On September 11, 2020, Gov. Murphy signed P.L.2020, c. 79, now known as Chapter 79. That law provides important new protections against subcontracting for ESP members. Specifically, it prohibits a board from subcontracting jobs during the term of a collective bargaining agreement. Additionally, it requires boards to give at least 90 days’ notice before commencing any process of subcontracting and to negotiate with the majority representative over the impact of any such action.

In technical terms, it prohibits any local or regional school district, educational services commission, jointure commission, county special services school district, or any board or commission under the authority of the commissioner of Education or State Board of Education, or any county college from entering into a subcontracting agreement which would affect the employment of any employees in a collective bargaining unit represented by a majority representative during the term of an existing collective bargaining agreement in effect. Following the term of a collective bargaining agreement, a subject employer may enter into a subcontracting agreement only if: 1) the employer provides written notice to the majority representative of the affected employees and to the New Jersey Public Employment Relations Commission (PERC), not less than 90 days before requesting bids or soliciting subcontracting proposals, and 2) the employer offers the majority representative the opportunity to meet and discuss the decision to subcontract, and to negotiate over its impact. Any employee replaced or displaced as the result of a subcontracting agreement retains all previously acquired seniority and shall have recall rights whenever the subcontracting terminates.

It is important to note that the new restrictions against subcontracting do not apply to State colleges, or public colleges or universities under the authority of the Secretary of Higher Education, except for county colleges. Also, Chapter 79 expressly carves out an exception from the restrictions on employers entering into subcontracting agreements, to exclude any contract entered into pursuant to the “Uniform Shared Services and Consolidation Act,” P.L.2007, c. 63 (codified as N.J.S.A. 40A:65-1 et seq.), or any contract to provide services to nonpublic schools through State or federal funds.

Except for the actions expressly required or prohibited by the provisions of Chapter 79, all aspects or actions related to or resulting from an employer’s decision to subcontract, including the issue of severance pay, remain subjects of negotiations.

Violations of any provision of the act shall be deemed an unfair practice for which a charge may be filed with PERC. Remedies expressly include employee reinstatement, back pay, back benefits, back emoluments, tenure and seniority credit, attorney’s fees, and such other relief as the commission deems appropriate.

Chapter 79 took effect immediately upon approval, on September 11, 2020.

If you have questions regarding your rights under this new law, please contact your local president or UniServ Field Rep.