

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2331

Introduced by

Senator Nething

Representatives S. Kelsh, Kretschmar

1 A BILL for an Act to create and enact a new chapter to title 34 of the North Dakota Century
2 Code, relating to limited collective bargaining partnerships for executive branch agencies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 34 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Strike or work stoppage prohibited.** A partnership agreement negotiated under this
7 chapter must contain an agreement not to strike. It is a violation of this chapter for a certified
8 employee organization to engage in or threaten strike, work stoppage, work slowdown, sickout,
9 or other similar disruptive measure against the state. If a certified employee organization
10 violates this chapter, the commissioner may decertify the certified employee organization and
11 the decertified employee organization may not use payroll deductions of any membership dues.

12 **Definitions.** As used in this chapter, unless the context otherwise requires:

13 1. "Certified employee organization" means an employee organization selected by a
14 majority of the employees voting in a secret ballot election held under this chapter
15 for the purpose of exclusive representation and certified by the commissioner.

16 2. "Commissioner" means the labor commissioner.

17 3. "Covered employee" means an individual employed by an executive branch
18 agency who occupies a position in the classified service under section 54-44.3-20.

19 The term does not include:

20 a. A temporary employee employed for six months or less;

21 b. An individual in the custody of the department of corrections and
22 rehabilitation;

23 c. An administrative law judge;

24 d. An attorney whose responsibilities include providing legal advice;

e. The governor's designee and any employee working with the labor commissioner and the governor's designee to implement this chapter;

f. A member of the North Dakota national guard;

g. A managerial employee; and

h. A supervisory employee.

4. "Employee organization" means an organization in which covered employees may participate and which exists for the purpose, in whole or in part, of dealing with the state as employer concerning issues of mutual concern between covered employees and the state.

5. "Executive branch agency" means an executive branch state agency, board, commission, department, office, or other administrative unit of the executive branch of state government.

6. "Governor's designee" means the individual designated by the governor to represent the executive branch of state government in the exercise of all of the state executive branch duties under this chapter.

7. "Partnership agreement" means an agreement arrived at through good-faith discussions between the governor's designee, on behalf of the executive branch, and representatives of the certified employee organizations, on behalf of the covered employees, that provides for improving government services, achieving efficiencies, and establishing the framework for discussing issues of mutual concern to the covered employees of the state. As necessary, the term includes an agreement addressing issues on a multi-unit basis, agency-specific basis, or occupational group-specific basis, and may include memorandums of understanding directed to particular issues or objectives.

8. "Partnership unit" means a unit consisting of covered employees in a single occupational group.

9. "Supervisory employee" means an employee who is an appointing authority or who makes major personnel decisions, including staffing, hiring, firing, evaluating, promoting, and training of employees. The term does not include an employee who performs the human resource functions of an appointing authority by delegation.

Application. This chapter is in addition to chapter 34-12.

Commissioner's duties.

1. The commissioner shall serve as a neutral party charged with implementing and administering this chapter, resolving issues that may arise under this chapter, and adopting rules as necessary for the proper implementation of this chapter.
2. The commissioner shall appoint a three-member panel to advise and make recommendations to the commissioner regarding matters delegated to the commissioner under this chapter. At least one member of the panel must have experience in representing public employees. Each member of the panel:
 - a. Serves at the pleasure of the commissioner;
 - b. Is entitled to receive compensation as established by the commissioner which may not exceed one hundred thirty dollars for each day engaged in performance of duties of the panel; and
 - c. Must have experience in public sector labor relations, in teaching labor or employment relations, or in administering laws or policies applicable to labor or employment relations.
3. The commissioner shall appoint qualified mediators as necessary to assist parties in resolving impasses and disputes, issue findings of fact, and make recommendations to the parties. A mediator appointed under this subsection must be a disinterested party who is mutually acceptable to the involved parties.
4. The commissioner shall conduct elections and make determinations regarding certification of exclusive representation. In conducting elections, the commissioner shall appoint election monitors to take complaints regarding the conduct of elections and to make recommendations regarding the disposition of such complaints.
5. The commissioner shall supervise elections in the following occupational groups for purposes of partnership units:
 - a. Administrative support and related services;
 - b. Enforcement and protective services;
 - c. Labor and trades and crafts employees;
 - d. Employment and social services employees;

- e. Health care and medical services employees;
- f. State police officers;
- g. Financial service employees;
- h. Professional services; and
- i. Regulatory and inspection employees.

Determination of representation.

1. The commissioner shall certify an employee organization as the exclusive representative of a partnership unit if the organization is designated as the partnership unit's representative by a majority of the covered employees voting within the partnership unit.
2. An employee organization may petition for certification by submitting to the commissioner a petition for exclusive representation. The petition must be accompanied by a showing of interest indicating the desire of the covered employees in a partnership unit to be exclusively represented by the petitioner for the purpose of negotiating a partnership agreement. The show of interest must be signed and dated by the employees within the twelve months preceding submission. A covered employee who is a dues-paying member of an employee organization is deemed to have expressed a show of interest in favor of the employee organization in which the covered employee is a member unless and until the covered employee expresses a contrary intent in writing. If a show of interest accompanying a petition is thirty percent or more of the covered employees in the partnership unit, the commissioner shall direct that an election be held. Within ten calendar days of determination that a valid petition has been submitted and election is necessary, the commissioner shall notify the interested employee organization and the governor's designee of the pending election petition. If a majority of the employees in a partnership unit that is appropriate for bargaining has signed valid authorizations designating an employee organization specified in the petition as the partnership unit's bargaining representative and no other employee organization is certified or otherwise recognized as the exclusive representative of any of the employees in the partnership unit, the commissioner

1 may not direct an election but shall certify the employee organization as the
2 certified employee organization.

3 3. An interested employee organization may intervene in an election if the interested
4 employee organization submits a petition of intervention to the commissioner within
5 fifteen days of notice of the pending election. A petition of intervention must be
6 accompanied by a show of interest supported by thirty percent of the covered
7 employees in the partnership unit indicating the covered employees' desire to be
8 exclusively represented by the intervenor for the purpose of negotiating a
9 partnership agreement.

10 4. An election under this section must be held in accordance with rules adopted by
11 the commissioner. In an election, covered employees have the option of voting to
12 be exclusively represented by the petitioning employee organization, to be
13 exclusively represented by an intervening employee organization, or to reject
14 exclusive representation by any employee organization. An election must be a
15 secret ballot that may take place by mail ballot, onsite balloting, or a combination of
16 mail balloting and onsite balloting. An employee organization seeking certification
17 under this section shall bear the costs associated with conducting and
18 administering the certification elections, including printing, postage, and other
19 supplies, as well as any temporary staff or overtime determined necessary to verify
20 signatures, to staff or monitor polling places, and to determine the results of an
21 election. If two or more employee organizations seek certification in a single
22 election, the costs of conducting and administering the election must be borne
23 equally by the respective employee organizations.

24 5. If none of the alternatives listed on the ballot receives a majority of the valid ballots
25 cast in the partnership unit in any initial representation election held under this
26 section, a secret ballot runoff election must be held between the top two recipients
27 of votes. If an employee organization receives the majority of the valid ballots cast
28 in the partnership unit, the commissioner shall certify that employee organization
29 as the exclusive representative of the covered employees in the partnership unit.

30 6. Neither the commissioner nor any management or supervisory employee may
31 encourage or discourage membership in any employee organization nor

1 encourage or discourage exclusive representation of employees by any employee
2 organization.

3 7. Certification of an employee organization as an exclusive representative continues
4 as long as the employee organization satisfies the criteria of this chapter. A
5 petition to decertify an existing exclusive representative may be filed in the same
6 manner as a petition for certification, except a decertification petition may not be
7 filed for a partnership unit if:

8 a. An election has been held in that partnership unit within the preceding twelve
9 months;

10 b. An exclusive representative of that partnership unit has been certified within
11 the preceding two years; or

12 c. The partnership unit has in effect a valid occupational group-specific
13 partnership agreement that by its terms does not exceed three years. The
14 limitation imposed under this subdivision does not bar the filing of a
15 decertification petition within the ninety-day period immediately preceding the
16 expiration of the partnership agreement.

17 8. If a decertification petition is filed, the existing exclusive representative is deemed
18 an intervenor on that petition and may not be required to submit a show of interest.

19 **Filing requirements for certified employee organizations.**

20 1. Each certified employee organization shall file and keep current with the
21 commissioner:

22 a. The organization's constitution and bylaws. A certified employee organization
23 may file the constitution and bylaws of the organization's national or
24 international organization in lieu of a filing of the constitution and bylaws of the
25 subordinate organization.

26 b. A list of the organization's officers and their addresses.

27 c. A copy of the most recently completed audit required by the certified
28 employee organization's constitution and bylaws.

29 2. The commissioner shall reasonably construct the filing requirements of
30 subsection 1 to allow for several organizations to affiliate or jointly file to seek
31 certification under this chapter.

1 **Negotiating partnership agreements.** The governor's designee and the
2 representatives of the certified employee organizations have a mutual obligation to negotiate
3 the terms of the partnership agreement in good faith and at reasonable times and places. The
4 discussions regarding partnership agreements can be initiated by the governor's designee or in
5 response to a proposal by a certified employee organization or a coalition of certified employee
6 organizations. A particular partnership agreement may be negotiated, depending on the nature
7 of the issues subject to the agreement, on a statewide basis, occupational group basis, or
8 department basis.

9 **Partnership agreements on matters necessitating statewide uniformity.** A
10 partnership agreement that governs discussions of matters impacting all covered employees as
11 a whole or that necessitate statewide uniformity must be negotiated on a collaborative basis
12 with all certified employee organizations. The negotiation of such a partnership agreement
13 must be conducted by the governor's designee in concert with the executive officials charged
14 with administering issues subject to the agreement and with a designee or negotiating team
15 selected by a coalition of the certified employee organizations. Such a partnership agreement
16 is subject to the approval of the governor and other officials charged with administering the
17 issues subject to the agreement.

18 **Partnership agreements on matters affecting individual occupational groups.** A
19 partnership agreement that governs discussions of matters impacting covered employees in a
20 single occupational group must be negotiated with the certified employee organization
21 representing that occupational group and with the governor's designee in concert with the
22 executive officials charged with administering the issues subject to the agreement. Such a
23 partnership agreement is subject to the approval of the governor and other officials charged
24 with administering the issues subject to the agreement.

25 **Partnership agreements on matters involving particular departments.**

- 26 1. A partnership agreement that governs discussions of matters impacting covered
27 employees in a single department must be negotiated by the executive director of
28 the department in concert with the governor's designee and with a designee or
29 negotiating team selected by a coalition of the certified employee organizations
30 representing covered employees in the respective department. Such a partnership

1 agreement is subject to the approval of the executive director of the department
2 and the governor.

3 2. The executive directors of executive branch agencies with covered employees
4 shall negotiate in good faith a partnership agreement with the certified employee
5 organizations representing the covered employees in their agencies.

6 3. A partnership agreement does not diminish the governor's discretion to prepare a
7 proposed budget, including setting the amount allocated to total employee
8 compensation in that proposed budget. A partnership agreement may not include
9 a requirement or an agreement that the executive branch or executive branch
10 agency negotiate with respect to the statutory functions of any executive branch
11 agency or to matters related to the public employees retirement system.

12 **Impasse and dispute resolution.** If the parties reach an impasse in the course of
13 negotiating a partnership agreement, either the governor's designee or a representative of a
14 certified employee organization may request that the commissioner appoint a neutral third party
15 to mediate any dispute over the terms and conditions of a partnership agreement. The
16 appointed mediator may make nonbinding written recommendations to the parties for resolution
17 of the impasse. Upon successful completion of negotiation, the parties shall execute a written
18 partnership agreement. The terms of a partnership agreement may provide procedures for
19 resolving disputes, including disputes over the interpretation and application of a partnership
20 agreement. Dispute resolution procedures may include nonbinding mediation and factfinding
21 but may not include binding arbitration.