HOUSE BILL 884

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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AN ACT

RELATING TO EMPLOYMENT LAW; ENACTING THE EMPLOYEE SECRET BALLOT

PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the

"Employee Secret Ballot Protection Act".

Section 2. FINDINGS.--The legislature finds that

individual freedom of choice in employment-related matters

should be guarded and maintained and that employees should have

the right to use a secret-ballot election when selecting an

exclusive bargaining representative. A secret-ballot election

upholds the sanctity of a worker's free choice and protects

employees from coercion, intimidation, threats, misinformation

or interference from outside influences. A labor organization

should not be able to pressure an employer to recognize the

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1   labor organization as an exclusive bargaining representative

2   based solely on a stated showing of interest by employees

3   without a secret-ballot election and an employer should not

4   bargain away its employees' rights to secret-ballot elections

5   for labor representation purposes.

6   Section 3. DEFINITIONS.--As used in the Employee Secret

7   Ballot Protection Act:

8   A. "agency" means a governmental subdivision,

9   district, public or quasi-public corporation, public agency or

10   public service corporation and town, city, county or municipal

11   corporation, whether incorporated or not and whether chartered

12   or not, of New Mexico;

13   B. "employee" means an individual employed by an

14   employer;

15   C. "employer" means any agency, group or

16   association of employers that is an employer within the meaning

17   of any law of New Mexico or of the United States, but

18   "employer" does not include the United States or any

19   corporation wholly owned by the United States;

20   D. "exclusive bargaining representative" means any

21   labor organization that has been selected or designated as the

22   representative of the employees in an appropriate collective

23   bargaining unit to represent the employees in their employment

24   relations with employers;

25   E. "labor organization" means an employee

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1   representation committee, organization or union in which

2   employees participate and that exists for the purpose, in whole

3   or in part, of dealing with an employer concerning employee

4   wages, rates of pay, hours of work, other forms of

5   compensation, grievances, labor disputes or other conditions of

6   employment; and

7   F.   "secret ballot" means the expression by ballot

8   or voting machine, but in no event by proxy, of a choice with

9   respect to any election or vote taken upon any matter, which is

10   cast in such a manner that the person expressing such choice

11   cannot be identified with the choice expressed.

12   Section 4.   EMPLOYEE RIGHT TO SECRET BALLOT.--

13   A.   All employees have the right to a secret-ballot

14   election process when seeking to select an exclusive bargaining

15   representative.

16   B.   An election that does not comply with the

17   provisions of the Employee Secret Ballot Protection Act is

18   void.

19   C.   A labor organization shall not authorize a

20   strike, picketing, boycott or other action for the sole purpose

21   of inducing or attempting to induce an employer to enter into

22   an agreement prohibited under the Employee Secret Ballot

23   Protection Act.

24   D.   A labor organization shall be recognized as the

25   exclusive bargaining representative only after a majority of

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1   voting employees in the collective bargaining unit have

2   indicated their affirmative approval of that recognition

3   through the use of secret ballots in an election.

4   Section 5. DENIAL OF SECRET-BALLOT ELECTIONS DEEMED AN

5   UNFAIR LABOR PRACTICE.--

6   A. It shall be an unfair labor practice by the

7   employer to dominate or interfere with the formation or

8   administration of any labor organization or contribute

9   financial or other support to it or to recognize or bargain

10   collectively with a labor organization that has not been

11   selected by a majority of such employees in a secret-ballot

12   election conducted in accordance with applicable state law.

13   B. It shall be an unfair labor practice by the

14   labor organization to cause or attempt to cause an employer to

15   recognize or bargain collectively with a representative of a

16   labor organization that has not been selected by a majority of

17   such employees in a secret-ballot election conducted in

18   accordance with applicable state law.

19   Section 6. COERCION AND INTIMIDATION PROHIBITED.--It is

20   unlawful for any person, labor organization or officer, agent

21   or member of a labor organization to compel or attempt to

22   compel an employee to join, affiliate with or financially

23   support a labor organization, or to refrain from doing so, by

24   any threatened or actual intimidation of the employee or

25   prospective employee, or the employee's or prospective

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1   employee's parents, spouse, children, grandchildren or any

2   other persons residing in the employee's or prospective

3   employee's home, or by any damage or threatened damage to an

4   employee's or prospective employee's property. It is also

5   unlawful to cause or attempt to cause an employee to be denied

6   employment or be discharged from employment because of support

7   or nonsupport of a labor organization by inducing or attempting

8   to induce any other person to refuse to work with such

9   employees.

10   Section 7. PENALTIES.--A person who directly or

11   indirectly violates any provision of the Employee Secret Ballot

12   Protection Act is guilty of a misdemeanor and upon conviction,

13   shall be subject to a fine not to exceed five thousand dollars

14   ($5,000) or imprisonment for a period of not more than one

15   year, or both.

16   Section 8. CIVIL REMEDIES.--

17   A. An employee harmed as a result of any violation

18   or threatened violation of the provisions of the Employee

19   Secret Ballot Protection Act is entitled to relief, including

20   injunctive relief, in the district court and may recover

21   damages, including costs and reasonable attorney fees,

22   resulting from the violation or threatened violation. Remedies

23   shall be independent of and in addition to the penalties and

24   remedies prescribed in other provisions of the Employee Secret

25   Ballot Protection Act.

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1   B. Legal action against a labor organization shall

2 be brought in the district court where the alleged violation

3 occurred or where the labor organization maintains its

4 principal office.

5   Section 9. DUTY TO INVESTIGATE.--It shall be the duty of

6 the attorney general to investigate complaints of violations or

7 threatened violations of the Employee Secret Ballot Protection

8 Act, to prosecute all persons violating any provisions of that

9 act and to take all action necessary to ensure the effective

10 enforcement of that act.

11   Section 10. PROSPECTIVE APPLICATION.--The Employee Secret

12 Ballot Protection Act does not apply to collective bargaining

13 relationships in which a labor organization was lawfully

14 recognized as an exclusive bargaining representative before the

15 effective date of that act.

16   Section 11. FEDERAL PREEMPTION.--The Employee Secret

17 Ballot Protection Act applies to:

18   A. employers that are state agencies; and

19   B. all other employers that are not subject to the

20 federal National Labor Relations Act or any other applicable

21 federal labor laws. To the extent that federal law governs

22 employment matters, the Employee Secret Ballot Protection Act

23 is invalid.

24   Section 12. EFFECTIVE DATE.--The effective date of the

25 provisions of this act is July 1, 2009.

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