maine System Labor Relations Act — Me. Rev. Stat. Ann., Title 26, §§ 1021-1035

Municipal Public Employees Labor Relations Law — Me. Rev. Stat. Ann., Title 26, §§ 961-974

**Maryland**

State employees collective bargaining law — Md. Code Ann., State Personnel and Pensions § 3-101 et seq.

Noncertificated public school employees bargaining rights — Md. Code Ann., Educ. §§ 6-501 - 6-510

Teachers — Md. Code Ann., Educ. §§ 6-401 - 6-411

Maryland-National Capital Park and Planning Commission employees — Md. Code Ann., art. 28, § 5-114.1

**Massachusetts**

Public employee bargaining rights — Mass. Ann. Laws, Ch. 150E, §§ 1-15

**Michigan**

Public Employment Relations Act — Mich. Comp. Laws Ann. §§ 423.201 to 423.216

Michigan Civil Service Commission Employee Relations Policy — Michigan Department of Civil Service Rules, Chapter 6

Michigan Const. Art. XI

Police Troopers and Sergeants — Mich. Comp. Laws Ann. §§ 423.271 to 423.286

Police and Firefighters — Mich. Comp. Laws Ann. § 423.231 to 423.246

**Minnesota**

Public Employment Labor Relations Act — Minn. Stat. §§ 179A.01 - 179A.25

**Missouri**

Public employee bargaining rights — Mo. Rev. Stat. §§ 105.500 - 105.530

**Montana**

Collective Bargaining for Public Employees — Mont. Code Ann. §§ 39-31-101 to 39-31-409

Collective Bargaining for Nurses — Mont. Code Ann. §§ 39-32-101 to 39-32-114

**Nebraska**

State Employees Collective Bargaining Act — Nebraska Const. Article 13, Ch. 81, § 81-1369 et seq. (*WARNING: Large (3103 K) document; must scroll to section*)

Industrial Relations Act — Nebraska Const. Article 8, Ch. 48, § 48-801 et seq. (*must scroll to section*)

**Nevada**

Local Government Employee-Management Relations Act — Nev. Rev. Stat. Ann. §§ 288.010-288.280

**New Hampshire**

Public Employee Labor Relations — N.H. Rev. Stat. Ann. §§ 273-A.1 to 273-A.17

Dog and Horse Racing Employees — N.H. Rev. Stat. Ann. §§ 273-C.1 to 273-C.14

**New Jersey**

New Jersey Employer-Employee Relations Act — N.J. Stat. Ann. §§ 34:13A-1 to 34:13A-13

Police and Fire Public Interest Arbitration Reform Act — N.J. Stat. Ann. §§ 34:13A-14 to 34:13A-21

**New Mexico**

Public Employee Bargaining Act — New Mexico Statutes Annotated 10-7E-1 to 10-7E-26

**New York**

Public Employees' Fair Employment Act (Taylor Act) — N.Y. Civ. Serv. Law §§ 200-214  
New York City Employees — N.Y. City Charter Ch.54; N.Y. Admin. Code, Sec. 1173-1.0 et seq.

*NOTE: The NY City Charter and Administrative Code are available online at <http://public.leginfo.state.ny.us/menuf.cgi>. Click on "Laws of New York" then scroll down to "Miscellaneous", under which you will find these codes.*

**North Dakota**

*No public sector bargaining laws.*

**Ohio**

Public Employees' Collective Bargaining — Ohio Rev. Code Ann. §§ 4117.01-4117.23

**Oklahoma**

School employees — Okla. Stat. Ann., Title 70, Ch. 70, §§ 509.1 - 509.10  
Fire and Police Arbitration Law — Okla. Stat. Ann., Title 11, Ch. 256, §§ 51-101 to 51-112

**Oregon**

Public Employee Collective Bargaining Act — O.R.S. § 243.650 et seq.

**Pennsylvania**

Public Employee Relations Act — Pa. Stat. Ann., Title 43, §§ 1101.101 - 1101.2301  
Police and firefighters — Pa. Stat. Ann., Title 43, §§ 217.1-217.10 (*not online*)

**Rhode Island**

Organization of State Employees — R.I. General Laws, § 36-11-1 et seq.  
Arbitration of Labor Controversies — R.I. General Laws, § 28-9-1 et seq.

**South Dakota**

Public Employees' Unions — S.D. Codified Laws §§ 3-18-1 to 3-18-17

**Tennessee**

Education Professional Negotiations Act — Tenn. Code. Ann. §§ 49-5-601 to 49-5-613 (*must scroll to sections*)

**Texas**

Fire and Police Employee Relations — Tex. Loc. Gov't Code Ann. § 174.001 et seq.

**Vermont**

State Employees Labor Relations Act — Vt. Stat. Ann., Title 3, Ch. 27, §§ 901-1006  
Vermont Municipal Labor Relations Act — Vt. Stat. Ann., Title 21, Ch. 22, §§ 1721-1735  
Vermont State Labor Relations Act — Vt. Stat. Ann., Title 21, Ch. 19, §§ 1501-1623  
Labor Relations for Teachers Act — Vt. Stat. Ann., Title 16, Ch. 57, §§ 1981-2010

**Washington**

State civil service employees' bargaining rights — Was. Rev. Code § 41.06.150 et seq.  
Public Employees' Collective Bargaining — Was. Rev. Code § 41.56.010 et seq.  
Educational Employment Relations Act — Was. Rev. Code § 41.59.010 et seq.  
Collective Bargaining - Academic Personnel in Community Colleges — Was. Rev. Code § 28B.52.010 et seq.  
Marine Employees - Public Employment Relations — Was. Rev. Code § 47.64.011 et seq.  
Port District Employees - Collective bargaining and arbitration — Was. Rev. Code § 53.18.010 et seq.

**Wisconsin**

State employees' bargaining rights — Wis. Stat. Ann. §§ 111.80 - 111.97  
Municipal employees' bargaining rights — Wis. Stat. Ann. §§ 111.70 - 111.77

**Wyoming**

Collective Bargaining for Fire Fighters — Wyo. Stat. Ann. §§ 27-10-101 to 27-10-109



# North Dakota Education Association

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## MEMORANDUM

**TO:** North Dakota Senate Political Subdivisions Committee  
**FROM:** Nick Whitman, Executive Director  
**DATE:** January 31, 2007  
**RE:** Senate Bill No. 2267

My testimony will include references to my personal involvement with collective bargaining as an attorney that has worked with the collective bargaining laws in Wisconsin, Illinois, New York and North Dakota as well as with the National Labor Relations Act.

I have gained experience with collective bargaining from the governmental perspective (United States Department of Labor, National Labor Relations Board, and Wisconsin Employment Relations Commission), the employer perspective (United Parcel Service, Krukowski and Costello, S.C.), and the union perspective (Teamsters, American Federation of Teachers, National Education Association, Wisconsin Education Association Council, National Education Association of New York, New York State United Teachers, AFL/CIO).

While I will touch on my own experiences, I would also ask you to consider the quotes listed below. The quotes come from individuals representing the broad political spectrum who are leaders in the labor, governmental, religious, and business arenas.

1. Collective bargaining is not a gravy train for trade unions; it is not a candy tree. Collective bargaining is a problem-solving process and when there are real problems it is a way to address them naturally, where each side can make appropriate contributions to the resolution of the problems. It does not always yield great increases or continual improvements for workers. It frequently has to address the problem of what we have to do to save this place of employment and to save these jobs.

**Lane Kirkland, AFL-CIO President**

2. No issue is more important for the future than the procedures through which the framework of collective bargaining evolves.

**John Thomas Dunlop, Secretary of Labor (1975 – 1976), Ford Administration**

3. Laws that define workers' basic rights don't necessarily assure that workers can exercise these rights free of coercion . . . Collective bargaining is the only American institution that gives workers the ability to claim both kinds of protection – from outside and inside.

**John Hoerr, UPI and Business week labor-management journalist, 1991**

4. The rights of employees freely to organize for the purpose of collective bargaining should be fully protected.

**President Franklin D. Roosevelt, message to Congress, 2/2/1935**

5. Where would the United States and its market economy be if not for the decent wages and benefits achieved through collective bargaining?

**Monsignor George G. Higgins, *Organized Labor and the Church*, 1993**

6. From 1935 to 1980, America produced more wealth for a greater number of people than any society in history. Collective bargaining and the labor movement were crucial to that process.

**Congressman William Clay (D-Mo.)**

7. Why encourage collective bargaining? Simply stated, because there is an overriding national interest in assuring fair and decent labor standards and the collective bargaining system is the surest means to that end that does not require further government regulation.

**Thomas Donohue, AFL-CIO President**

8. Through collective bargaining, the “bad, low paying” jobs of a prior generation – factory jobs, construction jobs, railroad jobs and the like – became the “good, decent paying” jobs that enable hard working Americans to buy a home, raise a family, and send their kids to college.

**Thomas Donahue, AFL-CIO President, 9/8/1994**

9. Those who would destroy or further limit the rights of organized labor – those who cripple collective bargaining or prevent organization of the unorganized – do a disservice to the cause of democracy.

**President John F. Kennedy**

10. Our labor unions are not narrow, self-seeking groups . . . Through collective bargaining and grievance procedures; they have brought justice and democracy to the workplace.

**President John F. Kennedy, 1962**

11. At the collective bargaining table, in the community, in the exercise of the rights and responsibilities of citizenship, we shall represent the interests of all the American people.

We pledge ourselves to the more effective organization of working men and women; to the securing to them of full recognition and enjoyment of the rights to which they are justly entitled; . . . to the attainment of security for all the people sufficient to enable workers and their families to live in dignity; the enjoyment of the leisure which their skills make possible; and to the strengthening and extension of our way of life and the fundamental freedoms which are the basis of our democratic society.

**From the preamble of the constitution of the AFL-CIO**

12. The role of the labor movement, through the institution of collective bargaining, is to bring democracy to the workplace.

**George Meany, AFL-CIO President**

13. Genuine, meaningful worker participation must have collective bargaining at its core.

**John T. Joyce, Commissioner - Presidential Commission for Collective Bargaining, appointed by President Ronald Reagan.**

14. American workers just won't accept regimentation anymore. We are going to have to give workers a piece of the action and stop treating them like children, or even worse, like machines with nothing to contribute to their jobs but their bodies.

**Rex Reed, AT&T Vice-President of Industrial Relations**

*Peggy Schafer*

*attachment # 4*

*SB 2267*

Collective Bargaining for State employees is long overdue in North Dakota. State employees should be entitled to the same "rights" as those who work in the private sector. We should not be treated as second-class citizen because we have chosen to work for this State.

Collective Bargaining would allow State employees and their Employer's to negotiate important issues such as pay, policies and conditions of employment. It would set forth rules or guidelines for both parties and open the lines of communication between administrators and employees.

As you are well aware turnover at the State Pen and other state agencies are alarming. This is a definite sign that there are issues that need to be addressed. Yes, we have open door policies however collective bargaining would provide a more effective tool to address our issues and maybe work towards helping stop such alarming turnovers.

In closing, I believe Collective Bargaining for State employees is a step in the right direction. Thank you for your time.