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.