

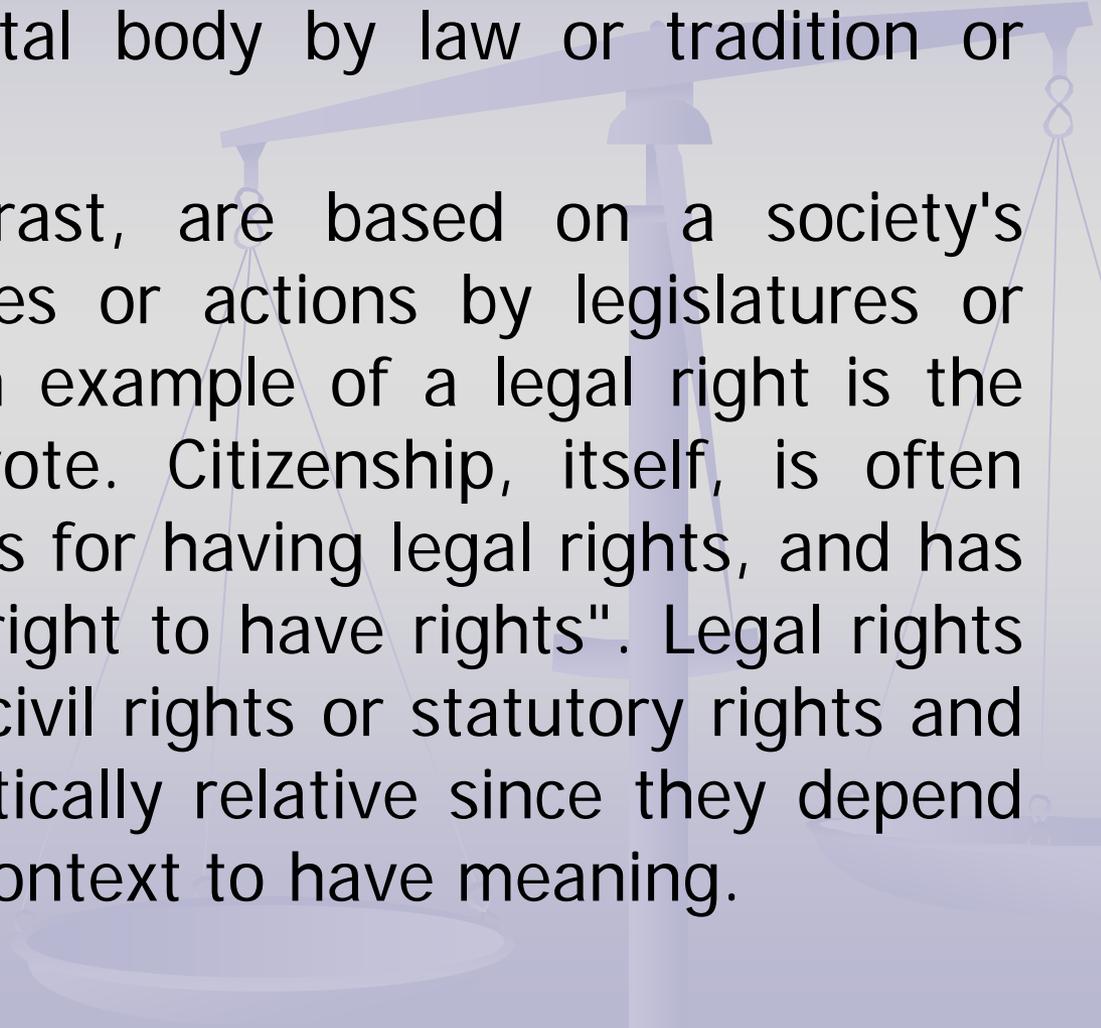


Employee Rights

Employee Rights, Contract Enforcement, and Grievance Processing



Just What is a Right?

- Right is an abstract idea of that which is due to a person or governmental body by law or tradition or nature.
 - Legal rights, in contrast, are based on a society's customs, laws, statutes or actions by legislatures or other legal bodies. An example of a legal right is the right of citizens to vote. Citizenship, itself, is often considered as the basis for having legal rights, and has been defined as the "right to have rights". Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning.
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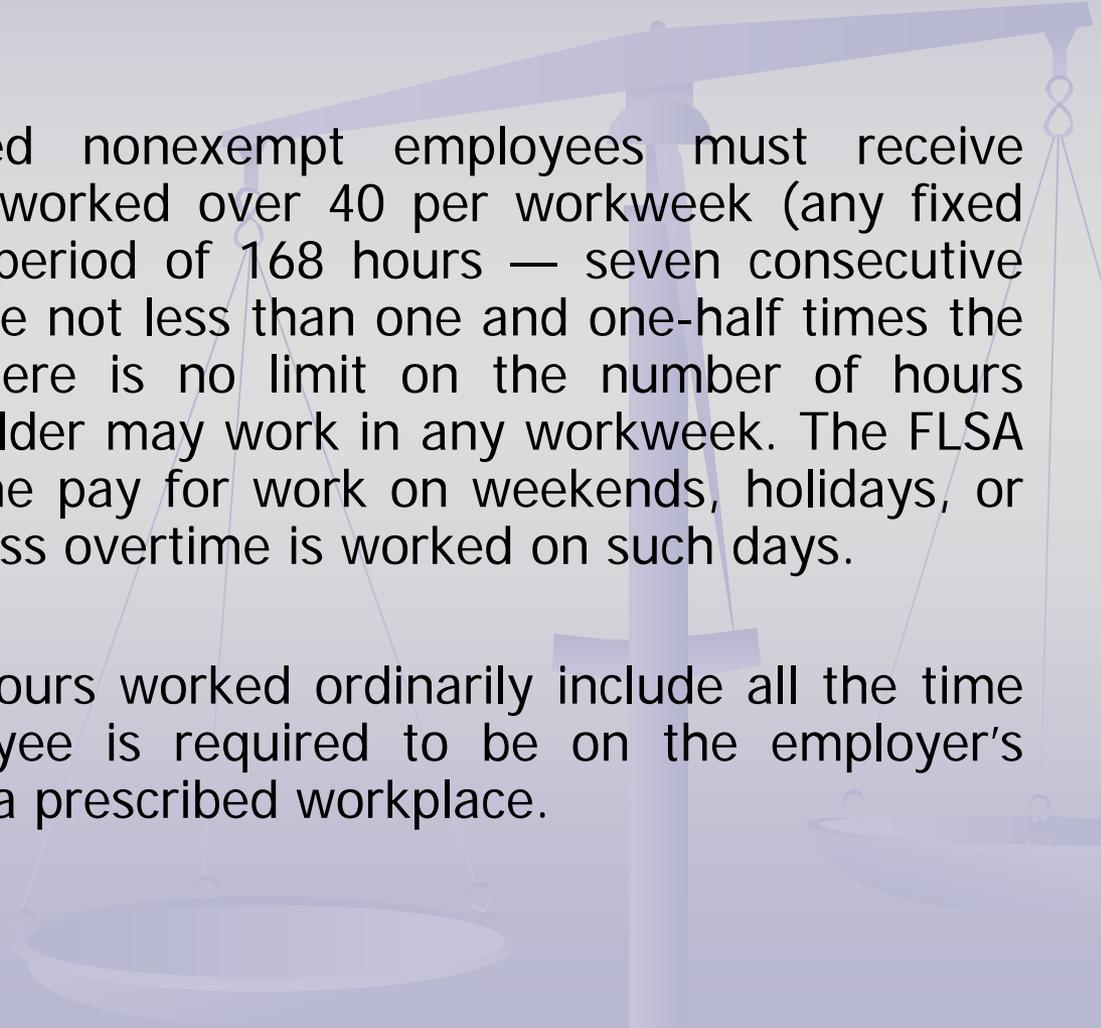


Rights under Federal Law

- Fair Labor Standards Act
- Equal Employment Opportunity Commission

Fair Labor Standards Act

- The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. (\$7.50 in NM)
- Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

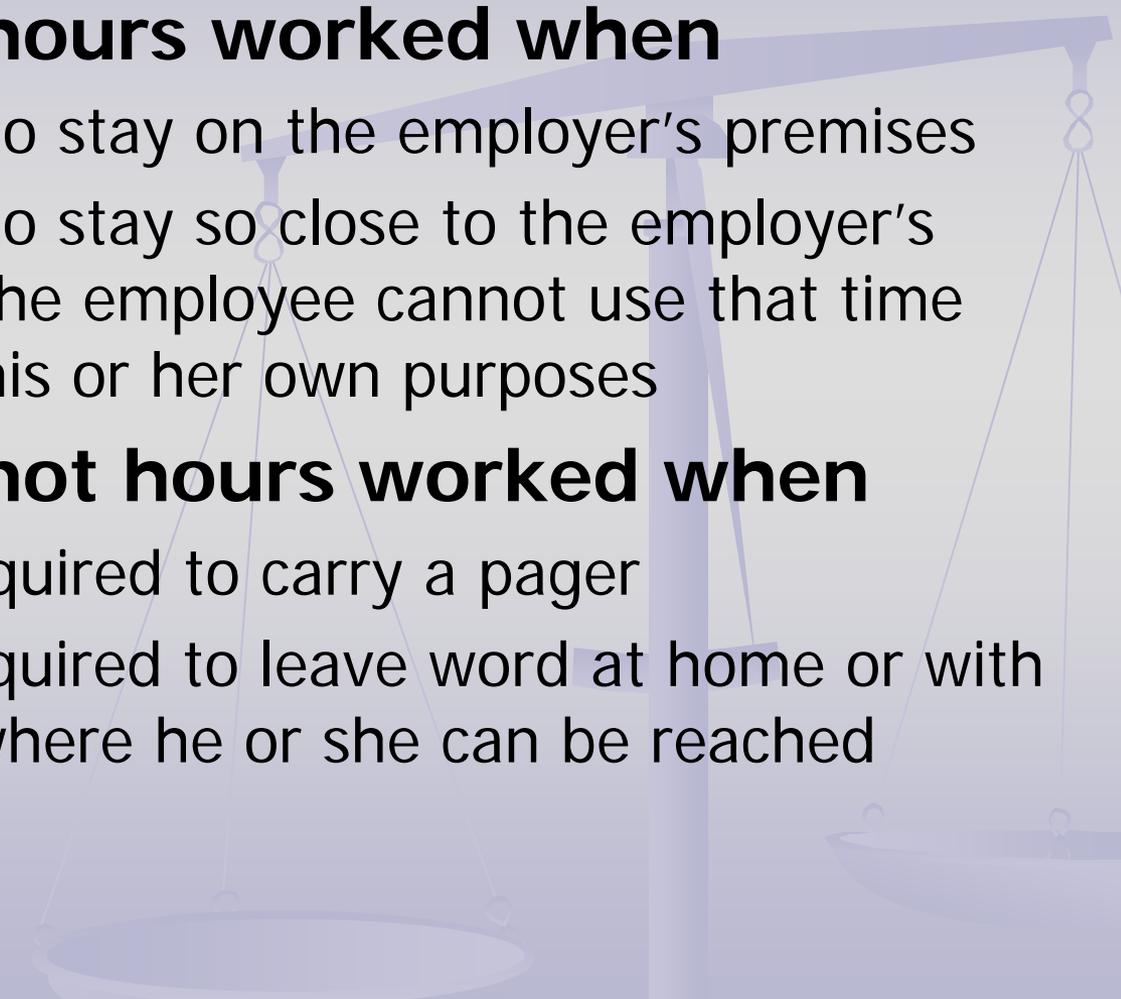


FLSA Minimum Wage: The federal minimum wage is \$7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

FLSA Overtime: Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

Hours Worked: (PDF): Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

On-Call time



On-call time is hours worked when

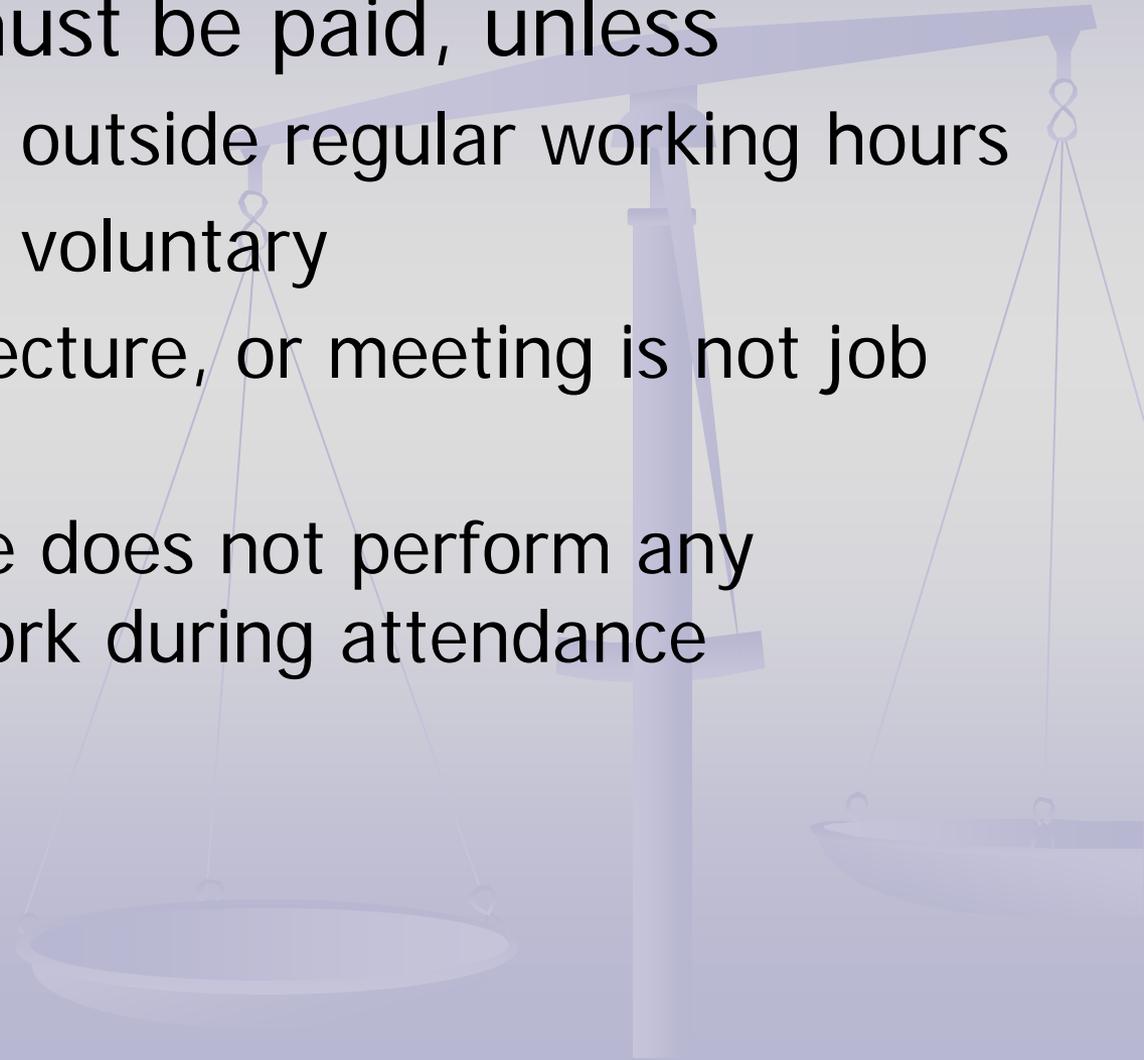
- Employee has to stay on the employer's premises
- Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes

On-call time is not hours worked when

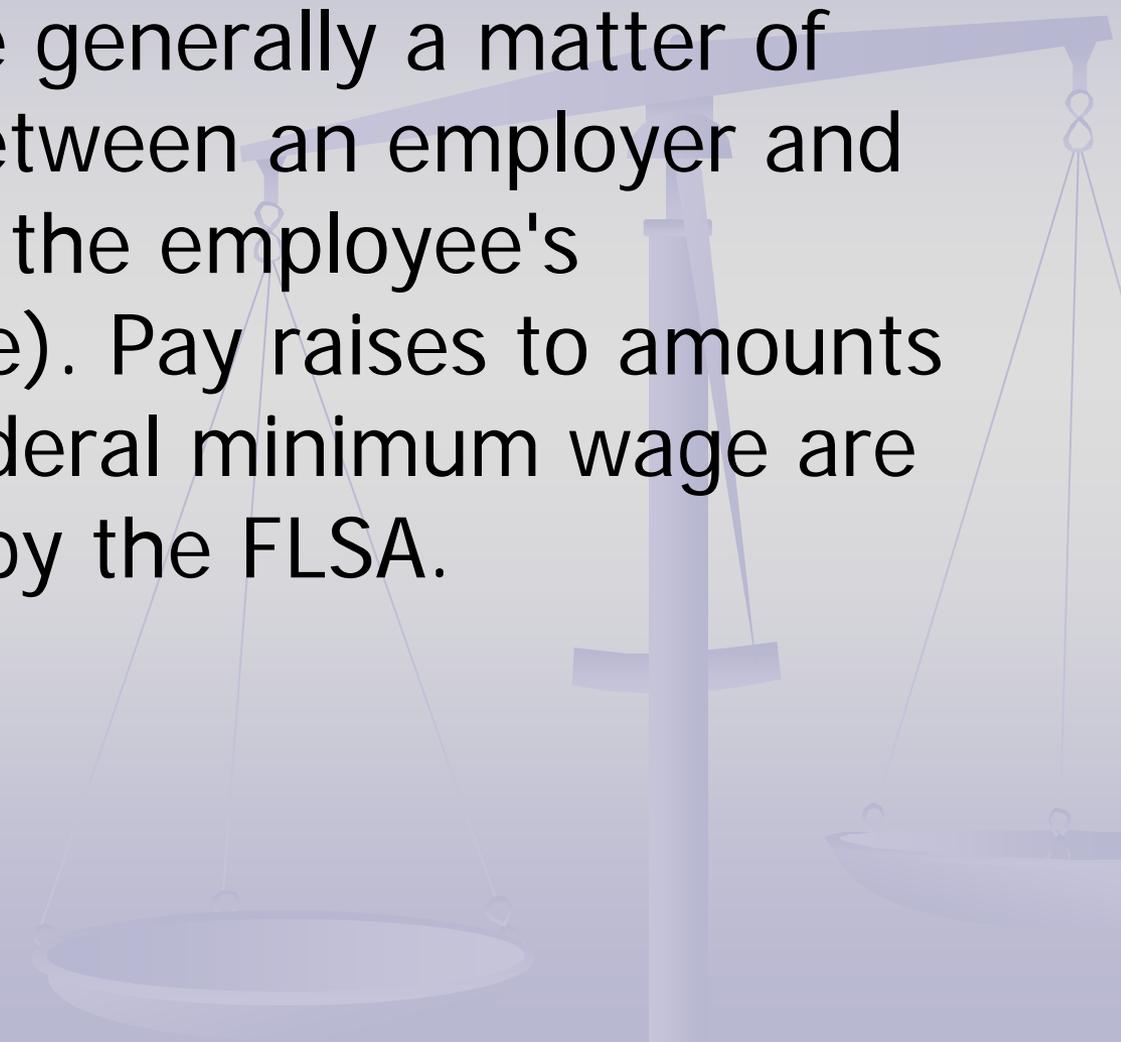
- Employee is required to carry a pager
- Employee is required to leave word at home or with the employer where he or she can be reached

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance



Pay Raises

- Pay raises are generally a matter of agreement between an employer and employee (or the employee's representative). Pay raises to amounts above the Federal minimum wage are not required by the FLSA.
- 

Overtime Pay

- Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek
- Each work week stands alone

Overtime Pay

USE OF COMPENSATORY TIME OFF IN LIEU OF TIME-AND-ONE-HALF PAY

- The 1985 amendments to the Fair Labor Standards Act gave public employers the right to use limited compensatory time off in lieu of premium payment if the state or local government had the policy **in place by April 15, 1986**.
- For non-union employees, the policy may have been adopted by ordinance, resolution or simple motion by the governing body or by executive order of the mayor or city manager; in the case of union employees, the union contract in effect at that time would prevail.

Overtime Pay

USE OF COMPENSATORY TIME OFF IN LIEU OF TIME-AND-ONE-HALF PAY

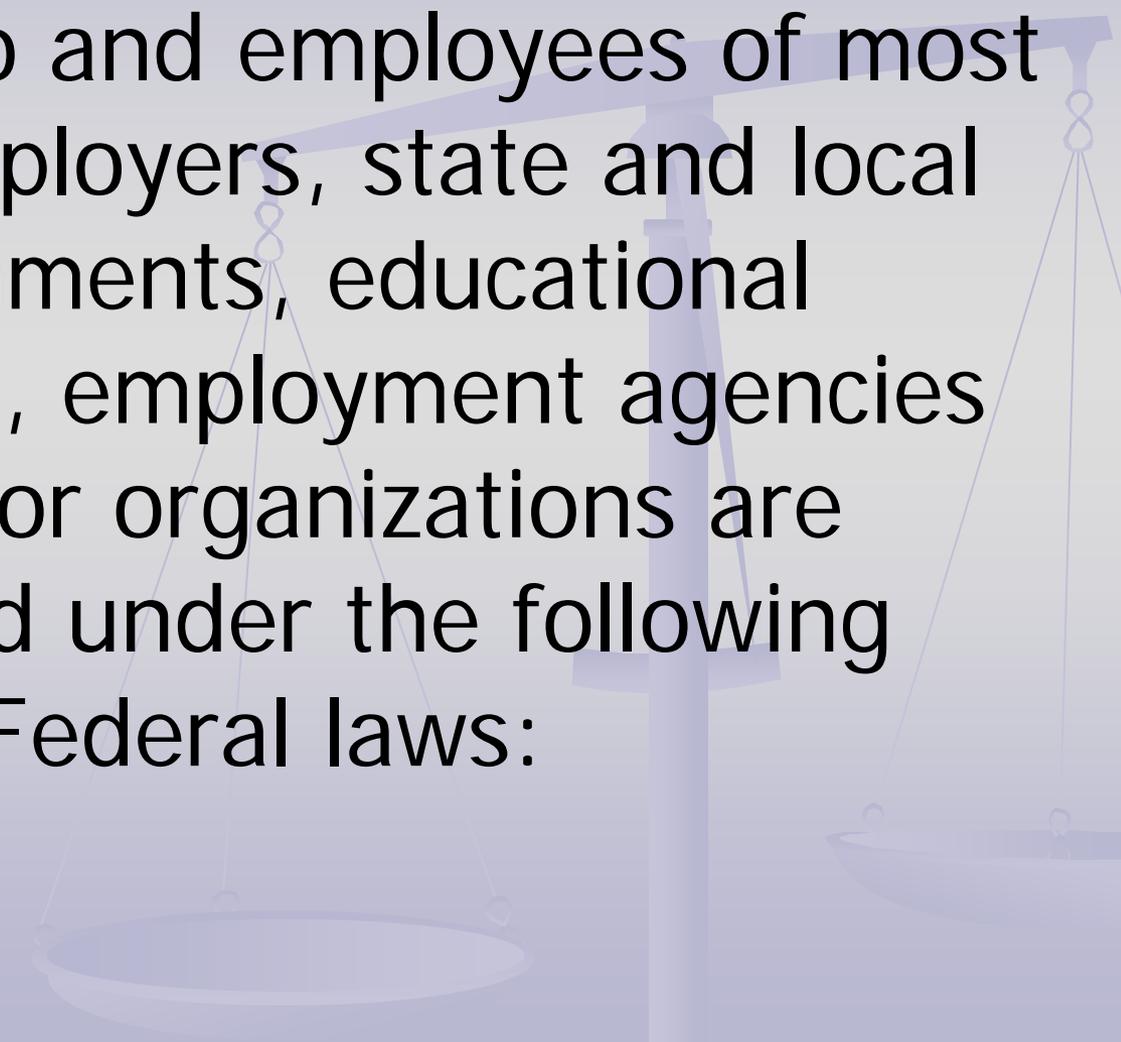
- However, there is a provision that a non-exempt employee may agree **at the time of hire** to accept limited compensatory time off in lieu of premium pay under certain conditions.
- Such a post April 15, 1986, agreement **cannot apply to employees already hired** unless it is part of a union contract negotiated for the bargaining agent representing those employees.

Breaks And Meal Periods

- The FLSA does not require breaks or meal periods be given to workers. Some states may have requirements for breaks or meal periods. If you work in a state which does not require breaks or meal periods, these benefits are a matter of agreement between the employer and the employee (or the employee's representative).
- Meal periods are *not* hours worked when the employee is relieved of duties for the purpose of eating a meal; if an employee is asked or allowed "suffered" to work during a meal break, it becomes paid time.
- Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must, if allowed by the employer, be paid.

Equal Employment Opportunity Commission

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:



RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

- Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

DISABILITY

- The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

SEX DISCRIMINATION

- In addition to sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

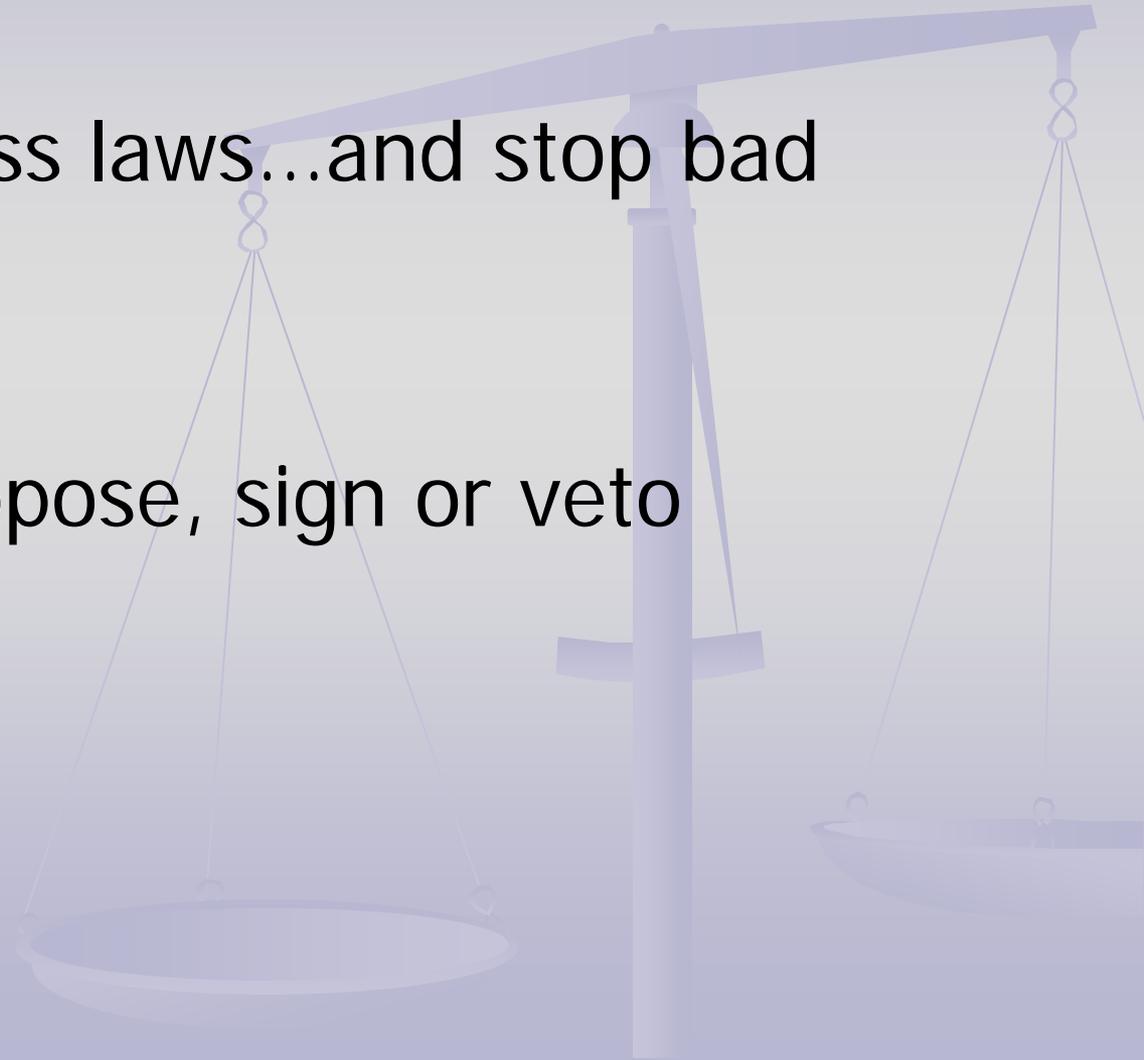
Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws. If you believe that you have been discriminated against under any of the above laws, you should immediately contact an attorney to determine your rights.

AGE DISCRIMINATION

- The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

Elections Have Consequences

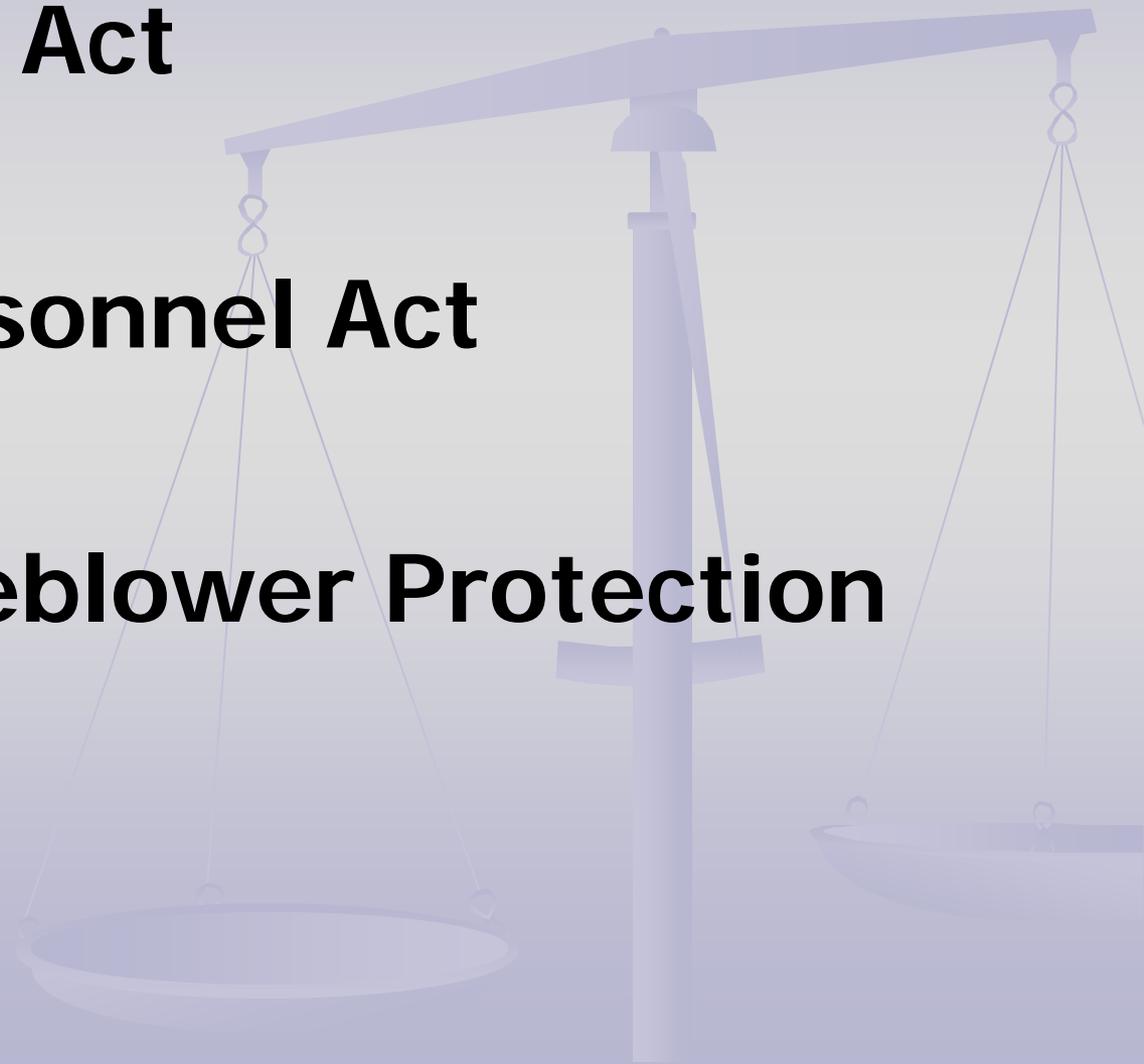
- Legislators pass laws...and stop bad legislation
- Governors propose, sign or veto legislation





Rights Under New Mexico Law

- **Bargaining Act**
- **School Personnel Act**
- **NM Whistleblower Protection Act**



Bargaining Agreements

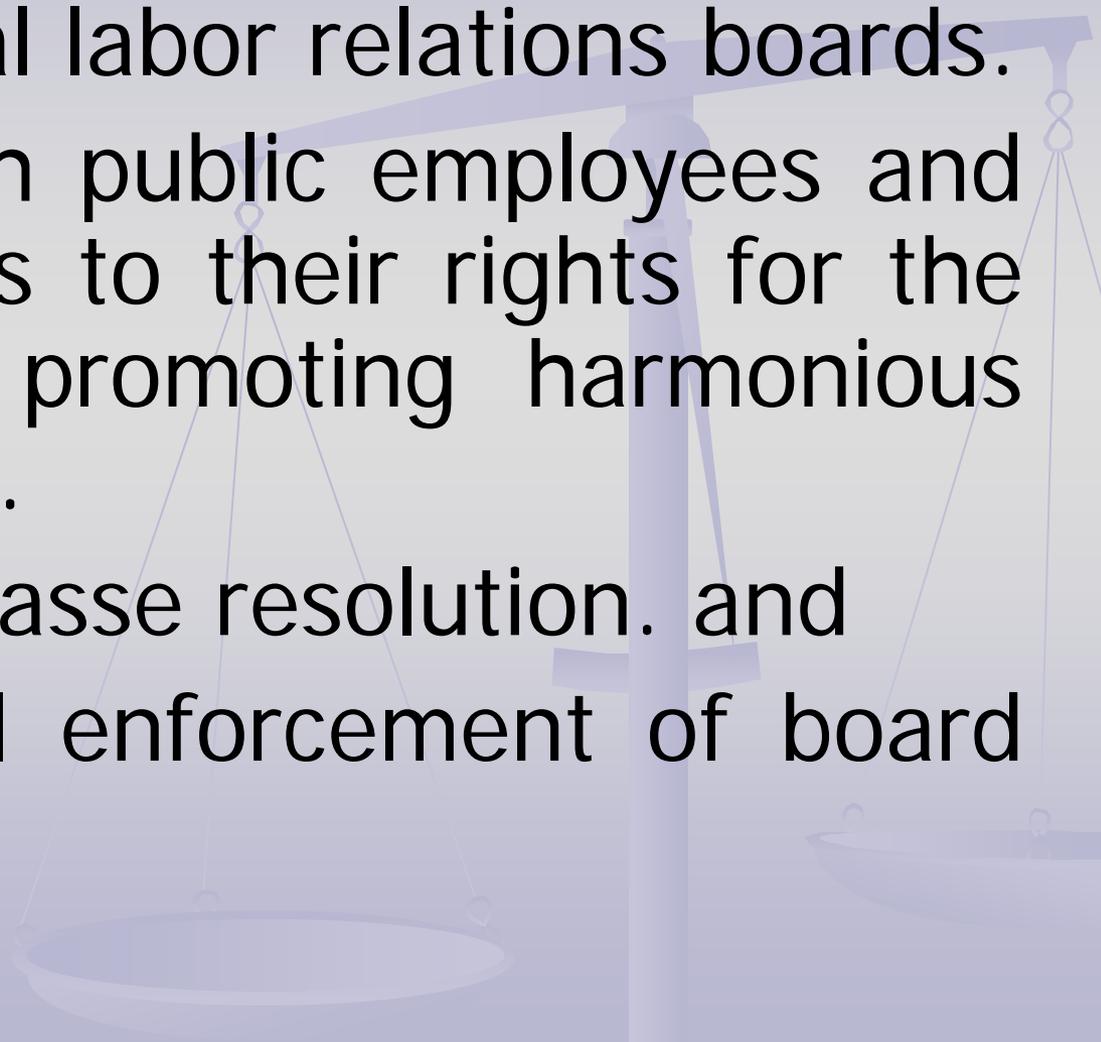
The rules regarding the Public Employee Bargaining Act are set forth in New Mexico Statutes §10-7E-1- 26.

The intent of the Bargaining Act is:

- ❑ to establish fair and expeditious procedures that further the purposes of the act, which are:
 - ❑ 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 assuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

The main way that the Bargaining Act affects the individual member is through the creation of the Public Employee Labor Relations Board ("PELRB"). The PELRB is responsible for the following seven primary functions:

- Establish procedures for the filing of, hearing and determination of prohibited practice complaints.
- Hold elections for selection, certification, and decertification of exclusive bargaining agents.

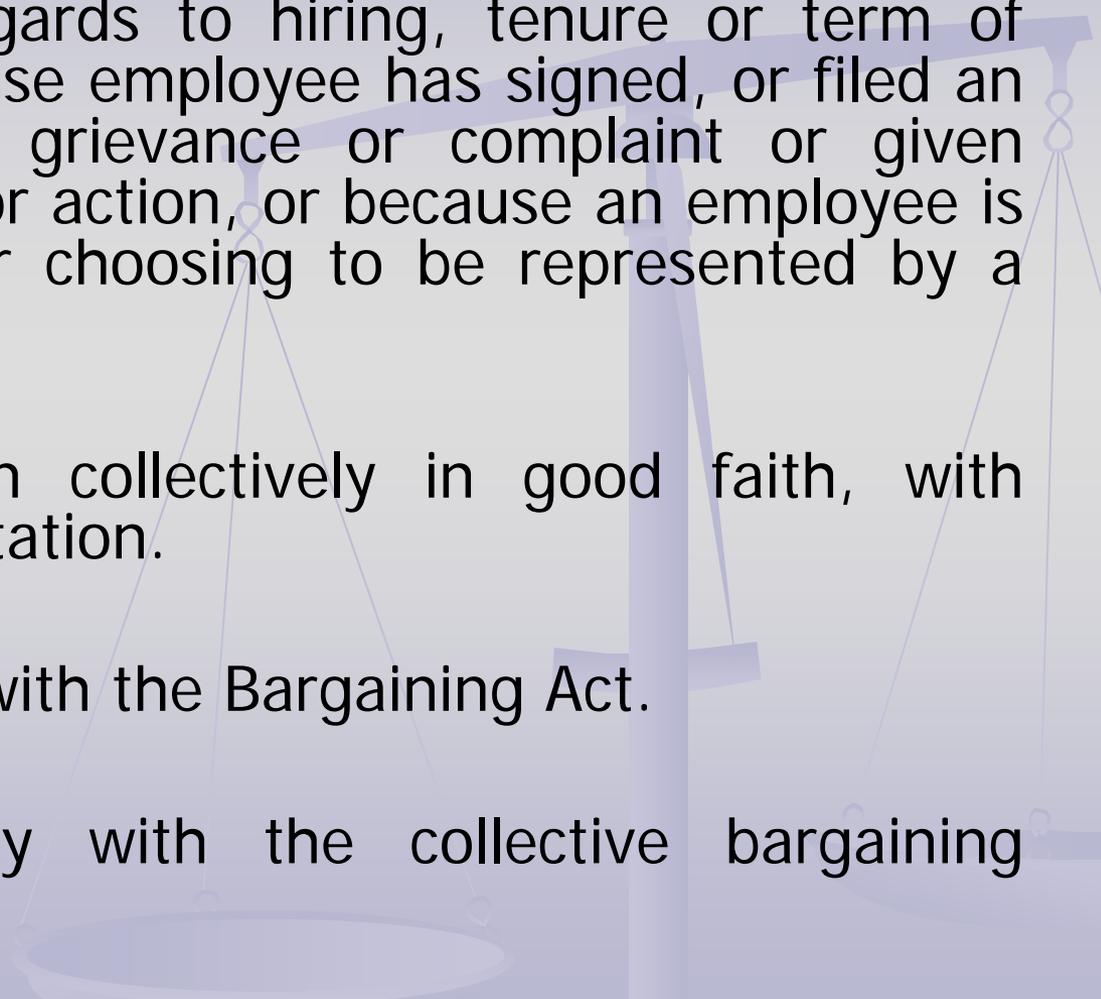
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- Hold hearings for determination of appropriate bargaining units.
 - Approve local labor relations boards.
 - Educate both public employees and employers as to their rights for the purpose of promoting harmonious relationships.
 - Assist in impasse resolution. and
 - Seek judicial enforcement of board orders

Prohibited Practices

- **Prohibited Practice** The Bargaining Act sets out a procedure for any public employee or any bargaining unit to file a claim for a prohibited practice. Once a complaint is filed, the PELRB carries out an investigation and may have a hearing. However, the definition of a “prohibited practice” is much narrower than many folks believe. Sections 10-7E-19 – 21, NMSA 1978, define prohibited practices.

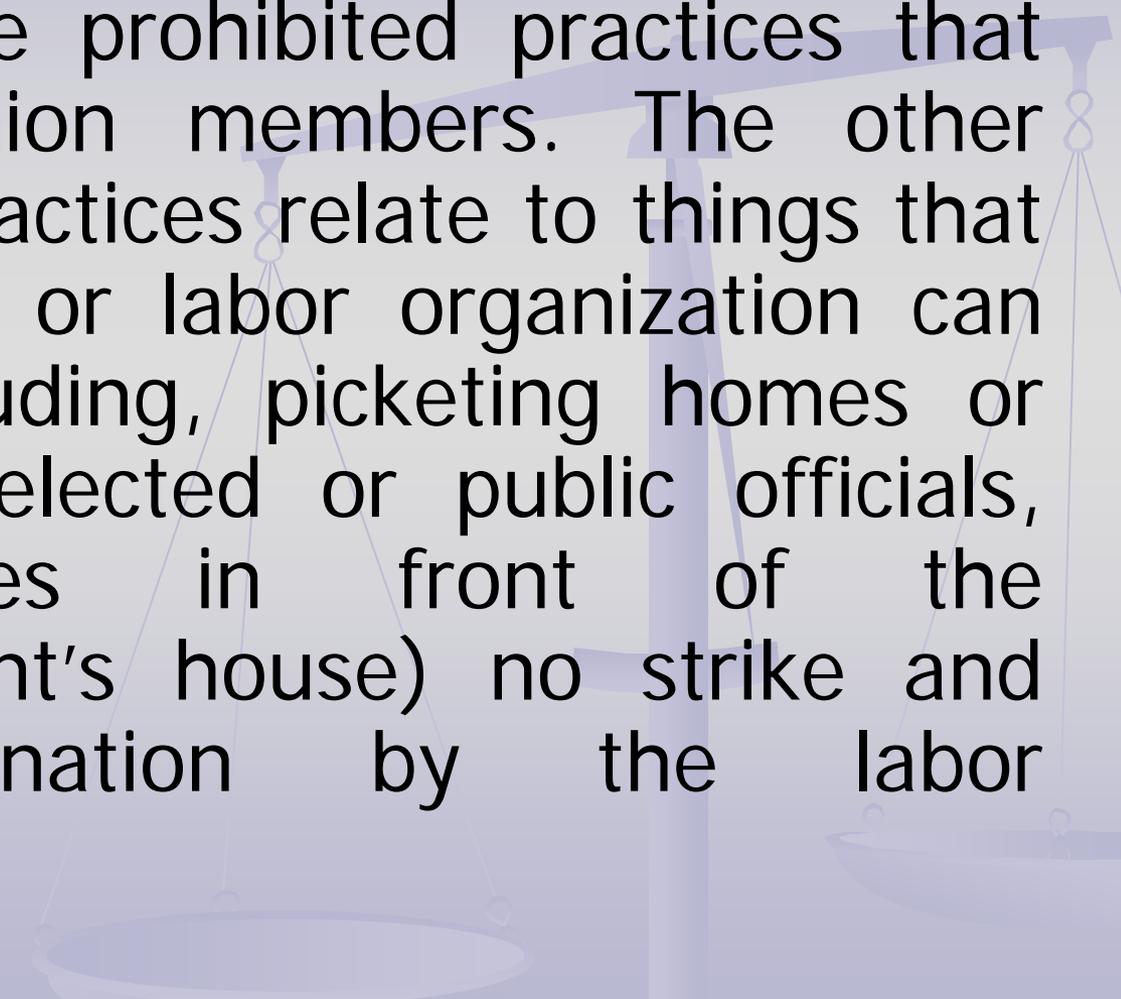
The first type of prohibited practice involves action on the part of an employer. An employer shall not:

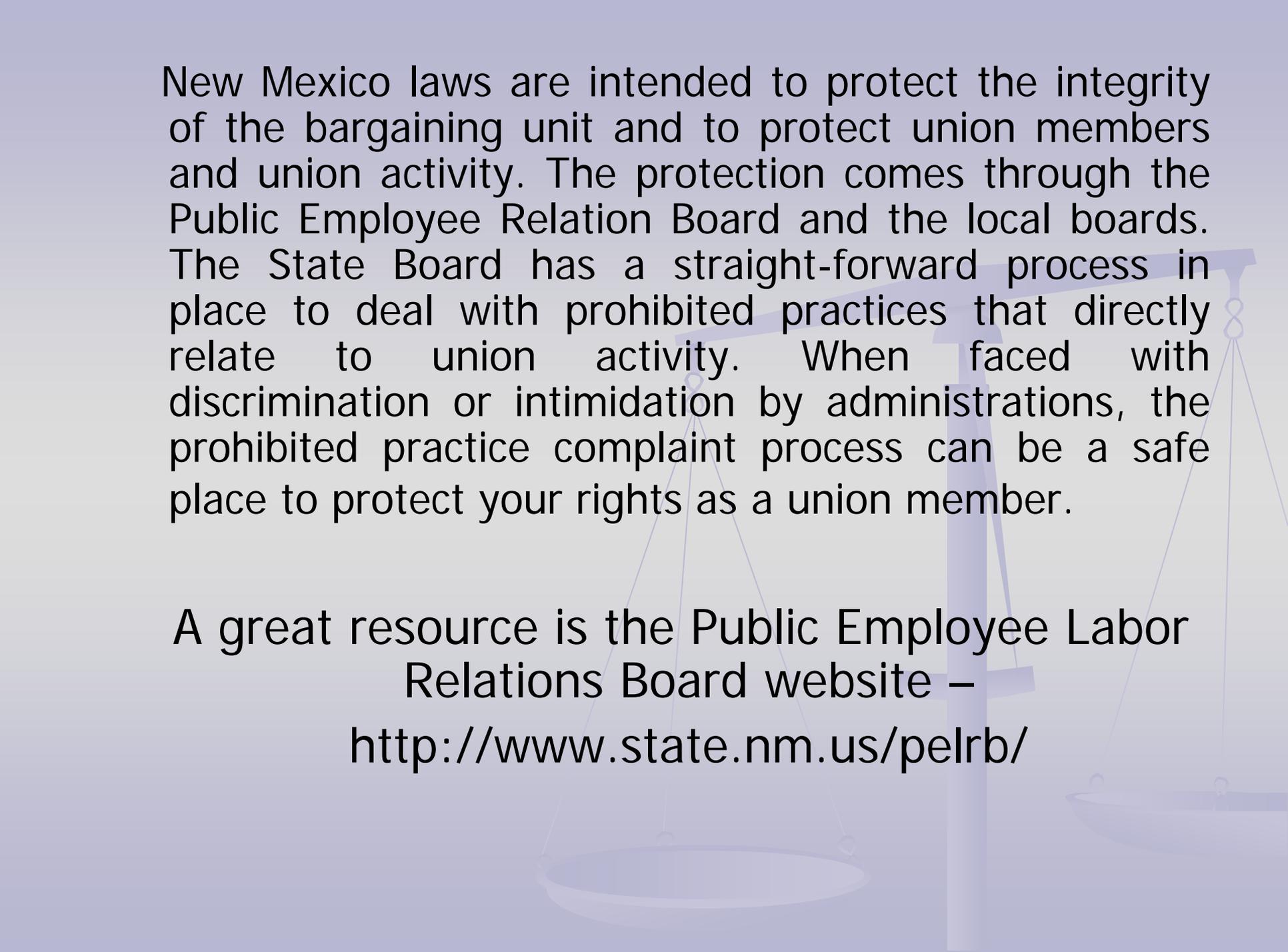
- Discriminate against a public employee with regard to terms and conditions of employment because of the employee’s membership in a labor union.
- Interfere with, restrain or coerce a public employee in the exercise of a right guaranteed under the Bargaining Act.

- 
- Dominate or interfere in the formation, existence or administration of a labor organization.
 - Discriminate in regards to hiring, tenure or term of employment because employee has signed, or filed an affidavit, petition, grievance or complaint or given testimony in a labor action, or because an employee is forming, joining or choosing to be represented by a labor organization.
 - Refuse to bargain collectively in good faith, with exclusive representation.
 - Refuse to comply with the Bargaining Act.
 - Refuse to comply with the collective bargaining agreement.

Employee Prohibited Practices

These are the prohibited practices that relate to union members. The other prohibitive practices relate to things that an employee or labor organization can not do; including, picketing homes or business of elected or public officials, (no marches in front of the Superintendent's house) no strike and no discrimination by the labor organization.





New Mexico laws are intended to protect the integrity of the bargaining unit and to protect union members and union activity. The protection comes through the Public Employee Relation Board and the local boards. The State Board has a straight-forward process in place to deal with prohibited practices that directly relate to union activity. When faced with discrimination or intimidation by administrations, the prohibited practice complaint process can be a safe place to protect your rights as a union member.

A great resource is the Public Employee Labor Relations Board website –
<http://www.state.nm.us/pelrb/>

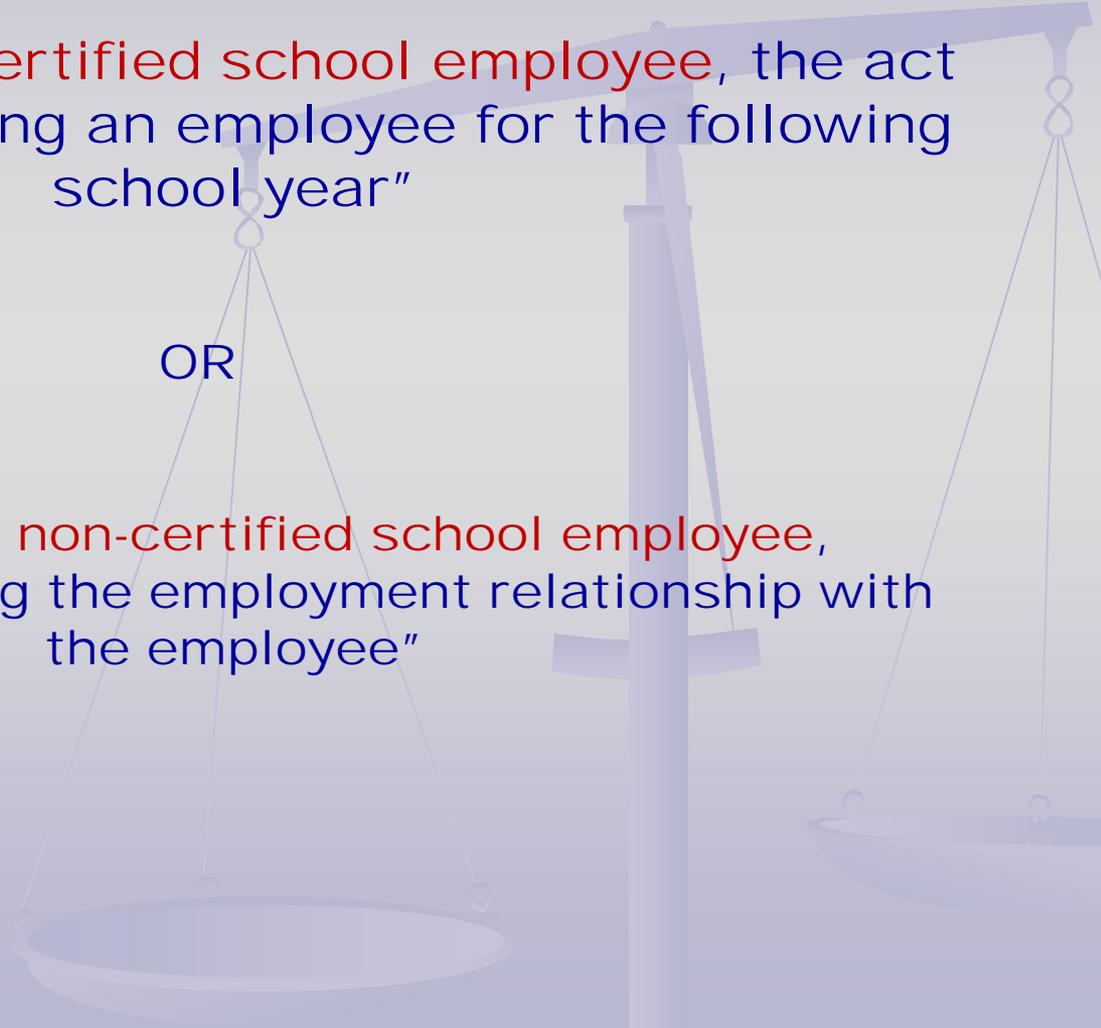
Termination and Discharge

All Education Professionals Should Know
Their Rights.

Knowledge is Power!



“TERMINATION MEANS”



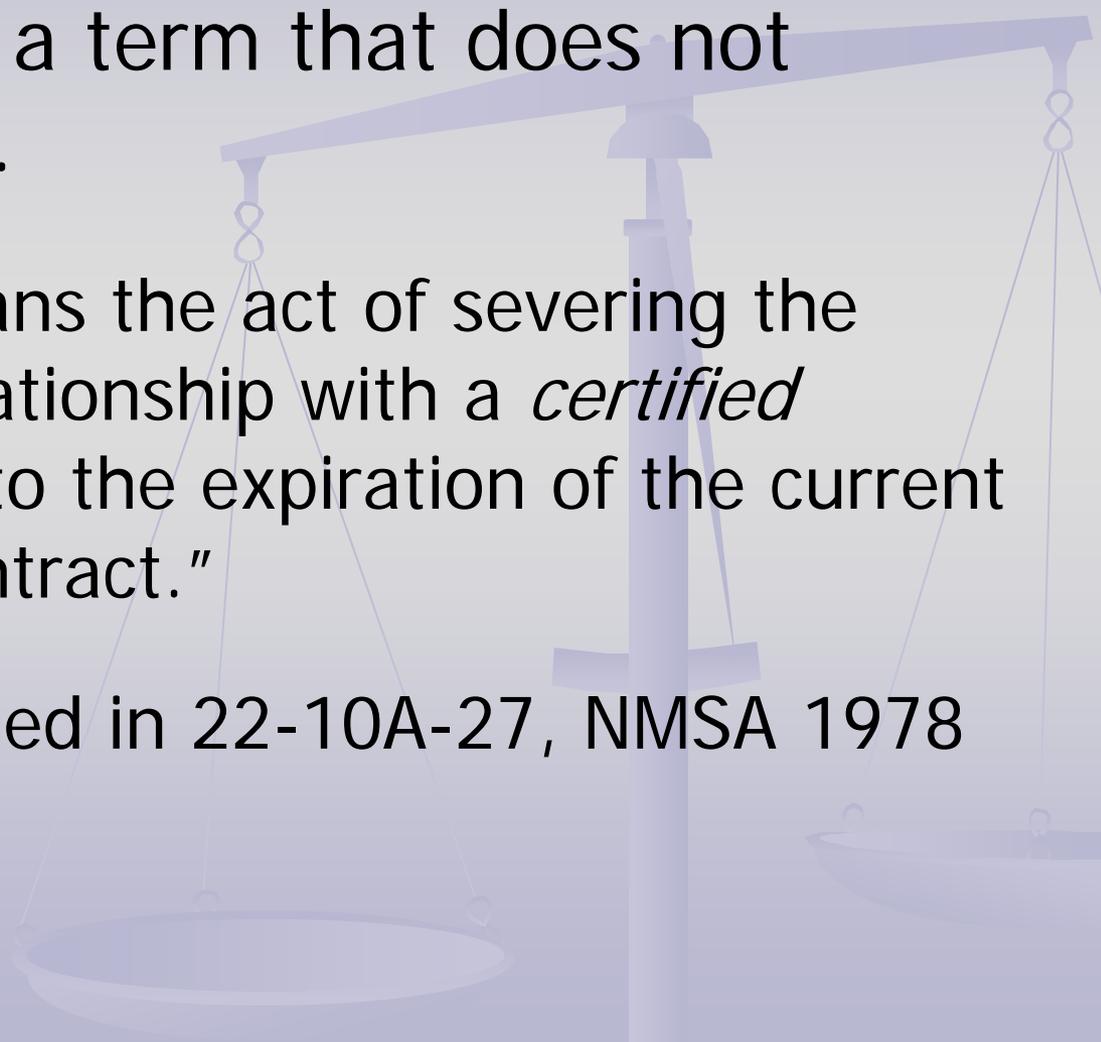
“in the case of a **certified school employee**, the act of not reemploying an employee for the following school year”

OR

“in the case of a **non-certified school employee**, the act of severing the employment relationship with the employee”

(22-10A-2, NMSA 1978)

Termination and Discharge



- “Discharge” is a term that does not apply to E.S.P.
- “Discharge” means the act of severing the employment relationship with a *certified* employee prior to the expiration of the current employment contract.”
- Rights are outlined in 22-10A-27, NMSA 1978



DISCHARGE

DUE PROCESS 22-10A-27

- **Written notice of intent to Discharge**
- **District's intent to Discharge for cause and advise of right to a hearing before local school board**
- **Advise supt. within 5 working days of receipt of notice for hearing**
- **Local board must hold hearing no less than 20 and no more than 40 w/days of receipt of request**

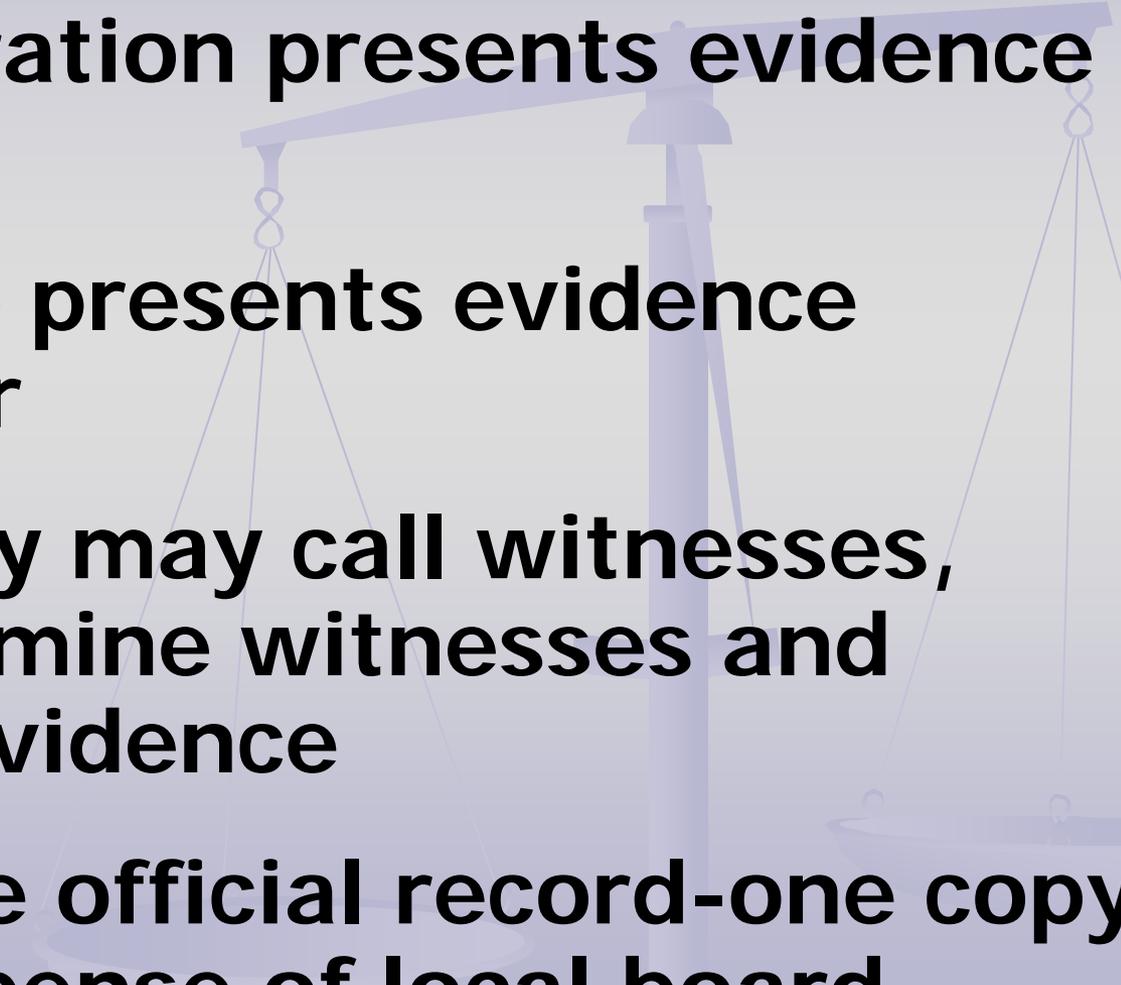


DISCHARGE DUE PROCESS

- Employee must have at least 10 days notice before the board hearing
- Representation at the hearing
- Evidence allowed
- Subpoenas for attendance of witnesses
- Administration has burden to prove cause

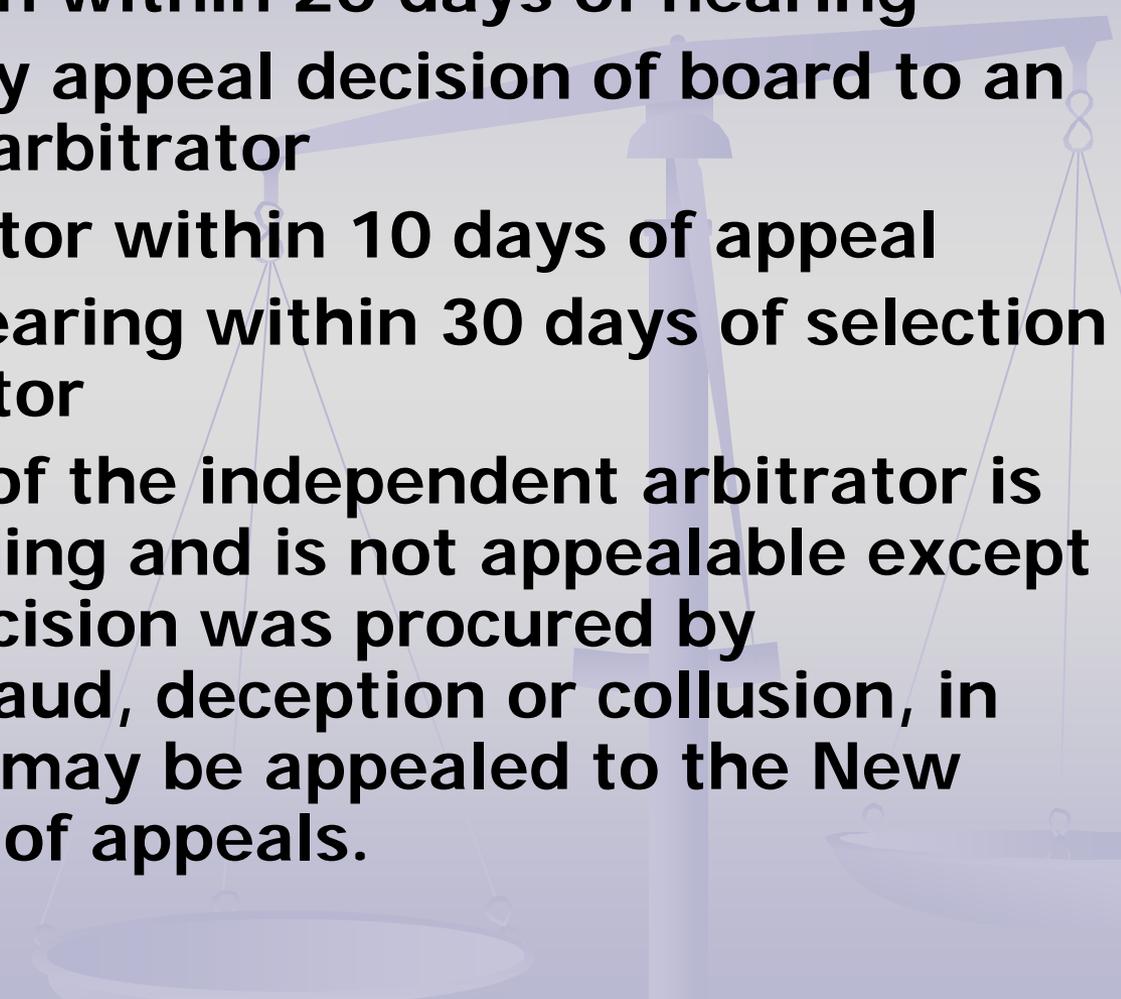


DISCHARGE DUE PROCESS

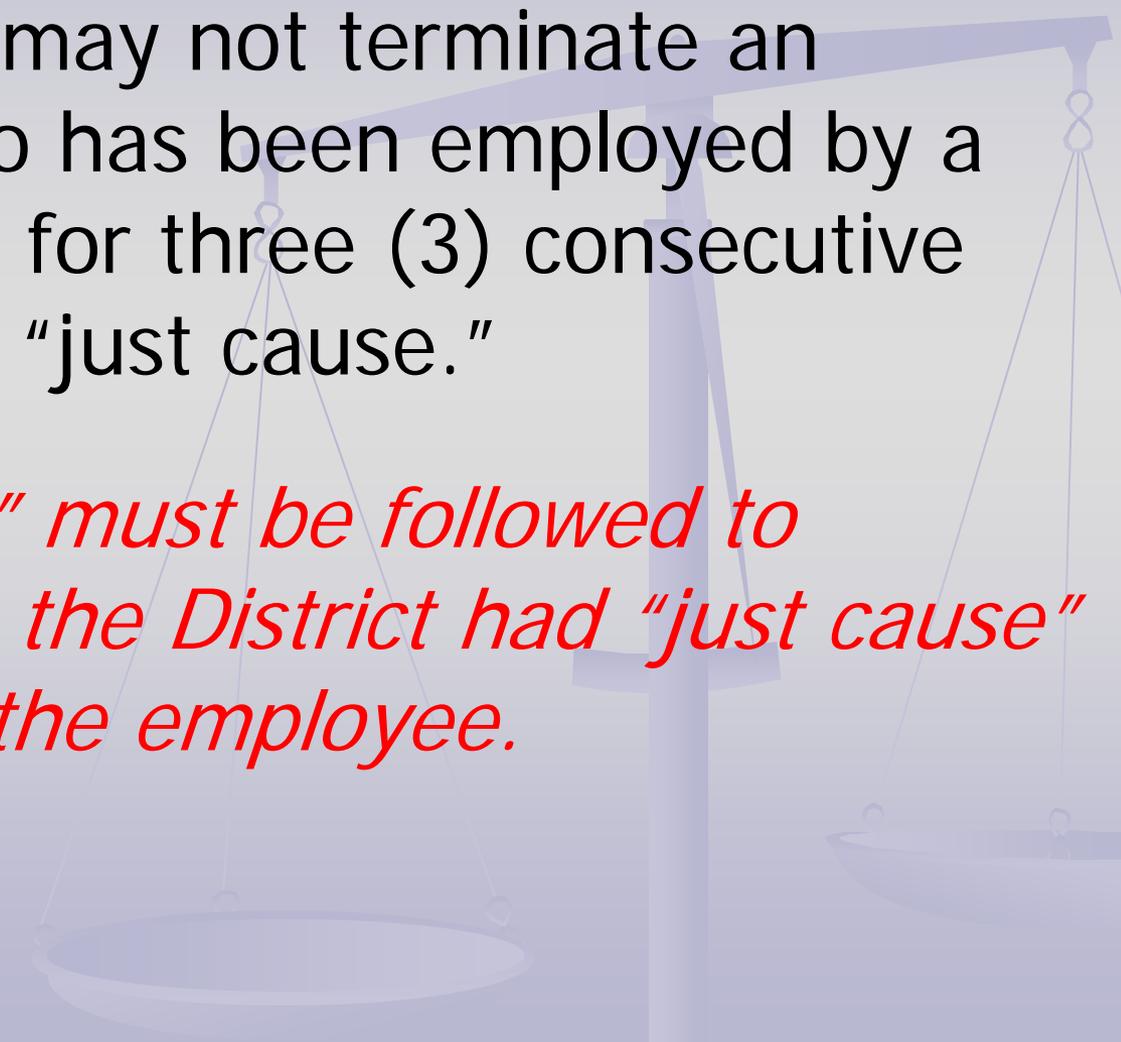
- **Administration presents evidence first**
 - **Employee presents evidence thereafter**
 - **Each party may call witnesses, cross examine witnesses and present evidence**
 - **Must have official record-one copy at the expense of local board**
- 



DISCHARGE DUE PROCESS

- Board decision within 20 days of hearing
 - Employee may appeal decision of board to an independent arbitrator
 - Select arbitrator within 10 days of appeal
 - Arbitration hearing within 30 days of selection of the arbitrator
 - The decision of the independent arbitrator is final and binding and is not appealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the New Mexico Court of appeals.
- 

Termination Due Process



- A local board may not terminate an employee who has been employed by a school district for three (3) consecutive years without “just cause.”
- *“Due process” must be followed to establish that the District had “just cause” not to rehire the employee.*

Termination (continued)

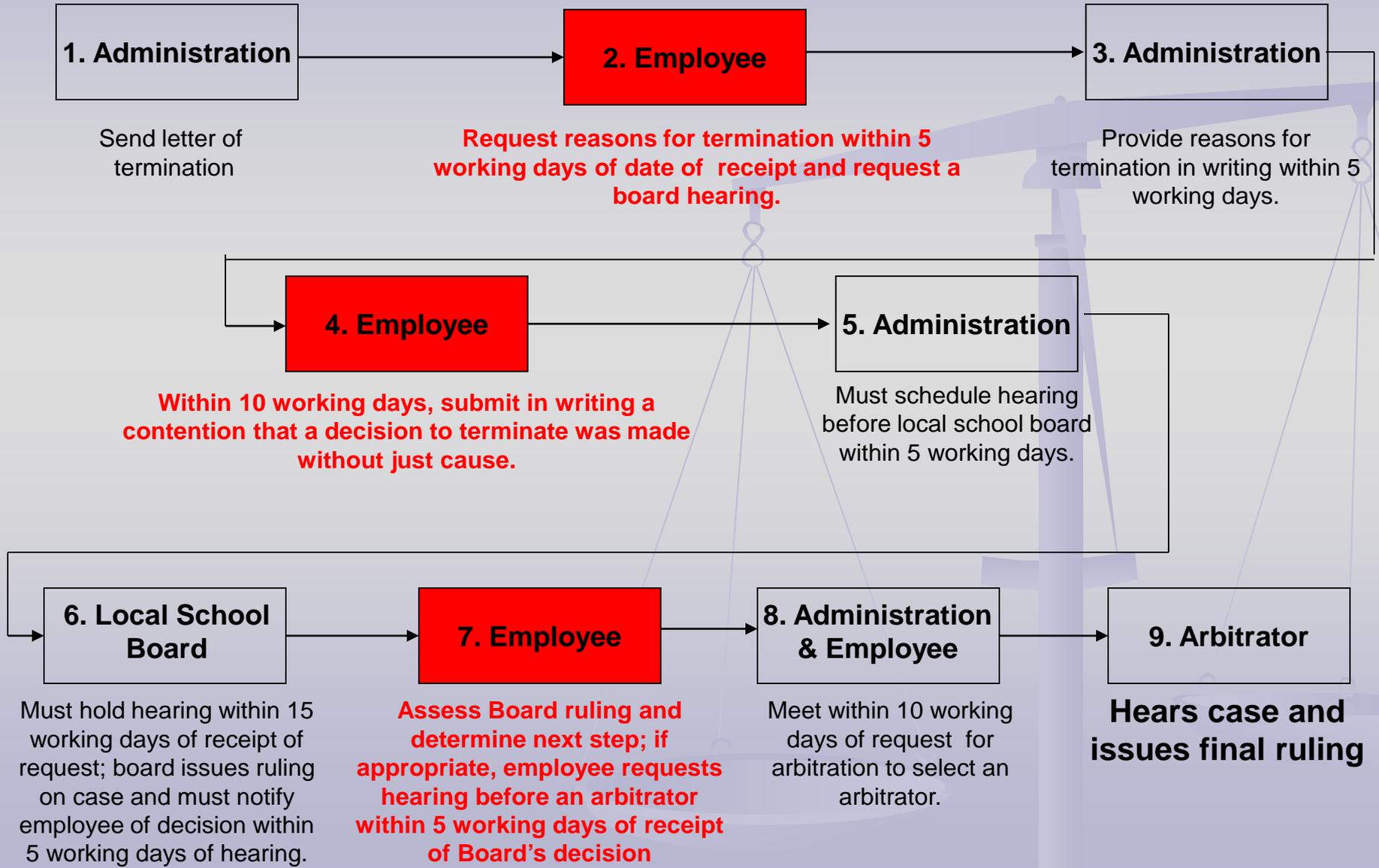
- For E.S.P., the law states the employee must have completed three (3) consecutive years of employment for this purpose.
- E.S.P. who are in their 1st, 2nd, and 3rd year of employment do not have “due process” rights. An employer can “terminate” such an employee for any reason the school board deems sufficient. *During the fourth contract year, E.S.P. gain “due process” rights.*

Termination (continued)

- “Just cause” is a legal term of art used in many different employment contexts.
- For our purposes it means “a reason that is rationally related to an employee's competence or turpitude or the proper performance of the employee's duties and that is not in violation of the employee's civil or constitutional rights.”
- If a employee who has been employed for three or more consecutive years receives a notice of termination, several steps exist to challenge the termination.

TERMINATION STEPS

of Employees Employed By A School District For Three (3) Consecutive Years Without Just Cause.

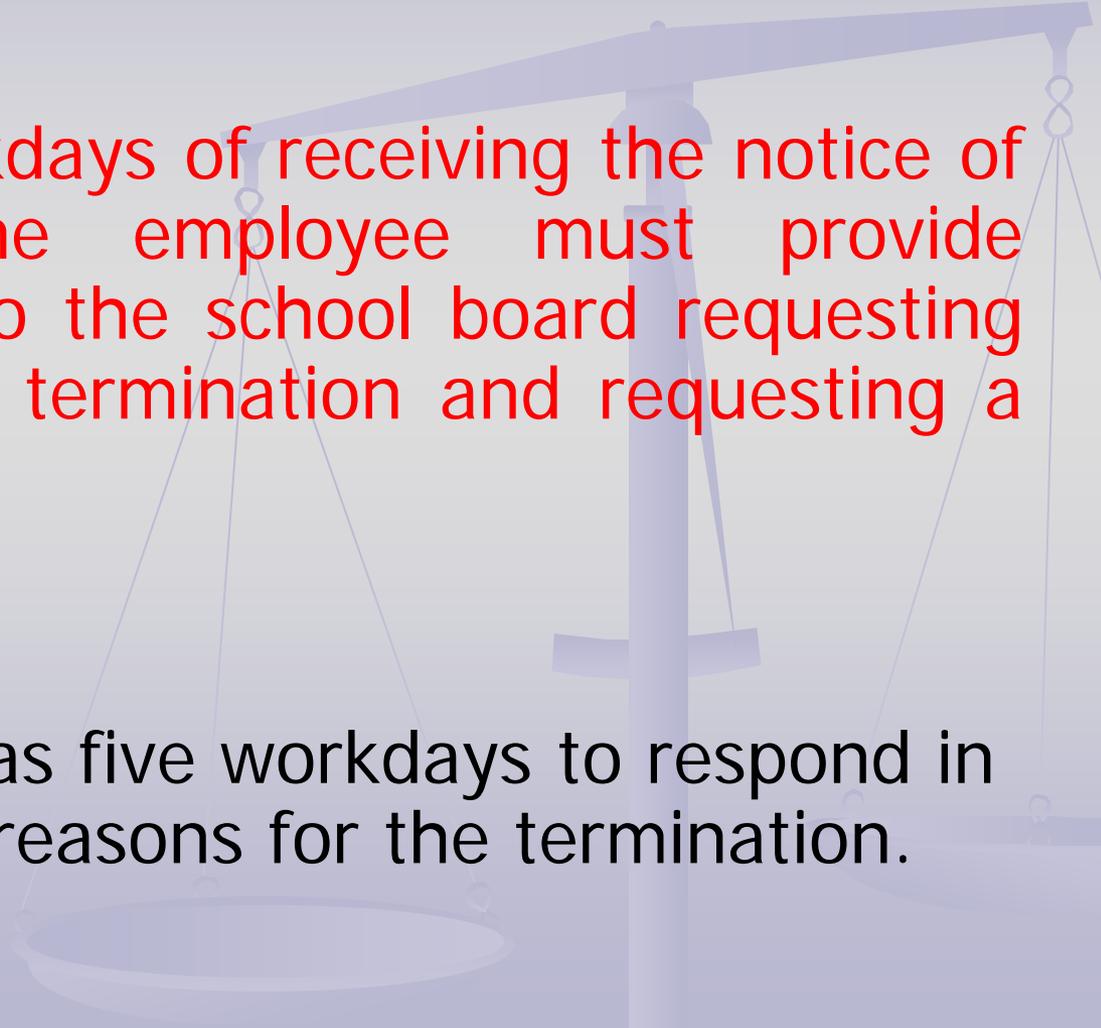


Termination (continued)

The chart on the previous slide shows the course of a termination and the steps an employee may take to appeal a termination. Specifically, it shows the process for an E.S.P. employed for three consecutive years. The following slides explore this in detail.

Step 1: starts with a letter from the District. If an employee has been told they are being terminated, know that until they receive the letter, the action is not formal.

Termination (continued)



Step 2:

Within five workdays of receiving the notice of termination, the employee must provide written notice to the school board requesting the reasons for termination and requesting a hearing.

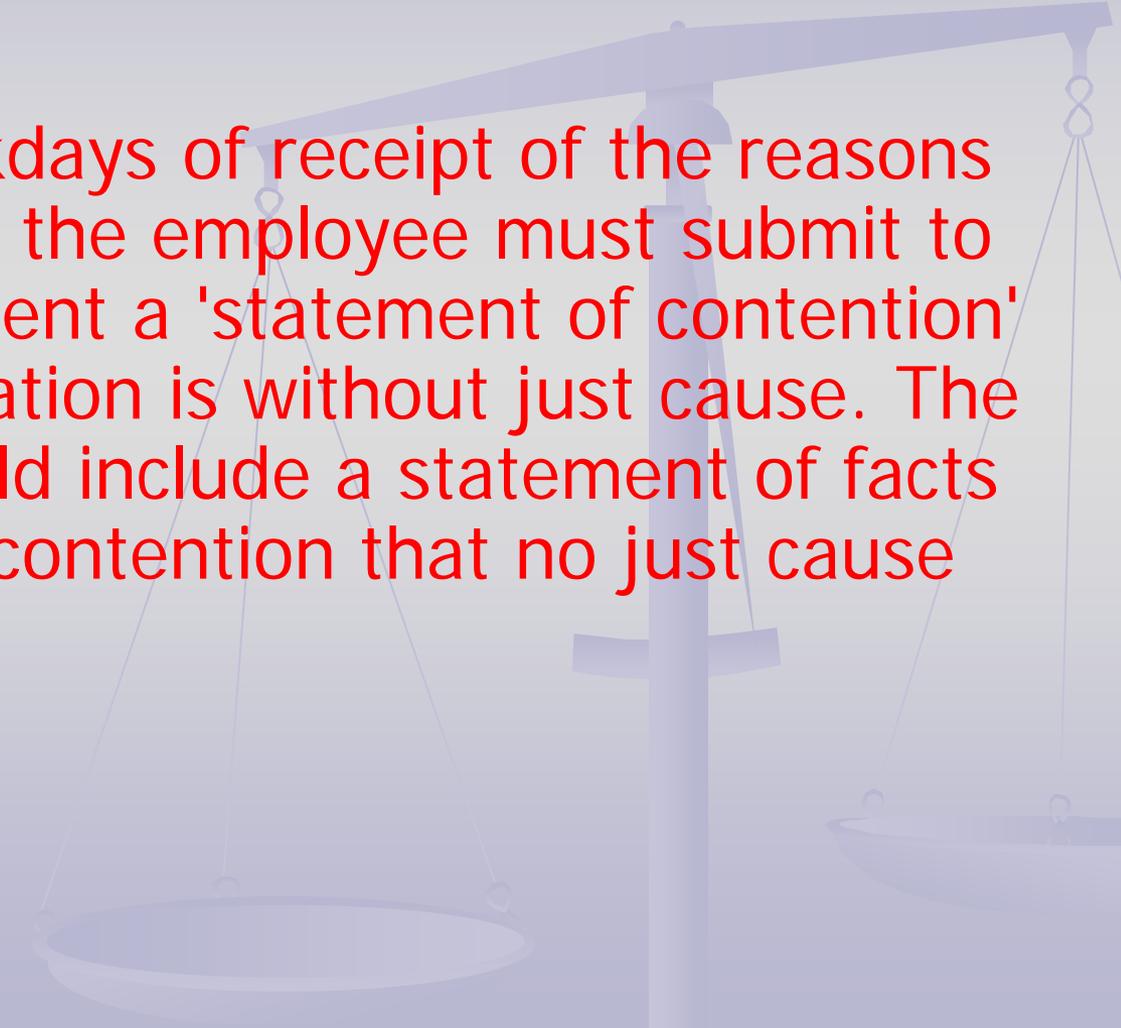
Step 3:

The employer has five workdays to respond in writing with its reasons for the termination.

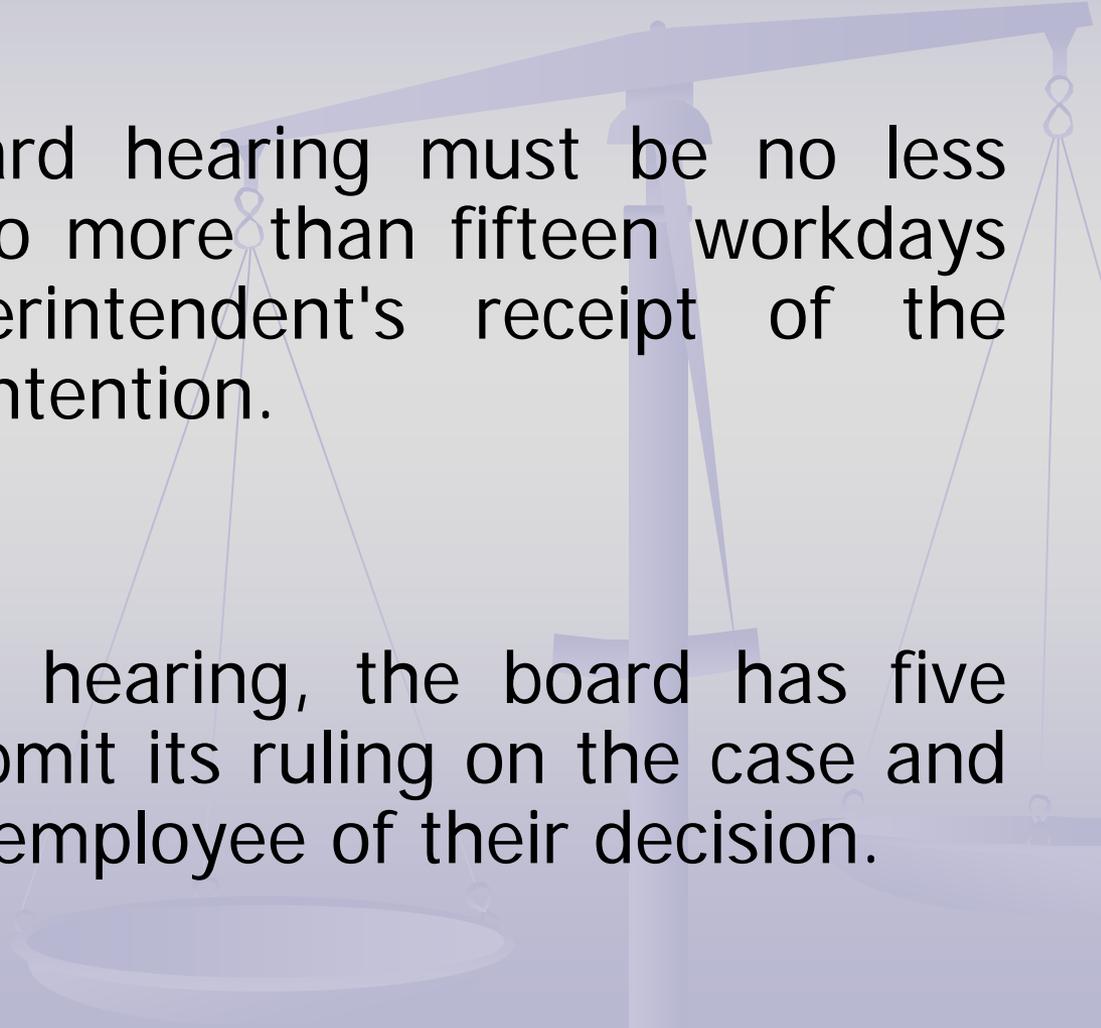
Termination (continued)

Step 4:

Within ten workdays of receipt of the reasons for termination, the employee must submit to the superintendent a 'statement of contention' that the termination is without just cause. The statement should include a statement of facts supporting the contention that no just cause exists.



Termination (continued)



Step 5:

The school board hearing must be no less than five and no more than fifteen workdays after the superintendent's receipt of the statement of contention.

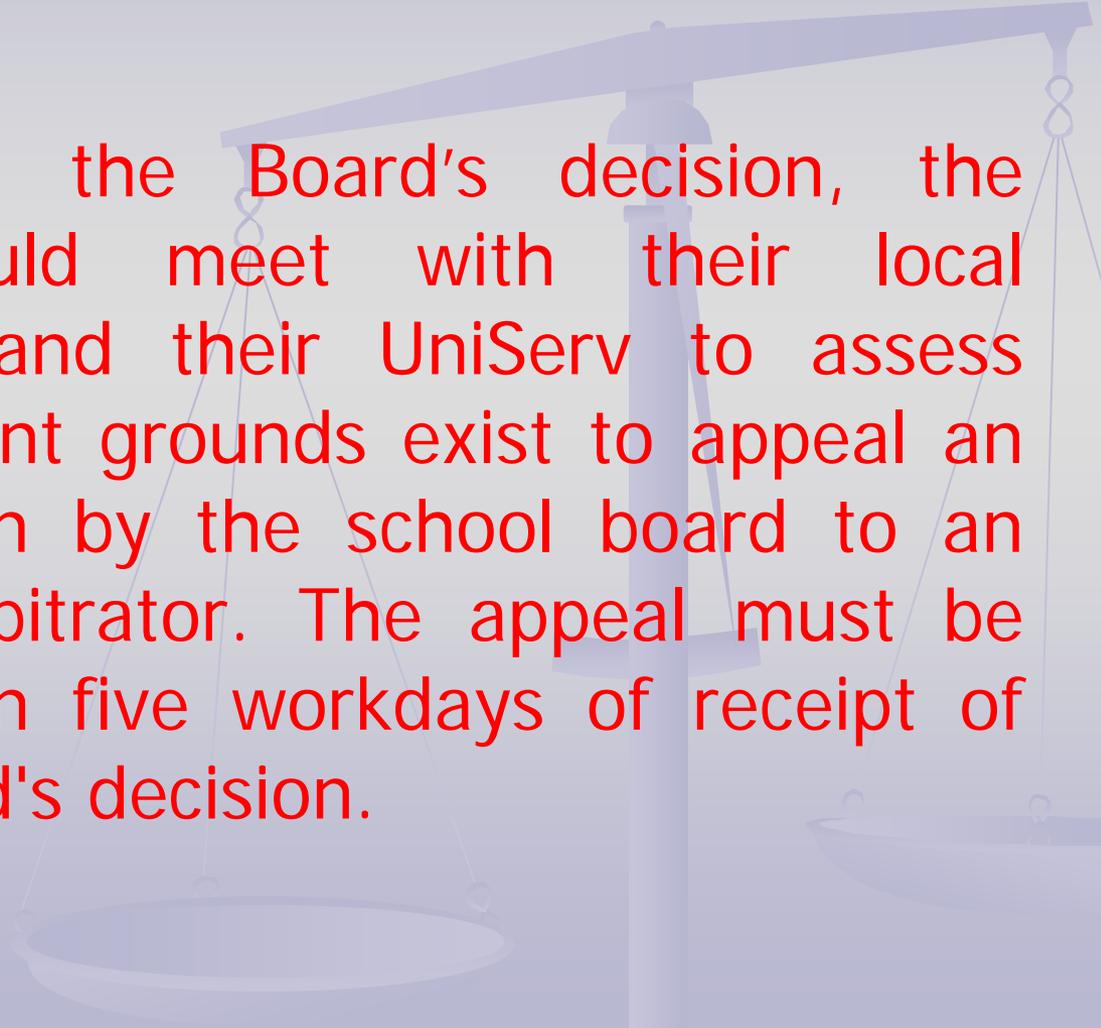
Step 6:

After the board hearing, the board has five workdays to submit its ruling on the case and must notify the employee of their decision.

Termination (continued)

Step 7:

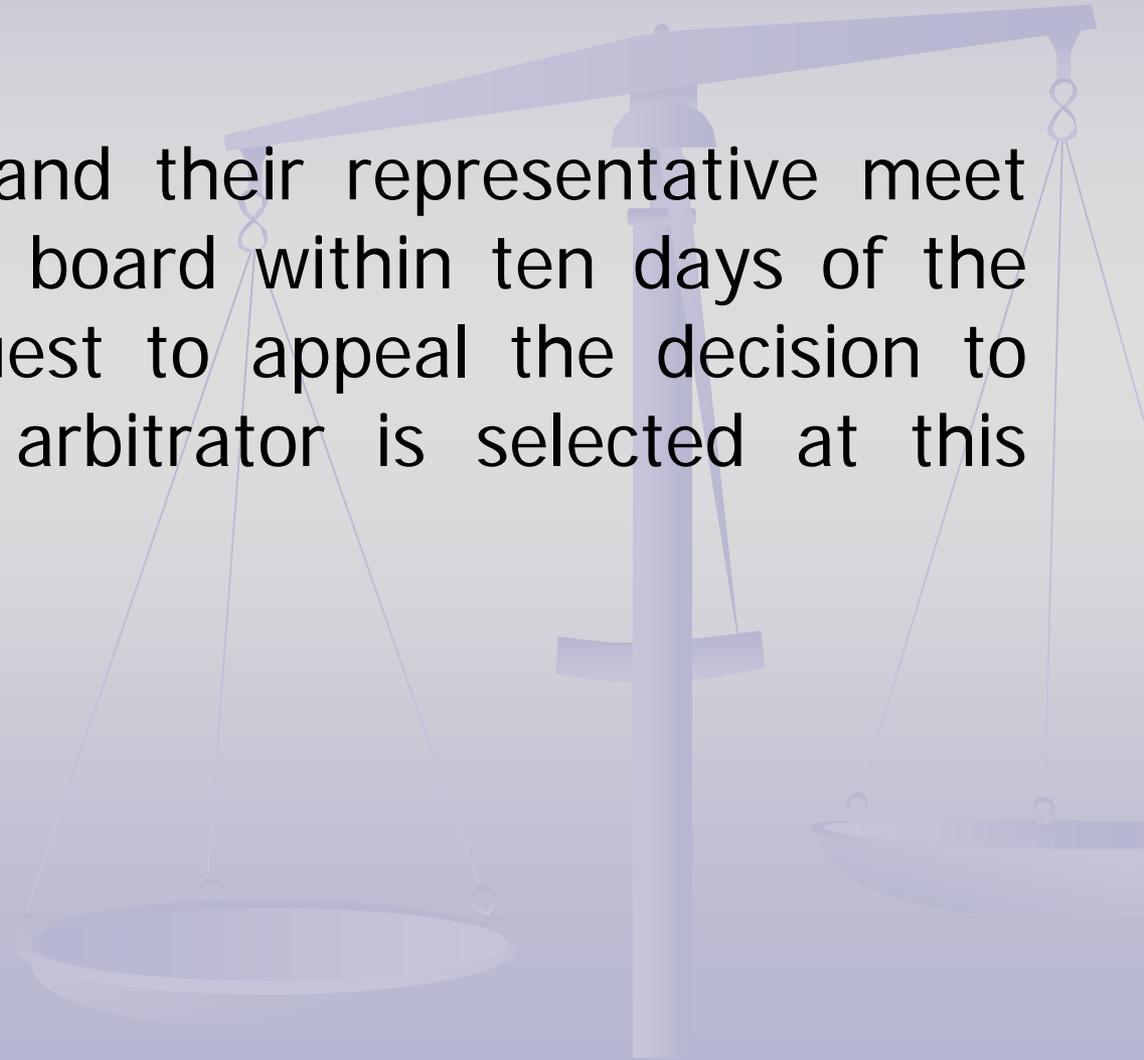
Upon receiving the Board's decision, the employee should meet with their local representative and their UniServ to assess whether sufficient grounds exist to appeal an adverse decision by the school board to an independent arbitrator. The appeal must be submitted within five workdays of receipt of the school board's decision.



Termination (continued)

Step 8:

The employee and their representative meet with the school board within ten days of the employees request to appeal the decision to arbitration. An arbitrator is selected at this meeting.

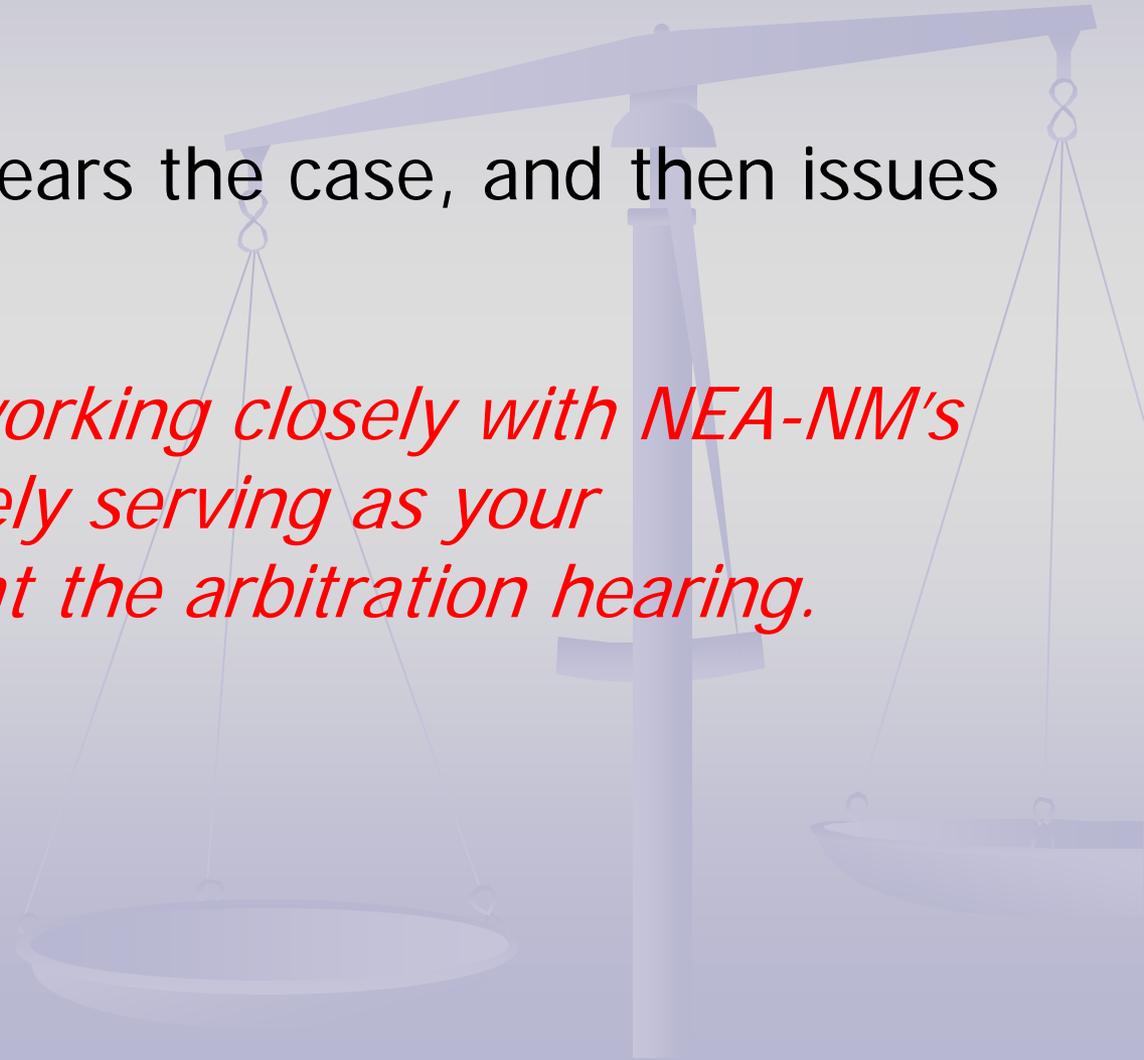


Termination (continued)

Step 9:

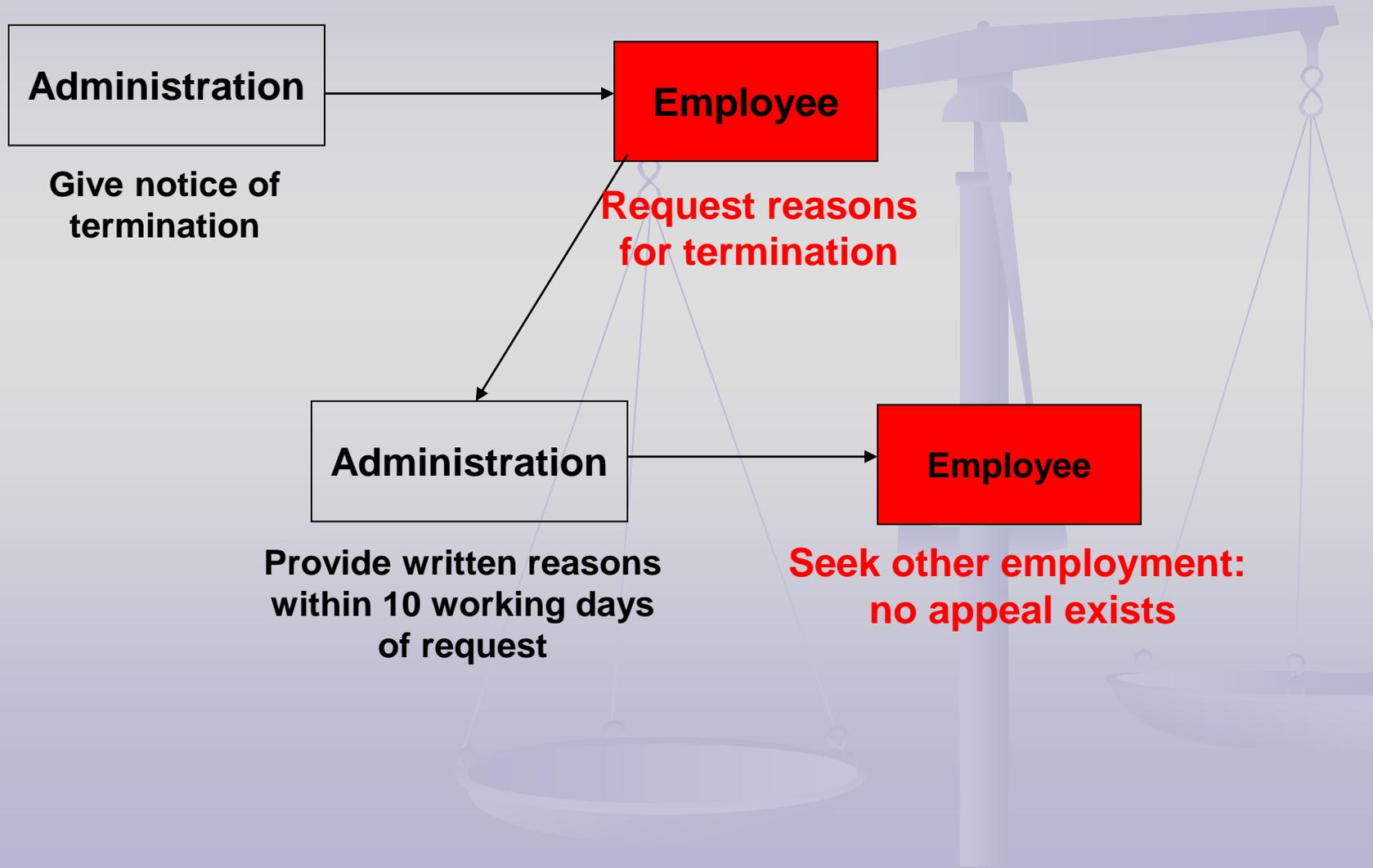
The Arbitrator hears the case, and then issues a final ruling.

Your UniServ, working closely with NEA-NM's attorneys, is likely serving as your representative at the arbitration hearing.



TERMINATION STEPS

of Employees With Fewer Than Three (3) Years of Service



Termination Less than Three (3) Years

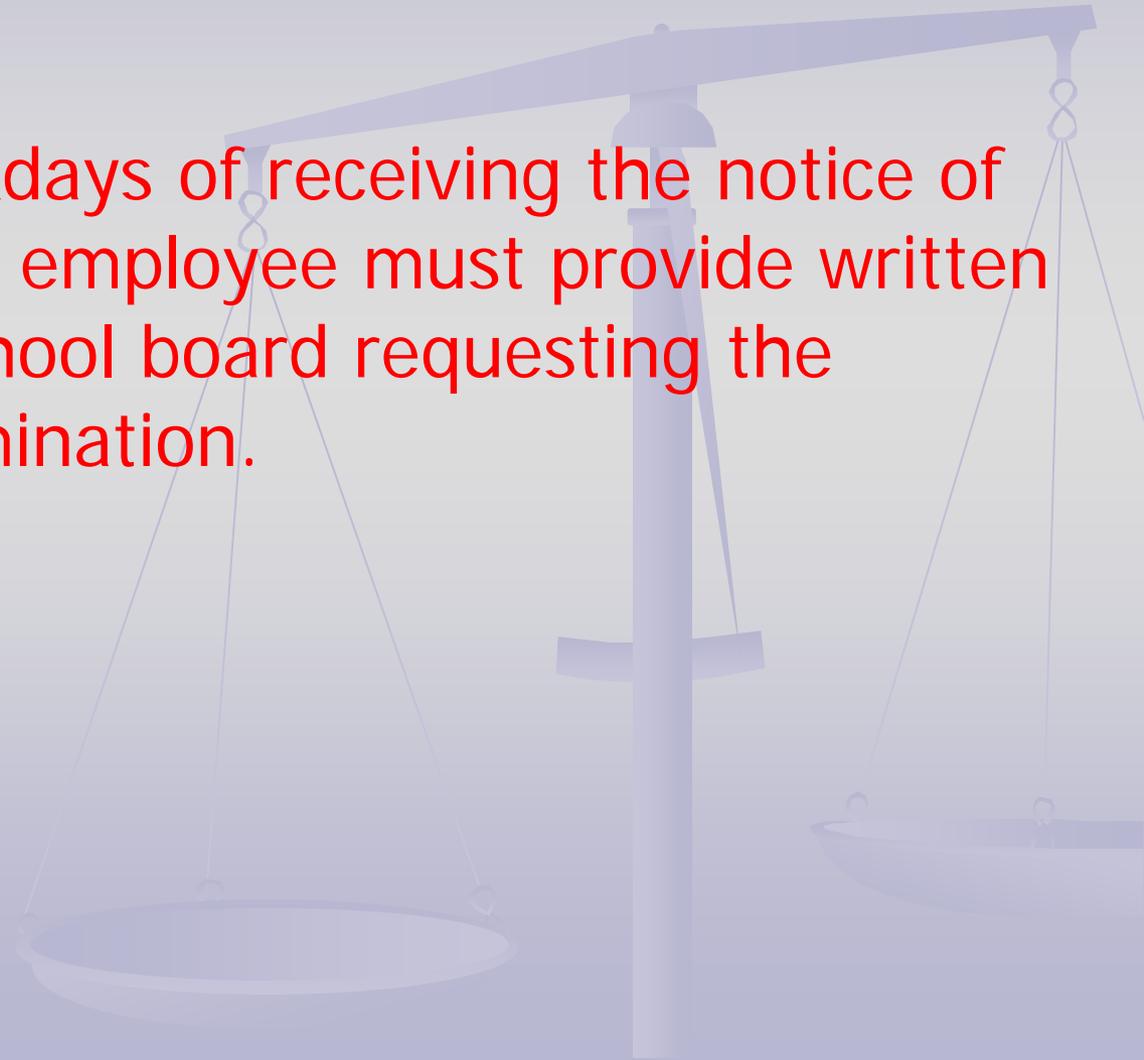
The course of the Termination steps for an employee with less than three (3) years of consecutive service with that district is shown on the “flow chart” on the next slide, and explained in the next few slides.

Step 1: starts with a letter from the District.

Termination Less than Three (3) Years

Step 2:

Within five workdays of receiving the notice of termination, the employee must provide written notice to the school board requesting the reasons for termination.



Termination Less than Three (3) Years

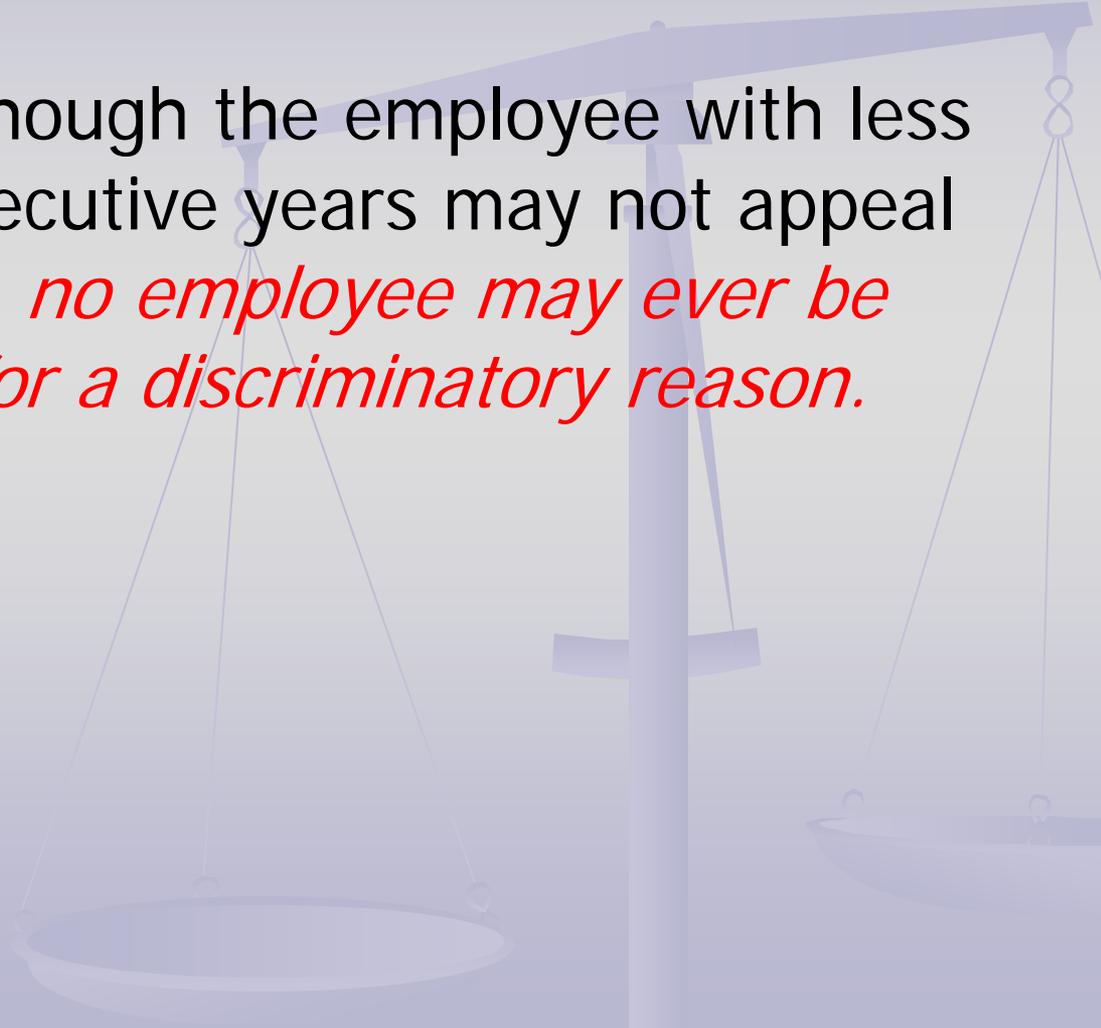
Step 3:

The administration has ten working days to provide their reasons for termination to the employee.

There is no appeal process for the termination of an employee with less than three years of consecutive service in the same district.

Termination Less than Three (3) Years

However, even though the employee with less than three consecutive years may not appeal a termination, *no employee may ever be terminated for a discriminatory reason.*



Termination Less than Three (3) Years

- **Discriminatory reasons** are those based on your membership in a “class” of people recognized by the law.
- It could include a physical disability, age discrimination, racial discrimination, gender discrimination, **or retaliation for certain protected acts** such as filing a worker's compensation claim, or for participation in organizing for collective bargaining and union activities.

Termination Less than Three (3) Years

Although the same procedural appeals are not provided for employees with three years or less of consecutive service, *you do have the ability to file suit in court if you have been terminated for a prohibited reason (such as discrimination).*

However, keep in mind that the standard of proof is very high in proving such a claim.

New Mexico Whistle Blower Protection Act

New Mexico's Whistleblower Protection Act prohibits public employers from retaliating against public employees who take action, object to, or refuse to participate in a matter they believe, in good faith, to be an unlawful or improper act .

Under the act, protected activities of employees include disclosing or threatening to disclose, providing information or testifying about unlawful or improper act(s) of a public employer, or objecting to or refusing to participate in an activity, policy or practice of the public employer that constitutes an unlawful or improper act.

Whistle Blower Protection

An unlawful or improper act that constitutes malfeasance is defined as a practice, procedure, action or failure to act on the part of the public employer that violates a federal law or regulation, a state law or administrative rule, or a law of any political subdivision, or would or does result in a misuse of public funds or poses a substantial danger to public health and safety.

Legal action against the public employer must be brought within 2 years after the date of the occurrence, and may be brought in any court of competent jurisdiction. Affirmative defenses may be raised, such as the disciplinary action was warranted due to misconduct, poor job performance, reduction in work force or other legitimate business purposes. The remedies provided for in the act are not exclusive and do not preclude civil or criminal actions against an employee who files a false claim under the act.

Free Speech, Not as Free as it Used to Be

As a general matter, a state cannot deny someone public employment because of their private speech. What then, is the First Amendment protection for the speech of a public employee?

The Supreme Court has developed a distinct doctrine addressing that question, in which the canonical cases are *Pickering v. Board of Ed. of Township High School Dist.* and *Connick v. Myers*. As a general matter, the *Pickering/Connick* test sets out a two-part inquiry: **First, was the employee's speech on "a matter of public concern"?** If not, then the employee has *no* First Amendment cause of action based on his or her employer's reaction to the speech.

Free Speech??

If, however, the speech *was* on a matter of public concern, then the First Amendment question is whether the government entity had an adequate justification for treating the employee differently from any other member of the general public. **The state has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that has some potential to affect the state employer's operations.**

In almost all of the cases in this line, the speech in question had clearly been made in the employee's private capacity. Somewhat surprisingly, the Court had never quite decided whether "official capacity" speech -- speech an employee makes *qua* employee -- is entitled to even the modest First Amendment protection of *Pickering/Connick*.

Free Speech??

However, in 2006, in a case called *Garcetti v. Ceballos*, **the Supreme Court held that most, if not quite all, of the speech made in a public employee's official capacity is entitled to no constitutional protection at all.**

The case involved a deputy district attorney, Ceballos, who worked in the Los Angeles County District Attorney's Office. Ceballos discovered what he considered to be serious misrepresentations in an affidavit that his office had used to obtain a search warrant -- and he did what an employee was supposed to do in such a situation: Not announce it to the public, but instead bring the alleged wrongdoing to the attention of his supervisors. Those supervisors disagreed with Ceballos's concerns; and Ceballos claimed that he was thereafter subjected to a series of retaliatory employment actions.

Free Speech??

In *Garcetti v. Ceballos*, the Court held that **"when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."** This apparently means that employees may be disciplined for their official capacity speech, without any First Amendment scrutiny, and without regard to whether it touches on matters of "public concern" -- a very significant doctrinal development.

Rights Determined at the Local Level

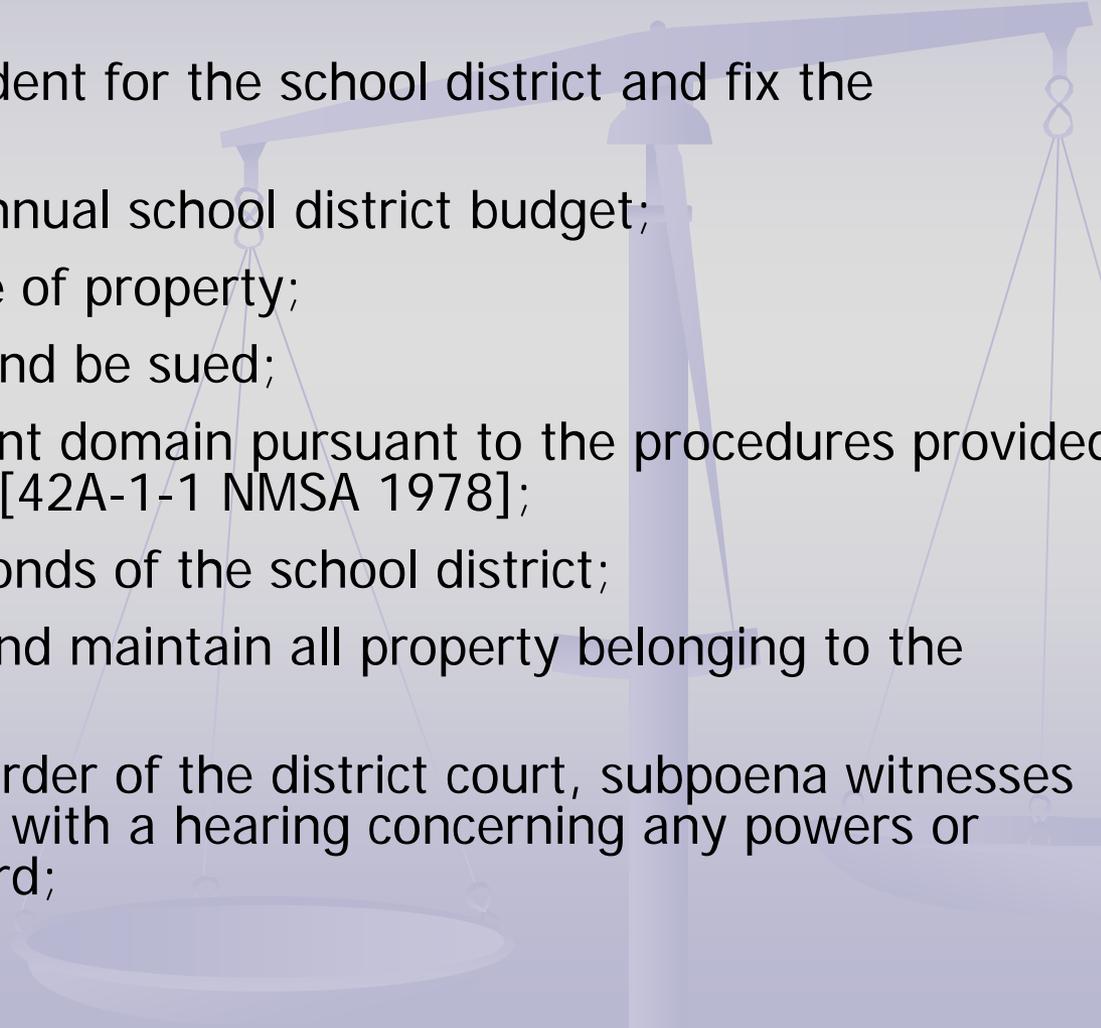


- Superintendents
- School Board Policies, including Grievances, Transfer and Promotion policies
- Collective Bargaining Agreements

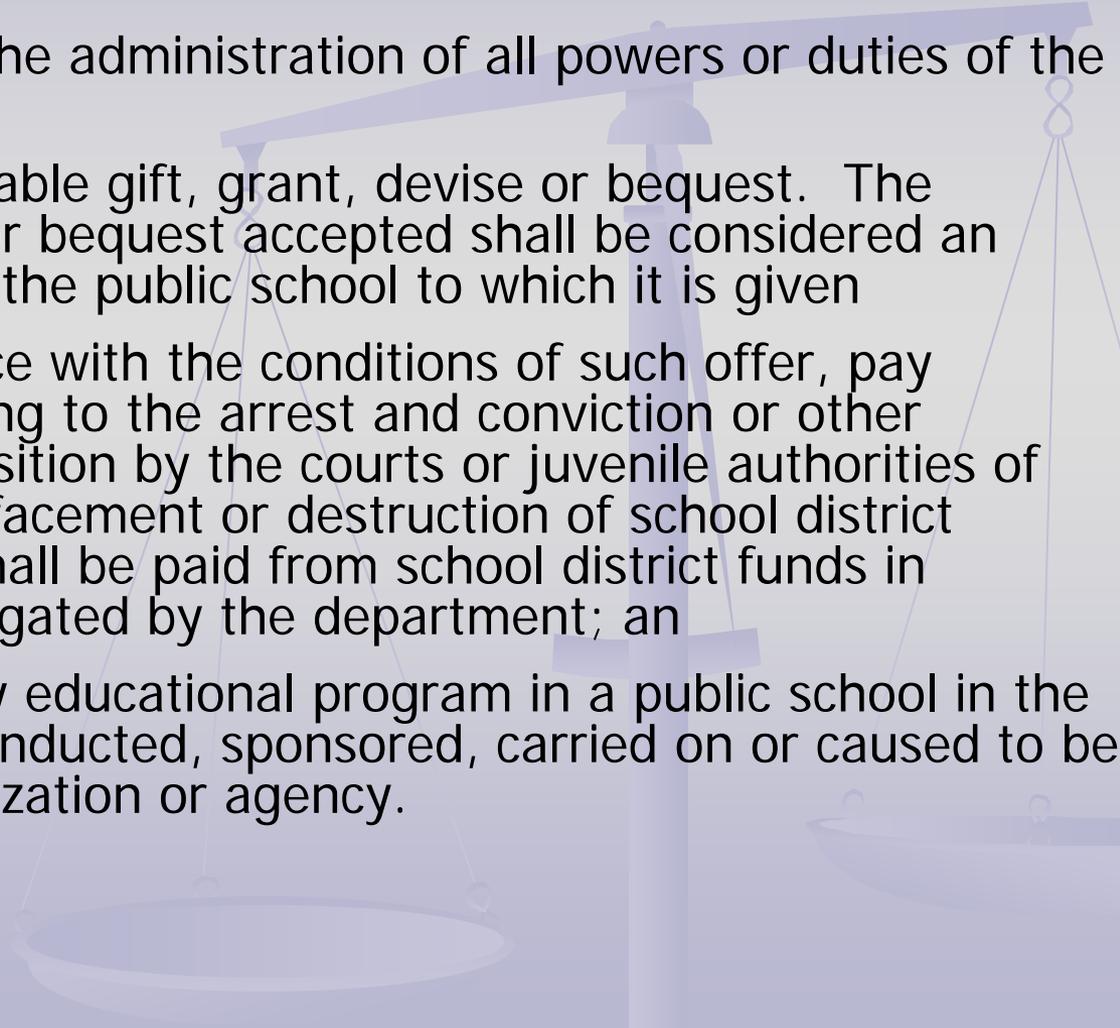


School Boards

22-5-4. Local school boards; powers; duties.

- A. subject to the rules of the department, develop educational policies for the school district;
 - B. employ a local superintendent for the school district and fix the superintendent's salary;
 - C. review and approve the annual school district budget;
 - D. acquire, lease and dispose of property;
 - E. have the capacity to sue and be sued;
 - F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code [42A-1-1 NMSA 1978];
 - G. issue general obligation bonds of the school district;
 - H. provide for the repair of and maintain all property belonging to the school district;
 - I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;
- 

School Boards

- J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code [13-1-28 NMSA 1978];
 - K. adopt rules pertaining to the administration of all powers or duties of the local school board;
 - L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given
 - M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; an
 - N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.
- 

School Board Policy

Policies are guidelines adopted by local school boards or charter school governing boards to chart a course of action. They tell what is wanted and may include why and how much. They should be broad enough to permit discretionary action by the administration in meeting day-to-day problems, and yet be specific enough to give clear guidance. Policy-making is the board's major task and primary responsibility. It is essential, therefore, for the board to think through the principles by which it wants the school district to be governed and to record them in the form of comprehensive written policies. The board creates, reinforces or negates policy every time it makes a decision. Absent collective bargaining agreements, board policies may cover employment relations or these may be left to administrative directives, depending on the local school district's interpretation of 22-10-.

Collective Bargaining Agreements supersede Board Policies, not vice versa. Board policies may not be contrary to law or state regulation.

School Boards vs. Superintendent

According to various school reform statutes, including HB 212:

Superintendents, rather than boards, employ, fix the salaries of, assign, terminate or discharge all employees of the school district;

The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process.

Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.



A Trio of “Rights” from Court Decisions

- **Garrity Rights**
- **Weingarten-like**
- **Loudermill Rights**



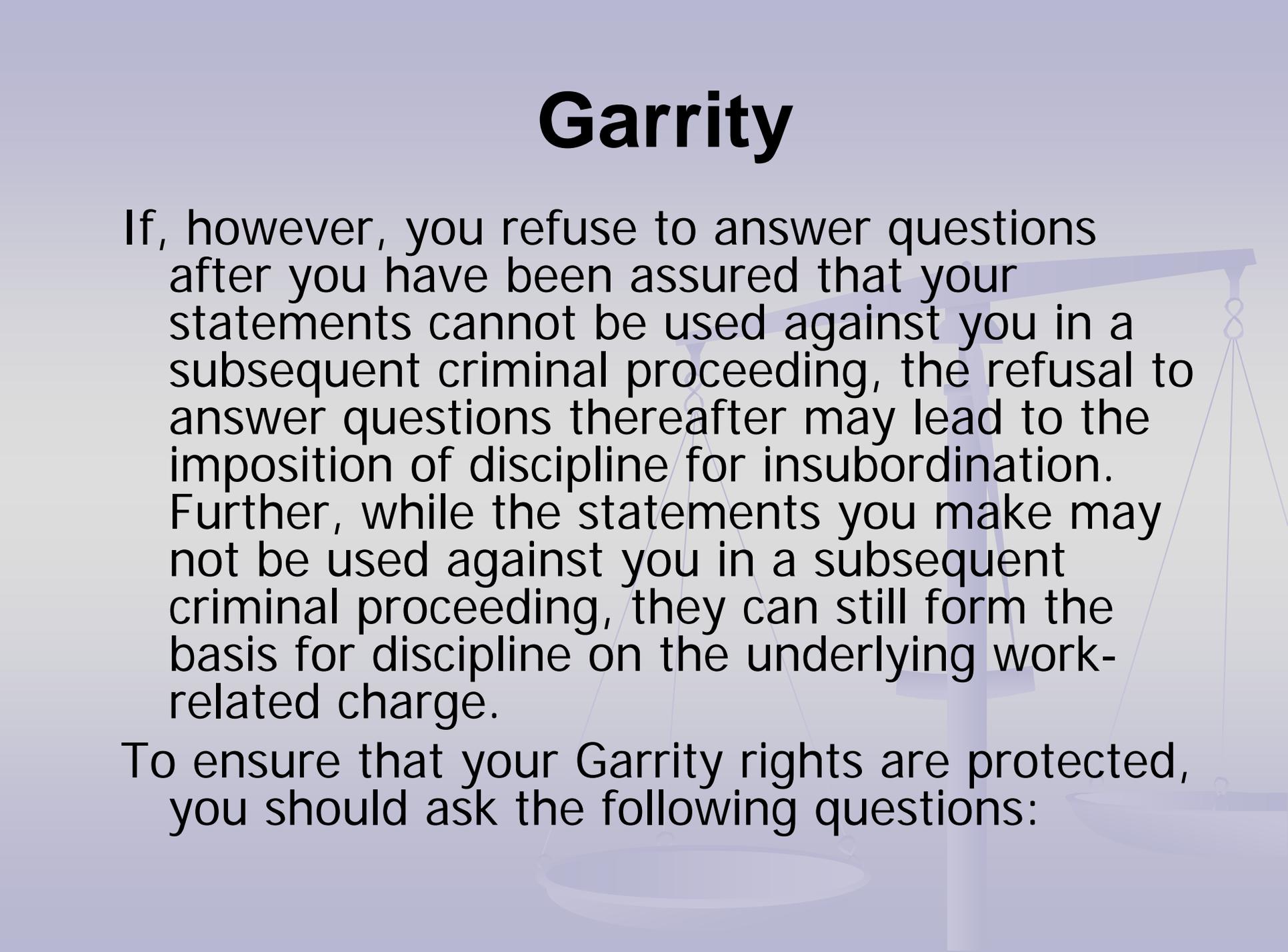
Garrity Rights

In the case of *Garrity v. New Jersey*, the U.S. Supreme Court determined that public employees could not be forced, under clear threat of discipline, to violate the principles of compulsory self-incrimination.

This decision established what have come to be called "Garrity Rights" for public employees.

The Garrity rule is similar to Miranda rights for public employees. However, the burden is on the employee to assert their Garrity rights. These rights can and should be asserted whenever an employee believes they are being investigated for possible criminal conduct.

Garrity



If, however, you refuse to answer questions after you have been assured that your statements cannot be used against you in a subsequent criminal proceeding, the refusal to answer questions thereafter may lead to the imposition of discipline for insubordination. Further, while the statements you make may not be used against you in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work-related charge.

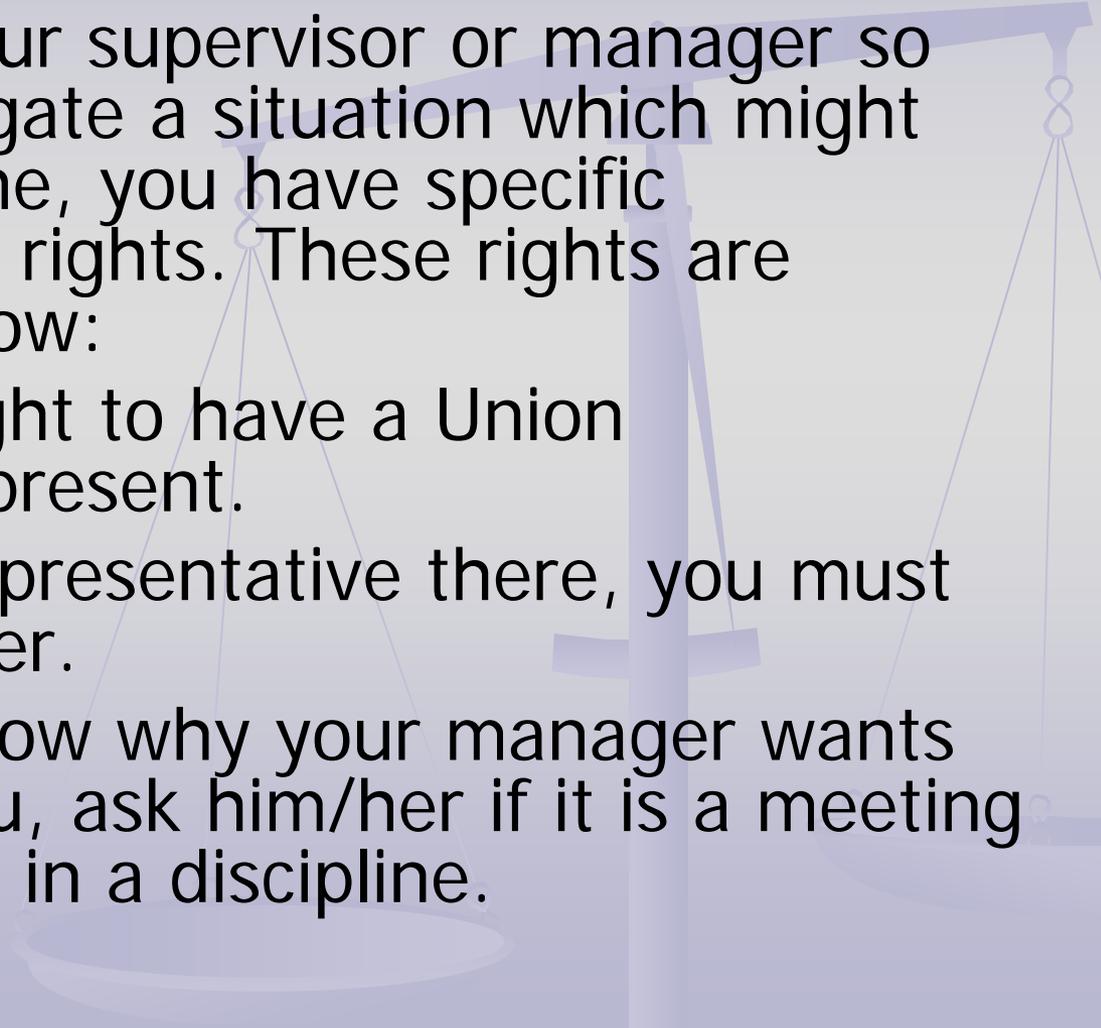
To ensure that your Garrity rights are protected, you should ask the following questions:

Garrity



- 1) If I refuse to talk, can I be disciplined for the refusal?
- 2) Can that discipline include termination from employment?
- 3) Are my answers for internal and administrative purposes only and are not to be used for criminal prosecution?
 - Once an employee has asserted their Garrity rights, management must:
 - Give a **direct order** to answer the question;
Make the question **specific, directly and narrowly related** to the employee's duty or fitness for duty;
Advise the employee that the **answers will not and cannot be used against him/her in a criminal proceeding, nor the fruits of those proceedings**; and
Allow **union representation** if the employee also asserts their Weingarten Rights.

Weingarten-like

- If you are ever called into an interview meeting with your supervisor or manager so they can investigate a situation which might result in discipline, you have specific representational rights. These rights are summarized below:
 - You have the right to have a Union Representative present.
 - If you want a representative there, you must ask for him or her.
 - If you do not know why your manager wants to meet with you, ask him/her if it is a meeting that could result in a discipline.
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Weingarten-like

- If your manager refuses to allow you to bring a representative, repeat your request in front of a witness. Do not refuse to attend the meeting, but do not answer any questions either. Take notes. Once the meeting is over call your representative at once.
- You have the right to speak privately with your representative before the meeting and during the meeting.
- Your representative has the right to play an active role in the meeting. She or he is not just a witness.

Weingarten-like

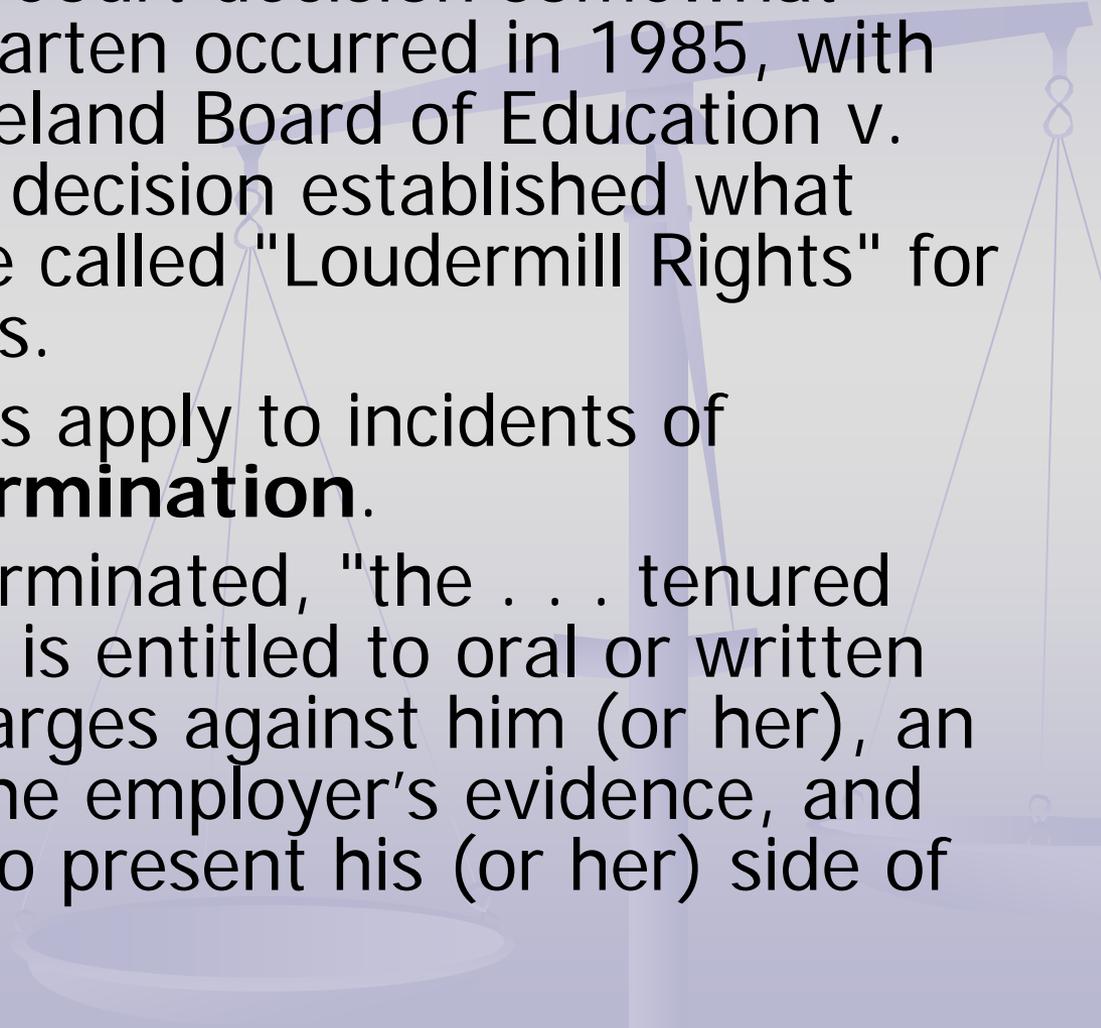
- These rights are generally called "Weingarten Rights" based on a 1975 Supreme Court decision (NLRB vs. J. Weingarten). As with all rights, if we do not use them we lose them. Since much of New Mexico Public Employee Collective Bargaining Act is based on NLRB precedent, we have similar rights under NM PEBA
- **This statement could save your job:**
"If this discussion could in any way lead to my being disciplined or terminated I respectfully request that my representative be present at the meeting. Without representation present, I choose not to respond to any questions or statements."

Weingarten-like

What situations DO NOT give rise to Weingarten rights?

- Where the meeting or discussion is merely for the purpose of conveying work instructions, training, or needed corrections.
- Where the purpose of the meeting is simply to inform the employee about a disciplinary decision that has already been made and no information is sought from the employee.
- Where the employer has clearly and overtly assured the employee prior to the interview that no discipline or adverse consequences will result from the interview.
- Where any discussion that occurs after the employer has notified the employee of the discipline has been initiated by the employee rather than the employer.

Loudermill Rights



- A U.S. Supreme Court decision somewhat similar to Weingarten occurred in 1985, with the case of Cleveland Board of Education v. Loudermill. This decision established what have come to be called "Loudermill Rights" for public employees.
- Loudermill Rights apply to incidents of **involuntary termination**.
- Prior to being terminated, "the . . . tenured public employee is entitled to oral or written notice of the charges against him (or her), an explanation of the employer's evidence, and an opportunity to present his (or her) side of the story."

Loudermill

- Unlike Weingarten, the **employer has an obligation** to inform the employee of his/her Loudermill Rights.
- The **employee has the right** to speak or not to speak at the Loudermill (or "pre-disciplinary") hearing. Also, the employee has a right to union representation, and the union representative may speak on behalf of the employee.
- If the employee chooses not to attend the *Loudermill* (or "pre-disciplinary") hearing, the employer may proceed with termination



nea
nm

A large, stylized graphic element consisting of a central circle containing the letter 'E'. This circle is surrounded by a cross-like structure of thick black lines. The word 'nea' is written in a blue, serif font to the left of the central structure, and 'nm' is written in the same font to the right. The entire graphic is superimposed on a faint, light blue background of a scale of justice.