



City of Las Cruces®

MOUNTAINS OF OPPORTUNITY

Labor Management Relations Board Meeting

Wednesday, March 10, 2021

10:00 a.m.

https://las-cruces-org.zoom.us/webinar/register/WN_GBPAO-JQQymktpq9OAgUyA

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I. Call To Order/Introductions

II. Acceptance Of Agenda

III. Action Items

III.I. Rules

Documents:

LMRB PART 1 CITY.PDF

LMRB PART 2 CITY OR COUNTY.PDF

LMRB PART 3 CITY OR COUNTY.PDF

IV. Discussion Items

IV.I. Ordinance Changes

Documents:

ORDINANCE NO. 2961.PDF

LABOR MANAGEMENT BOARD MEETING 03.10.21.PDF

V. Adjournment

**LABOR MANAGEMENT RELATIONS BOARD
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Section 1. DEFINITIONS:

- A. Ordinance definition: The terms defined in the Ordinance on Collective Bargaining shall have the meanings set forth therein.
- B. Additional definitions: The following terms shall have the meanings set forth below.
- (1) **“Ordinance”** means the City of Las Cruces Ordinance on Collective bargaining including any amendments to that Ordinance.
 - (2) **“Amendment of certification”** means a procedure whereby an incumbent labor organization certified by the Board to represent a unit of public employees or a public employer may petition the Board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.
 - (3) **“Certification of incumbent bargaining status”** shall mean a procedure whereby a labor organization recognized by the City of Las Cruces as the exclusive representative of an appropriate bargaining unit on June 30, 1999, petitions the Board for a declaration of bargaining status.
 - (4) **“Challenged ballot”** means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the Board.
 - (5) **“Complainant”** means an individual, labor organization, or the City of ** that has filed a prohibited practices complaint.
 - (6) **“Delivering a copy”** as it pertains to service or filing of pleadings or other documents means: (1) handing it to the Board, to its agent(s), to opposing counsel or unrepresented parties; (2) sending a copy by facsimile or electronic submission in accordance with Sections 4 or 18 herein; (3) leaving it at the Board’s, opposing attorney’s or party’s office with a clerk or other person in charge thereof; or (4) if the attorney’s or party’s office is closed or the person to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
 - (7) **“Document”** means any writing, photograph, film, blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.
 - (8) **“Electronic submission”** means the filing of a pleading or other document with the Board using an electronic system established by the Board, service by the parties, or email communications.
 - (9) **“On a form prescribed by the Board”** as used in these rules pertaining to the filing of documents with the Board, shall include the electronic data submitted by use of any interactive form posted for that purpose on the Board’s webpage.
 - (10) **“Probationary employee”** shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for determining rights under the Ordinance, a public employee may not be considered to be a probationary employee for more than one year after the date of hire by the City of Las Cruces. If otherwise undefined, the term shall refer to an employee who has held that position, or a related position, for less than six months.
 - (11) **“Prohibited practice”** means a violation of Section 16 or 17 of the Ordinance.
 - (12) **“Representation case”** or **“representation proceeding”** means any matter in which a petition has been filed with the Board requesting a certification or decertification election, or an amendment of certification, or unit clarification.

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- (13) **“Respondent”** means a party against whom a prohibited practices complaint has been filed.
- (14) **“Rules”** means the rules and regulations of the Board (these rules), including any amendments to them.
- (15) **“Unit accretion”** means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion will not render the existing unit inappropriate.
- (16) **“Unit clarification”** means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the Board to change the scope or description of an existing bargaining unit; a change in union affiliation; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of employees represented by the same exclusive representative into horizontal units, where the Board finds the unit as clarified to be an appropriate bargaining unit and no question concerning, representation arises.
- (17) **“Unit inclusions or exclusions”** means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Ordinance.

Section 2. COMPUTATION OF TIME: When these rules state a specific number of days in which some action must or may be taken after a given event, the date of the given event is not counted in computing the time, and the last day of the period is deemed to end at close of business on that day. Saturdays, Sundays, and City of Las Cruces recognized legal holidays shall not be counted when computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday, then the last day for taking the action shall be the following business day.

Section 3. EXTENSION OF TIME: A party seeking an extension of time in which to file with the Board or a hearing examiner any required or permitted document may file with the Board or the hearing examiner, an appropriate written request for an extension. Such a request shall be filed at least three days prior to the due date and shall state the position of all other parties, or that the filing party was unable to reach another party. The Board or the hearing examiner may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

Section 4. FILING WITH THE BOARD: To file a document with the Board, the document may be either hand-delivered to the City Clerk during its regular business hours, or sent to that office by United States mail, postage prepaid, or by sending a copy by facsimile or electronic submission. The City Clerk will be responsible for recording the filing of documents to be filed with the Board.

A. Time of filing: A document will be deemed filed when it is received by the Board. For hand delivered or mailed documents the date and time stamp affixed by the City Clerk will be determinative. For faxed or electronically transmitted documents the time and date affixed on the cover page or the document itself by the City Clerk’s facsimile machine or receiving computer will be determinative.

B. Additional time after service by mail: Whenever a party has the right or is required to do

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some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

C. Signatures: Parties or their representatives filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document. All electronically filed documents shall be deemed to contain the filer's signature. The signature in the electronic document may represent the original signature in the following ways:

- (1) by scanning or other electronic reproduction of the signature; or
- (2) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

D. Demand for original: A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile or electronic submission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

Section 5. REPRESENTATION OF A PARTY: A party may be self-represented or be represented by counsel or other representative. Any representative of a party shall file with the Board a signed notice of appearance, stating the name of the party, the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

Section 6. EX PARTE COMMUNICATIONS: Except as otherwise provided in this rule, no party to a proceeding pending before this Board or any of its agents shall communicate, or attempt to communicate, with a hearing examiner assigned to the case or with a Board member concerning any issue in the case without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the Board, or to communicate with the Board, a mediator, or Board member at the Board's, mediator's, or Board member's request.

Section 7. DISQUALIFICATION: No Board agent, member nor hearing examiner shall decide or otherwise participate in any case or proceeding in which he or she: (a) has a financial interest in the outcome; (b) is indebted to any party, or related to any party or any agent or officer of a party by consanguinity within the third degree; (c) has acted on behalf of any party within two years of the commencement of the case or proceeding; or (d) for some other reason or prejudice, he or she cannot fairly or impartially consider the issues in the proceeding.

Section 8. MOTION TO DISQUALIFY:

A. A motion to disqualify a Board agent, member, or hearing examiner in any matter, based upon the foregoing criteria, shall be filed with the Board, with copies served on all parties, prior to any hearing or the making of any material ruling involving the pending issues.

B. Such motion shall set out the basis for the disqualification and all facts in support thereof.

C. If the Board finds such motion meritorious upon due inquiry, it shall disqualify the Board

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agent, member or hearing examiner and he or she shall withdraw from the proceeding. If the motion is denied, the Board shall so rule and the matter shall proceed.

Section 9. RECORDS OF PROCEEDINGS: All meetings of the Board (whether general, special, or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the Board or a hearing examiner of the Board shall be audio-recorded, or, upon order of the Board may be transcribed, except that Board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the Board. Following the Board's approval of the minutes of a meeting of the Board, the minutes shall become the sole official record of the meeting, and the audio recording of the meeting may be erased. The Board shall keep the audio recordings of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or Board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials. The Board's recording or transcript shall be the only official record of a hearing.

Section 10. NOTICE OF HEARING:

A. After the appropriate notice or petition is filed in a representation, prohibited practices, or impasse resolution case, the Board shall hold a status and scheduling conference with the parties to determine the issues, establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

B. Upon setting a rulemaking hearing, the Board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules. Notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice and shall be published in at least one newspaper of general circulation in the City of ** at least 30 days prior to commencement of the hearing.

C. Upon setting a hearing or conference before the Board or designee in any proceeding, the Board shall cause notice of hearing to be issued to all parties of record setting forth the time and place of the hearing or conference. A party to a representation, prohibited practices, or impasse resolution case in which a hearing or conference is scheduled may request postponement of the hearing or conference by filing a written request with the Board, and serving the request upon all other parties, at least five days before commencement of the hearing or conference. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the Board shall grant a postponement to a date no more than 20 days after the previously set date. Only in extraordinary circumstances may the Board grant a further postponement, or a postponement to a date more than 20 days after the previously set date, or a postponement with less than five days' notice.

Section 11. EVIDENCE ADMISSIBLE:

A. The technical rules of evidence shall not apply, but, in ruling of the admissibility of evidence, the hearing examiner or Board may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

B. Irrelevant, immaterial, unreliable, unduly repetitious or cumulative evidence, and evidence protected by the rules of privilege (such as attorney-client, physician-patient, or special privilege) shall be excluded upon timely objection.

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C. The hearing examiner or Board may receive any evidence not objected to, or may, upon the hearing examiner's or Board's own initiative, exclude such evidence if it is irrelevant, immaterial, unreliable, unduly repetitious, cumulative, or privileged.

D. Evidence may be tentatively received by the hearing examiner or Board reserving a ruling on its admissibility until the issuance of a report or decision.

Section 12. MISCONDUCT: As part of the Board's duty under Section 2 of the Ordinance to ensure the orderly functioning of the City; and as part of its power to hold hearings and enforce the Ordinance by the imposition of appropriate administrative remedies pursuant to Section 8 of the Ordinance, the hearing examiner or body conducting a hearing or official performing duties under the Ordinance may exclude or expel from any hearing or proceeding, any person, whether or not a party, who engages in violent, threatening, disruptive, abusive or unduly disrespectful behavior. An exercise of the Board's power to control its proceedings under this rule may include prohibiting a representative from appearing before the Board or one of its hearing examiners for a period of time designated by the Board, reprimanding, suspending, or recommending referral for other disciplinary action. In the event of such exclusion or expulsion the hearing examiner, Board, or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate. An exercise of this power by an agent of the Board is subject to review by the Board.

Section 13. SUBPOENAS:

A. Any party to a proceeding in which a notice of hearing has issued may file a written request with the Board for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; identify the person(s) or documents sought; and state the general relevance to an issue in the case of the testimony or documents sought. The Board may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears to the Board that the documents or testimony sought are not relevant to issues in the case. Otherwise, the Board shall immediately issue a subpoena to the requesting party.

B. The Board or a hearing examiner may issue subpoenas on the initiative of the Board or hearing examiner in which case a showing of relevance is not required, and a notice of hearing need not have been issued.

C. A person upon whom a subpoena is served may move to quash the subpoena. A motion to quash shall be filed according to the scheduling order, or as permitted by the Board or the hearing examiner.

D. Any applicable witness and travel fees shall be the responsibility of the subpoenaing party.

Section 14. EXCHANGE OF DOCUMENTS AND LISTS OF WITNESSES: Pursuant to the scheduling order, each party shall serve upon all other parties all documents it intends to introduce at the hearing and a list of all witnesses it intends to call, along with a brief statement of the subjects about which each witness is expected to testify. No party may compel discovery other than as provided in this rule and Section 13 (subpoenas), except by a specific order of the Board upon good cause shown. The Board or hearing examiner may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule if, in the Board or hearing examiner's judgment, there was sufficient reason for the failure to timely supply the names or documents.

Section 15. OWNERSHIP AND CONFIDENTIALITY OF SHOWING OF INTEREST:

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Evidence of a showing of interest submitted to the Board in support of a representation petition shall remain the property of the party submitting such evidence, shall not become property of the Board, shall be kept confidential by the Board, and shall be returned to the party that submitted the same upon the close of the case.

Section 16. BURDEN OF PROOF:

A. Except in unit clarification proceedings, no party shall have the burden of proof in a representation proceeding. Rather, the Board in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

B. In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

Section 17. MOTIONS AND RESPONSES TO MOTIONS: All motions and responses to motions, except those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order or, if no deadline is set forth in the scheduling order or such has yet to be issued, within 10 days.

Section 18. SERVICE: Service of papers upon parties may be made by personal delivery, by depositing in United States mail, first class postage prepaid, by facsimile (“fax”) submission, or by electronic submission and, by the next scheduled work day after sending a “fax” or electronic submission, either personally delivering the document or depositing it in first class mail, in which case the date of “fax” or electronic submission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served. The Board may serve any document by electronic transmission to an attorney or party or its representative under this rule.

Section 19. TESTIMONY OF BOARD AGENTS: Agents of the Board (including the Board, investigators, hearing examiner, and Board members), whether employees of the Board or contractors, may not be compelled to testify in Board proceedings.

Section 20. FORM OF PAPERS: All papers required or permitted to be filed with the Board or a hearing examiner shall be on an official form prepared by the Board, if available, or on 8 ½ by 11 white paper, double spaced. All papers shall show at or near the top of the first page the case name and, if available, the case number, and shall be signed.

Section 21. APPEAL OR REVIEW BY THE BOARD: Unless otherwise provided in these rules, appeal or request for review by the Board shall be permitted only upon completion of proceedings before a hearing examiner. Review by the Board shall be based on the evidence presented or offered at the earlier stages of the proceeding and shall not be de novo. An interlocutory appeal may be allowed with the permission of the Board or the hearing examiner.

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Section 22. BOARD'S AUTHORITY: Except as otherwise provided in these rules, the Board shall have authority to delegate to other Board employees or outside contractors any of the authority delegated to the Board by these rules. In every case where these rules or the Ordinance provide for the appointment of a hearing examiner, the Board shall appoint the hearing examiner, and may appoint the Board or a Board member as the hearing examiner.

Section 23. CLOSING OF CASES: The Board shall close a case following completion of all administrative and judicial proceedings related to the case. The Board may, after notice to the parties, summarily close any case in which the moving party has taken no action within the previous six months, unless the delay is caused by factors beyond the party's control.

Section 24. PUBLICATION OF BOARD DECISIONS: At the times and in the manner prescribed by the Board, the Board shall reproduce multiple copies of Board decisions, classify and index the decisions, and make tables and indexes of the decisions, as well as compilations of the decisions, available to the public.

Section 25. TIME LIMITS FOR BOARD ACTIONS: Whenever these rules set forth a period of time within which the Board or a hearing officer must take any action, the Board or hearing examiner may, for good cause, extend for a reasonable time, not to exceed 20 workdays for each extension, the date by which such action must be taken, unless the date is controlled by statute.

Section 26. MEETINGS BY TELEPHONE:

- A.** Pursuant to Subsection C of Section 10-15-1 NMSA, 1978, a member of the Board may participate in a meeting of the Board by means of a conference telephone or other similar communications equipment in accordance with the provisions enumerated in this Section.
- B.** This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.
- C.** Each member participating by conference telephone must be identified when speaking.
- D.** All participants must be able to hear each other at the same time.
- E.** Members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.

Section 27. CHAIRPERSON SUCCESSION:

- A.** From among the three members appointed to the Board pursuant to Section 7 of the Ordinance, the Board shall appoint a chair to serve as the primary point of contact for the Board's staff, to conduct the regular and special meetings of the Board in a manner consistent with parliamentary procedure. In like manner the Board shall appoint a vice-chair to serve in the capacity of chair in its absence or inability to serve and to provide for automatic succession when the term of the chair is up.
- B.** The chair and the vice-chair shall serve in those capacities for a period of one year. If Board members continue to serve beyond one year, upon completion of the chair's one-year term, the vice-chair shall automatically become the chair and assume the duties of that office. The past chair shall resume regular duties as a member of the Board and the third Board member, who has not served as vice-chair within the preceding year, shall assume that role.
- C.** Initial appointments under this rule shall be by seniority based on the Board members' appointment letters. In the event of a tie, the chair shall be determined from between the two most senior members either by acclamation or by a coin toss supervised by the Board.

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Section 1. COMMENCEMENT OF CASE: A representation case is commenced by filing a representation petition with the Board. The petition shall include, at a minimum, the following information: the petitioner's name, address, phone number, state or national affiliation, if any, and representative, if any; the name, address and phone number of the public employer whose employees are affected by the petition; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups, and estimated numbers of employees in the proposed unit and any existing bargaining unit; a statement of whether or not there is a collective bargaining agreement in effect covering any of the employees in the proposed or any existing bargaining unit and, if so, the name, address and phone number of the labor organization that is party to such agreement; and a statement of what action the petition is requesting. In addition, a petition seeking a certification or decertification election shall be supported by a thirty percent showing of interest in the existing or proposed bargaining unit. A petition shall contain a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge and, in the case of a decertification petition, that the filer is a member of the labor organization to whom the decertification petition applies.

Section 2. SERVICE OF PETITION: Upon filing a petition, the petitioner shall serve it upon the employer and any incumbent labor organization. Within 10 days of the filing of a petition, the Board shall cause notice of the filing of the petition to be sent to any other interested party.

Section 3. FILING OF COLLECTIVE BARGAINING AGREEMENT: Along with a representation petition, the petitioner shall file with the Board a copy of any collective bargaining agreement, then in effect or recently expired, covering any of the employees in the petitioned-for unit.

Section 4. SHOWING OF INTEREST: With the petition and at the same time the petition is filed, the petitioner shall deposit with the Board a showing of interest consisting of signed, dated statements, which may be in the form of cards or a petition, by at least thirty percent of the employees in the proposed unit stating, in the case of a petition for a certification election, that each such employee wishes to be represented for the purposes of collective bargaining by the petitioning labor organization, and, in the case of a petition for a decertification election, that each such employee wishes a decertification election. Each signature shall be separately dated. So long as it meets the above requirements, a showing of interest may be in the form of signature cards or a petition or other writing, or a combination of written forms. No showing of interest need be filed in support of a petition for amendment of certification or unit clarification.

Section 5. INFORMATION REQUESTED OF PARTIES:

A. Within 10 days of the filing of a representation petition, the Board shall by letter request of any party that appears to have an interest in the proceeding, including any public employees involved and any incumbent labor organizations, its position with respect to the appropriateness of the bargaining unit petitioned for, a statement of any issues of unit inclusion or exclusion that the party believes may be in dispute, and any other issue that could affect the outcome of the proceeding.

B. From the public employer involved, the Board, within 10 days of the filing of a representation petition, shall also request a list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended

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immediately preceding the filing of the petition. The public-employer shall be instructed to file such a list within 10 days of the Board's request. The Board shall make the list available to the parties.

Section 6. INITIAL INVESTIGATION OF PETITION: After a petition has been filed, the Board shall investigate the petition. The investigation shall include the following steps and shall be completed within 30 days of the filing of the petition.

A. The Board shall check the showing of interest (if applicable) against the list of eligible employees, in the proposed unit filed by the public employer to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth in these rules, they shall be presumed valid unless the Board is presented with clear and convincing evidence that they were obtained by fraud, forgery, or coercion. In the event evidence of such fraud, forgery, or coercion is presented to the Board, the Board shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The Board shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 16 (opportunity to present additional showing) and shall explain in writing the basis of the dismissal. The Board's determination as to the sufficiency of a showing of interest is an administrative matter solely within the Board's authority and shall not be subject to question or review.

B. The Board shall determine the facial validity of the petition, including the facial appropriateness of the petitioned-for unit and may request the petitioner to amend a facially inappropriate petition. In the absence of an appropriate amendment, the Board shall dismiss a petition asking for an election in, or a clarification to, a facially inappropriate unit, or that is otherwise facially improper, in which case the Board shall explain its reasons in writing.

C. The Board shall determine whether there are significant issues of unit scope, unit inclusion or exclusion, labor organization or public employer status, a bar to the processing of the petition, or other matters that could affect the proceedings. The Board shall make the determination pursuant to the provisions of Subsection C of Section 10 of the Ordinance and Section 10-7E-24 NMSA 1978 of the Public Employee Bargaining Act.

Section 7. SETTLEMENT/STIPULATION OF UNIT ISSUES: If the Board finds that there are significant issues affecting the proceeding that are or may be in dispute, the Board shall confer with all parties to attempt to resolve the issues and to enter into a written stipulation stating the agreement. Any such stipulation shall be subject to approval of the Board upon review, which may be requested by the Board.

Section 8. NOTICE OF FILING OF PETITION: Unless the Board has determined that there is need for a representation hearing pursuant to Section 12, then within 30 days of receipt of a petition, the Board shall issue a notice stating that the petition has been filed, naming the petitioner, stating the unit petitioned-for, and stating the procedures for intervention as set forth in Section 9, below, including the date by which an intervenor must file its petition and showing of interest. The Board shall issue sufficient copies of the notice to the employer, and the employer shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for at least five days.

Section 9. INTERVENTION:

A. At any time within 10 days after the employer's posting of the notice of filing of petition,

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a labor organization other than the petitioner may file with the Board an intervenor's petition seeking to represent some or all of the employees in the petitioned-for unit. The intervenor's petition shall contain the same information set forth in Section 1 above.

B. The intervenor's petition shall be accompanied by a showing of interest showing that at least thirty percent of the employees in the petitioned-for unit wish to be represented by the intervenor for purposes of collective bargaining. The showing of interest shall otherwise meet the requirements set forth in Section 4 above.

C. An intervenor that has presented a sufficient showing of interest in the unit found to be appropriate shall be placed on the ballot and shall be considered a party to the proceeding.

D. Upon application, an incumbent labor organization shall have automatic intervenor status if it is not the petitioner, pursuant to the provisions of Subsection B of Section 10-7E-24 NMSA 1978 of the Public Employee Bargaining Act.

Section 10. CONSENT ELECTION: Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the Board is satisfied that the issues are so resolved, including unit scope, the Board shall draw up a consent election agreement to be signed by all parties and by the Board. The Board shall proceed to an election on the basis of the agreement.

Section 11. INVESTIGATION, REPORT, NOTICE OF HEARING: In the absence of a consent election agreement, the Board shall investigate the outstanding issues and shall issue and serve a report and direction of election, a report and dismissal of petition, or a notice of hearing within 45 days of the posting of the notice of filing of petition. If there is a dispute between the parties regarding unit composition, or the Board is satisfied that the issues can best be resolved in a hearing, the Board shall issue and serve a notice of hearing without first conducting a further investigation. A hearing concerning unit composition, where the parties are in dispute on that issue, shall be set for a date not later than 30 days following the Board's notice of hearing or the Board's receipt of notice of the dispute, whichever is sooner.

Section 12. REPRESENTATION HEARING:

A. In the absence of a consent election agreement, and where there are significant unit issues that, in the Board's view, should be resolved in a hearing, the Board shall issue a notice of hearing.

B. The Board shall appoint the hearing examiner and may appoint itself to serve as hearing examiner.

C. The hearing examiner shall take evidence sufficient to make a full and complete record on all unresolved unit issues and any other issues necessary to process the petition. Details such as the time, date, and place of the election, and whether there will be manual or mail ballots or a combination, shall not be resolved through the hearing process, but shall be resolved instead through the pre-election conference process described in Section 18.

D. The hearing examiner may examine witnesses, call witnesses, and call for introduction of documents.

Section 13. BRIEFS: If any party requests permission to file a post-hearing brief, the hearing examiner shall permit all parties to file briefs and shall set a time, for the filing of briefs which normally shall be no longer than 10 days following the close of the hearing. Briefs shall be filed with the Board and copies shall be served on all parties.

Section 14. BOARD/HEARING EXAMINER REPORTS: The Board/hearing examiner

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shall issue his or her report following the close of the hearing. Except in extraordinary circumstances, which shall be set forth in the report, the report shall be issued no longer than 15 days following the close of the hearing or the submission of post-hearing briefs, whichever is later. The report shall make findings of fact, conclusions of law, and recommendations for the determination of issues, and shall adequately explain the hearing examiner's reasoning. The Board/hearing examiner shall serve the report on all parties.

Section 15. BOARD REVIEW OF HEARING EXAMINER REPORTS AND DECISIONS:

A. If the Board has appointed a hearing examiner then within 10 days after service of the hearing examiner's report, any party may file a request for Board review of the hearing examiner's recommended disposition. The request for review shall state the specific portion of the hearing examiner's recommended disposition to which exception is taken and the factual and legal basis for such exception. The request may not rely on any evidence not presented to the hearing examiner. The request must be served on all other parties.

B. Within 10 days after service of a request for review, any other party may file and serve on all parties a response to the request for review.

C. Whether or not a party has filed a request for review, the Board, within 60 days, shall review any recommended disposition regarding the scope of a bargaining unit made by the hearing examiner. In addition, the Board shall review any other issue properly raised by a party in a request for review. The Board shall conduct its review on the basis of the existing record and may, in its discretion, hear oral argument.

D. Within 60 days following review, the Board shall issue its decision ordering an election, dismissing the petition, setting a further hearing, or otherwise disposing of the case. The Board may adopt or incorporate in and attach to its decision all or any portion of the hearing examiner's report.

Section 16. OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:

A. When the Board finds that the petitioner or an intervenor has submitted an insufficient showing of interest in the unit petitioned for, the Board shall notify the petitioner or intervenor, and that party shall have the opportunity to submit an additional showing of interest. The Board shall then review the additional showing of interest to determine whether the total showing of interest submitted by the party is sufficient to sustain its petition or intervention.

B. In the event that the Board or hearing examiner determines that a unit other than the unit petitioned for is appropriate and it appears to the Board that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate, the Board shall notify the petitioner or intervenor and give such party a reasonable amount of time in which to file an additional showing. If the party fails to file a sufficient showing within that time, the Board shall dismiss the petition or deny intervenor status.

Section 17. ELIGIBILITY TO VOTE:

A. Employees in the bargaining unit shall be eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement or the direction of election issued by the Board and are still employed in the unit on the date of the election.

B. Employees in the bargaining unit who are eligible to vote but who will be absent on the day of voting because of hospitalization, temporary assignment away from normal post of duty, leave of absence, vacation at a location more than 50 miles distant from the polling place, or other legitimate cause, may request an absentee ballot from the Board. Except for good cause shown,

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such a request must be received by the Board at least 10 days before the election, in which case the Board, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the Board by mail. To be counted, an absentee ballot must be received by the Board at least one day before the ballot count. The Board shall establish procedures to permit an absentee ballot to be challenged, as provided in Section 23, below.

C. The employer whose employees comprise the bargaining unit shall submit to the Board and to all other parties a list of all employees eligible to vote in the election no later than 10 days before the commencement of the election balloting. Employees whose names do not appear on the list but who believe they are eligible to vote may cast ballots through the challenged ballot procedure set forth in Section 23, below.

Section 18. PRE-ELECTION CONFERENCE:

A. At a reasonable time at least 15 days before the election, the Board shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual, electronic, or mail ballots, the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The Board shall notify all parties by mail or email, if available, of the time and place of the pre-election conference, at least five days in advance of the conference. The conference may proceed in the absence of any party.

B. The Board will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) and the use of manual, mail, or electronic participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.

C. The parties may stipulate to a consent election agreement without the necessity of a pre-election conference subject to approval of its terms by the Board, in which case the requirement for a pre-election conference shall be waived.

Section 19. NOTICE OF ELECTION:

A. The Board shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Section 18 above, no later than 10 days before the election. The notice of election shall also describe the bargaining unit whose members are eligible to vote and shall describe the challenged ballot procedure. The notice shall include a sample ballot.

B. The Board shall provide a sufficient number of copies of the notice of election to the employer whose employees are eligible to vote so that the employer may post a notice of election in all lounges or common areas frequented by unit employees and in all places where notices to employees are commonly posted. The employer shall post the notices in all such areas at least 10 days before the election and shall take reasonable measure to assure that they are not removed, covered, altered, or defaced.

Section 20. BALLOTS AND VOTING:

A. All voting shall be by secret ballot prepared by the Board. Position on the ballot shall be determined randomly. Ballots in an initial election shall include a choice of "no representation."

B. All elections shall be conducted by the Board, whether electronically, by mail in ballots, or on-site elections, subject to the provisions of Part 1, Section 22 regarding the Board's authority to delegate duties.

C. Any voter who arrives at a polling area before the polls close will be permitted to vote.

D. Public employers whose employees are eligible to vote in an election shall allow their employees in the voting unit sufficient time away from their duties to cast their ballots and shall allow their employees who have been selected as election observers sufficient time away from their duties to serve as observers. This rule does not impose on public employers an obligation to

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change the work schedules of employees to accommodate voting hours.

Section 21. ELECTIONEERING: No electioneering shall be permitted within 50 feet of any room in which balloting is taking place.

Section 22. OBSERVERS: Each party shall be entitled to an equal number of observers to observe and assist in each polling area, and to witness the counting of ballots. The Board has complete discretion to determine the number of observers. Observers shall not be supervisory or managerial employees or labor organization employees. However, representatives of the parties in addition to the observers may observe the counting of ballots.

Section 23. CHALLENGED BALLOTS:

A. Any party to an election, through its observer, or the election supervisor, may challenge the eligibility to vote of any person who presents himself or herself at the polls, and shall state the reason for the challenge. The Board shall challenge any voter whose name does not appear on the list of employees eligible to vote.

B. The Board shall furnish "challenge envelopes." On the outside of each challenge envelope, the Board shall write the name and job classification of the challenged voter, the name of the party making the challenge, and the reason for the challenge.

C. Following the voting and before the votes are counted, the Board shall attempt to resolve the eligibility of challenged voters by agreement of the parties. The ballots of challenged voters who are agreed eligible shall be mixed with the other ballots and counted.

D. Challenged ballot envelopes containing unresolved challenged ballots shall not be opened and the challenges shall not be investigated unless, after the other ballots are counted, the challenged ballots could be determinative of the outcome of the election.

E. If the challenged ballots could be determinative of the outcome of the election, the Board shall declare the vote inconclusive; shall, as soon as possible, investigate the challenged ballots to determine voter eligibility; and shall issue a report thereon or a notice of hearing within 15 days of the election.

F. Following resolution of determinative challenged ballots, the Board shall count the ballot of voters found to be eligible, adding the results of the earlier count and issuing a revised tally of ballots.

Section 24. TALLY OF BALLOTS: Immediately following the counting of ballots, the election supervisor shall serve a tally of ballots upon one representative of each party. The tally shall show the number of votes cast for each labor organization listed on the ballot, the number of votes cast for no representation, the number challenged ballots, and the percentage of employees in the unit who cast ballots. The tally shall also state whether the results are conclusive, and, if so, what the conclusive vote is. If the tally shows that fewer than forty percent of the employees in the unit voted, or that the choice of "no representation" received fifty percent or more of the valid votes cast, then the tally shall reflect that no collective bargaining representation was selected.

Section 25. RUN-OFF ELECTIONS: In an election where there are three or more choices on the ballot, if no ballot choice receives a majority of the valid votes cast, and at least forty percent of eligible voters voted, the Board shall set a run-off election in which voters will be permitted to cast ballots for the two choices that received the highest number of votes. A new tally shall be issued and served following the counting of the votes of a run-off election. A run-off election must be conducted within 15 days following completion of the initial election.

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Section 26. CERTIFICATION: If no objections are filed pursuant to Section 27, below, then the Board shall issue as may be appropriate either a certificate showing the name of the labor organization selected as the exclusive representative and setting forth the bargaining unit it represents, or a certification of results, showing that no labor organization was selected as bargaining representative. The results of each election shall be reviewed by the Board and appropriate action taken at the next regularly scheduled meeting of the Board after the objection period following the election.

Section 27. OBJECTIONS: Within five days following the service of a tally of ballots, a party may file objections to conduct affecting the result of the election. The Board shall, within 30 days of the filing of such objections, investigate the objections and issue a report thereon. Alternatively, the Board may schedule a hearing on the objections within 30 days of the filing of the objections. A determination to hold a hearing is not reviewable by the Board and shall follow the same procedures set forth in Subsections B, C and D of Section 12, Section 13, and Section 14 above. A party adversely affected by the Board's or hearing examiner's report may file a request for review with the Board under the same procedures set forth in Section 15, above. If the Board or hearing examiner finds that the objections have merit and that conduct improperly interfered with the results of the election, then the results of the election may be set aside and a new election ordered. In that event, the Board in its discretion may retain the same period for determining eligibility to vote as in the election that was set aside, or may establish a new eligibility period for the new election.

Section 28. AMENDMENT OF CERTIFICATION: A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. The Board shall dismiss such a petition within 30 days of its filing if the Board determines that it raises a question concerning representation and the petitioner may proceed otherwise under these rules. If the Board finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the Board shall issue an amendment of certification within 30 days of the filing of the petition.

Section 29. CERTIFICATION OF INCUMBENT BARGAINING REPRESENTATIVE STATUS: A labor organization that was recognized by the public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999, shall be recognized as the exclusive representative of the unit. Such labor organization may petition for declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978 (2003).

Section 30. UNIT CLARIFICATION:

A. Where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented by the same labor organization, either the exclusive representative or the employer may file with the Board a petition for unit clarification.

B. Upon the filing of a petition for unit clarification, the Board shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty (30) days of the filing of the petition. In the Board's investigation or

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through the hearing, the Board or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition. In such a case, the petitioner may proceed otherwise under these rules.

C. If the Board or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the Board or hearing examiner shall issue a report clarifying the unit within 30 days of the filing of the petition if no hearing is determined necessary, or within 30 days of the hearing if a hearing is determined necessary. If the Board determines that a question concerning representation exists, the petition shall be dismissed.

D. A hearing examiner determination on a unit clarification petition shall be appealable to the Board under the same procedures set forth in Section 152, above.

Section 31. ACCRETION:

A. The exclusive representative of an existing collective bargaining unit may petition the Board to include in the unit employees who do not belong, at the time the petition is filed, to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion in the existing unit would not render that unit inappropriate.

B. If the number of employees in the group sought to be accreted is less than ten percent of the number of employees in the existing unit, the Board shall presume that their inclusion does not raise a question concerning representation requiring an election, and the petitioner may proceed by filing a unit clarification petition under these rules. Such a unit clarification petition to be processed, must be accompanied by a showing of interest demonstrating that no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit. No group of employees may be accreted to an existing unit without an election if the Board determines that such group would constitute a separate appropriate bargaining unit.

C. If the number of employees in the group sought to be accreted is greater than ten percent of the number of employees in the existing unit, the Board shall presume that their inclusion raises a question concerning representation, and the petitioner may proceed only by filing a petition for an election under these rules. Such a petition, in an accretion situation, must be accompanied by a showing of interest demonstrating that no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

Section 32. VOLUNTARY RECOGNITION:

A. A labor organization representing the majority of employees in an appropriate collective bargaining unit and the public employer, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which the employer recognizes the labor organization as the exclusive representative of all of the employees in the unit. Such petition shall be accompanied by a showing of majority support, which shall be verified in accordance with the procedures of Section 4, above.

B. Prior to Board approval of any voluntary recognition, the Board shall post notice of filing of petition in the manner provided for in Section 8, above. The Board shall also give notice to any individuals or labor organizations that register with the Board to be informed of such petitions.

C. If an intervenor does not file a petition for intervention within 10 days, then the Board shall consider the petition for approval of the voluntary recognition if accompanied by consent of the employer.

D. The Board shall treat a voluntary recognition relationship so established and approve the same as a relationship established through Board election and certification, unless the Board finds

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the agreed-to bargaining unit to be inappropriate. In that event, the Board may require the filing and processing of a petition as provided for in these rules, and the conduct of an election, before recognizing the relationship.

E. If an intervenor files a proper petition pursuant to Section 9 above, within the 10-day time period, then the Board may not approve a voluntary recognition, and the Board shall proceed in the manner set forth for representation petitions.

Section 33. PETITION WITHDRAWAL: The petitioner in a representation proceeding may request permission of the Board to withdraw the petition at any time prior to an initial election. The Board has discretion to grant or deny a withdrawal request only after soliciting the positions of all parties.

Section 34. SEVERANCE PETITION: A severance petition is a representation petition filed by a labor organization that seeks to sever or slice a group of employees who comprise one of the occupational groups listed in Section 10 of the Ordinance from an existing unit for the purpose of forming a separate, appropriate unit. It must be accompanied by a thirty percent showing of interest among the employees in the petitioned-for unit. It may be filed no earlier than 90 days and no later than 60 days before the expiration date of a collective bargaining agreement or may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

Section 35. DISCLAIMER OF INTEREST: Any labor organization holding exclusive recognition for a unit of employees may disclaim its representational interest in those employees at any time by submitting a letter to the Board and the employer disclaiming any representational interest in a unit for which it is the exclusive representative. Upon receipt of a letter disclaiming an interest under this rule, the Board shall cause to be posted in a place or places frequented by employees in the affected bargaining unit stating the union has chosen to relinquish representation of the employees.

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Section 1. COMMENCEMENT OF CASE:

A. A prohibited practices case shall be initiated by filing with the Board a complaint. The complaint shall set forth, at a minimum: name, address and phone number of the public employer, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative, if known; the specific section of the Ordinance claimed to have been violated; the name, address, and phone number of the complainant; a concise description of the facts constituting the asserted violation; and a declaration that the information provided is true and correct to the knowledge of the complaining party. The complaint shall be signed and dated, filed with the Board, and served upon the respondent.

B. When an individual employee files a prohibited practices complaint alleging a violation of Subsection F and H of Section 16 or Subsection A(4) or A(5) of Section 17 of the Ordinance, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.

Section 2. LIMITATIONS PERIOD: Any complaint filed more than six months following the conduct claimed to violate the Ordinance, or more than six months after the complainant either discovered or reasonably should have discovered each conduct, shall be dismissed.

Section 3. FILING OF ANSWER:

A. Within 15 days after service of a complaint, the respondent shall file with the Board and serve upon the complainant its answer admitting, denying, or explaining each allegation of the complaint. For purposes of this rule, the term “allegation” shall mean any statement of fact or assertion of law contained in a complaint. No particular form is required either to state allegations or to answer them.

B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the Board or hearing examiner may find the allegation to be true.

Section 4. DEFAULT DETERMINATION: If a respondent fails to file a timely answer, the Board shall serve on the parties a determination of violation by default, based upon the allegations of the complaint and any evidence submitted in support of the complaint.

Section 5. SCREENING/INVESTIGATION:

A. Upon receipt of a complaint, the Board shall screen the complaint for facial adequacy. If the complaint is facially deficient, the Board shall advise the complainant of the deficiency and give the complainant an opportunity to amend the complaint within five days. Absent an amendment curing a facially deficient complaint, the Board shall dismiss the complaint, stating the reasons in writing and serving the dismissal on the parties. A complaint that is facially untimely pursuant to Section 2 shall be dismissed.

B. After screening a complaint, the Board shall investigate the allegations. The Board need not await the filing of an answer before commencing the investigation. At the Board’s request, the complainant shall immediately present to the Board all evidence available to the complainant in support of the complaint, including documents and the testimony of witnesses.

C. If a complainant fails to timely produce evidence in support of its complaint pursuant to the Board’s request or fails to produce evidence that in the Board’s opinion is sufficient to support the allegations of the complaint, the Board shall request the complainant withdraw the complaint within five days and, absent such withdrawal, shall dismiss the complaint stating the Board’s reasons in writing and serving the dismissal on all parties.

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Section 6. NOTICE OF HEARING: If the Board, following investigation and the filing of an answer, believes that there is sufficient evidence that the respondent has committed a prohibited practice to warrant a hearing, the Board shall designate a hearing examiner, which may be the Board itself, set a hearing, and serve a notice of the hearing upon all parties. The Board shall dismiss the complaint or set a hearing within 30 days of filing of the complaint. A hearing shall be scheduled within 45 days of the filing of the complaint.

Section 7. PRE-HEARING SETTLEMENT EFFORTS:

A. Following service of a notice of hearing and before commencement of the hearing, the Board shall attempt to settle the complaint with the parties. If the parties achieve a settlement, they shall reduce it to writing and submit it to the Board for approval.

B. If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. However, the complaint may be settled by the parties at any time prior to hearing.

C. The parties or hearing examiner may submit a proposed settlement agreement to the Board for its approval before the settlement becomes final.

D. The complainant may withdraw the complaint at any time prior to hearing, without approval by the Board. After commencement of the hearing, the complaint shall not be withdrawn or settled without the approval of the hearing examiner/Board. After a hearing examiner's report has been issued, a complaint may not be withdrawn without Board approval.

Section 8. PROHIBITED PRACTICES HEARINGS:

A. In the absence of an approved settlement agreement, the hearing examiner shall conduct a formal hearing, assigning the burden of proof and the burden of going forward with the evidence to the complainant, as stated in Part 1, Section 16(B).

B. The hearing examiner may examine witnesses called by the parties, call additional witnesses, or call for the introduction of documents.

Section 9. BRIEFS: The filing of post-hearing briefs shall be permitted on the same basis as provided by Part 2, Section 13 for briefs in representation cases.

Section 10. BOARD/HEARING EXAMINER REPORTS: The Board/hearing examiner shall issue a report within the same time limits and following the same requirements provided in Part 2, Section 14 for Board/hearing examiner reports in representation cases.

Section 11. APPEAL TO BOARD OF HEARING EXAMINER'S RECOMMENDATION:

A. Any party aggrieved by the hearing officer's recommendation may obtain Board review by filing with the Board and serving on the other parties a notice of appeal within 10 days following service of the hearing officer's report. The notice of appeal shall specify which findings, conclusions, or recommendations to which exception is taken and shall identify the specific evidence presented or offered at the hearing that supports each exception.

B. Any other party may file a response to notice of appeal within 10 days of service of the notice of appeal.

C. The Board may determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The Board shall decide the appeal and issue its decision within 60 days of the notice of appeal. The Board may issue a decision adopting, modifying, or reversing the hearing examiner's recommendations or taking other appropriate action. The Board may incorporate all or part of the hearing examiner's report in its decision.

D. If notice of appeal is not filed within 10 days following service of the hearing officer's report,

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the hearing examiner's report and recommended decision shall be transmitted immediately to the Board which may pro forma adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding Board precedent.

Section 12. RELIEF FROM PROHIBITED PRACTICES DETERMINATION: A party may move to set aside a default determination entered against it within 30 days after the service thereof. Said motion shall be served upon all other parties and shall set out in detail the reasons in support thereof. Upon finding good cause for the motion and within 30 days of the filing of such motion, the Board shall order such further proceeding as it deems appropriate. The failure to act within 30 days after the filing of such motion shall constitute a denial of the motion.

Section 13. ADMINISTRATIVE AGENCY DEFERRAL: Where the Board becomes aware that a complainant has initiated another administrative or legal proceeding based on essentially the same facts and raising essentially the same issues as those raised in the complaint, the Board may take any of the following actions, at the Board's discretion:

A. The Board may hold the proceedings under the Ordinance in abeyance pending the outcome of the other proceeding.

B. The Board may go forward with its own processing. In so doing, the Board may request that the other proceedings be held in abeyance pending outcome of the Board proceeding. In the event that the resolution of the proceedings in such other forum is contrary to the Ordinance, or all issues raised before the Board are not resolved, the Board may proceed under the provisions of Part 3.

Section 14. ARBITRATION DEFERRAL:

A. If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement, and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the Board determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the Board may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.

B. Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the Board and shall advise the Board in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

C. If the complaining party advises the Board that it wishes to proceed with the prohibited practices complaint, or if the Board on its own motion so determines, then the Board shall review the arbitrator's award. If, in the opinion of the Board, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the Ordinance and sufficient to remedy any violation found, then the Board shall dismiss the complaint. If the Board finds that the prohibited practice issues were not fairly presented to or were not fairly considered by the arbitrator, or that the award is inconsistent with the Ordinance, or that the remedy is inadequate, then the Board shall take such other action deemed appropriate. Among such other actions, the Board may accept the arbitrator's factual findings while substituting legal conclusions and remedies pursuant to Subsection E of Section 8 of the Ordinance appropriate for the prohibited practice issues.

D. In the event that no arbitrator's award has been issued within one year following deferral under this rule, then the Board may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.

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E. The Board's decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the Board within 10 days of the Board's decision. Interim decisions of the Board under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the Board.



**2961; Council
Bill 21-028**

City Council Action and Executive Summary

Type of Action:

- Resolution
- Ordinance
- TIDD Resolution

District:	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> N/A		
1st Reading:	February 1, 2021	Adopted:	February 16, 2021
Drafter:	Christine Rivera	Department:	Legal
Program:	Compliance	Line of Business:	Office of City Clerk
Title:	AN ORDINANCE AMENDING CHAPTER 15, LABOR MANAGEMENT RELATIONS OF THE LAS CRUCES MUNICIPAL CODE 1978, AS AMENDED RELATING TO COLLECTIVE BARGAINING FOR THE CITY OF LAS CRUCES, NEW MEXICO, PROVIDING RIGHTS, RESPONSIBILITIES, AND CONDITIONS OF CONTINUED EXISTENCE AND TRANSFER OF AUTHORITY UPON TERMINATION OF LOCAL BOARD.		

TYPE OF ACTION: Administrative Legislative Quasi-Judicial

PURPOSE(S) OF ACTION:

To amend Chapter 15 of the municipal code to conform to the state labor board template.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 5, 2020, Governor Michelle Lujan-Grisham signed House Bill (HB) 364 regarding Labor Management Relations. This bill allows for employees to organize and bargain collectively with employers. In order to conform with HB 364, a repeal and replace of Chapter 15 of the Las Cruces Municipal Code is required and must be sent to the State Labor Board by December 31, 2020, or the current local labor board will be revoked.

The State Labor Board met on January 6, 2021, and deferred approval of the original changes to Ordinance No. 2956, requiring the city to reformat and amend certain sections of the ordinance. This ordinance is being amended to conform to those changes for the State Labor Board to approve on February 9, 2021.

SUPPORT INFORMATION:

[Exhibit "A" - Chapter 15 Clean DEH edits \(002\)](#)

[Attachment "A" - HB0364](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

Yes

No

N/A

Does this action amend the Capital Improvement Plan (CIP)?

Yes

No

N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will amend Chapter 15 of the municipal code.
2. Vote "No"; this will not amend Chapter 15 of the municipal code and the ordinance will not be in compliance.
3. Vote to "Amend"; this will direct staff to modify the proposed ordinance.
4. Vote to "Table"; this is not an option as the ordinance must conform to the state.

REFERENCE INFORMATION:

Ordinance No. 2564

Ordinance No. 2956

ORDINANCE 2961; COUNCIL BILL 21-028

AN ORDINANCE AMENDING CHAPTER 15, LABOR MANAGEMENT RELATIONS OF THE LAS CRUCES MUNICIPAL CODE 1978, AS AMENDED RELATING TO COLLECTIVE BARGAINING FOR THE CITY OF LAS CRUCES, NEW MEXICO, PROVIDING RIGHTS, RESPONSIBILITIES, AND CONDITIONS OF CONTINUED EXISTENCE AND TRANSFER OF AUTHORITY UPON TERMINATION OF LOCAL BOARD.

The City Council is informed that:

WHEREAS, on March 5, 2020, House Bill 364 was signed by Governor Michelle Lujan-Grisham; and

WHEREAS, the City of Las Cruces must adopt an ordinance in accordance with House Bill 364; and

WHEREAS, the City of Las Cruces must submit an ordinance to the State Labor Board by December 31, 2020 to maintain the existing local labor board; and

WHEREAS, the State Labor Board deferred approval of previous changes to Chapter 15 of the municipal code.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the Las Cruces Municipal Code 1978, as amended, Chapter 15, Labor Management Relations is amended to read as follows:

SECTION 1. SHORT TITLE. Sections 15-1 through 15-21 shall be referred to as labor management relations and may sometimes be referred to as "this chapter."

SECTION 2. PURPOSE. The purpose of the labor management relations ordinance is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens.

SECTION 3. CONFLICTS. In the event of conflict with other City of Las Cruces Ordinances, the provisions of the City of Las Cruces Labor Management Relations Ordinance shall supersede other previously enacted ordinances. The City of Las Cruces sanctioned rules and regulations, administrative directives, departmental rules and regulations, and workplace practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

SECTION 4. DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply:

A. "Appropriate bargaining unit" means a group of employees designated by the board for the purpose of collective bargaining.

B. "Appropriate governing body" means the policymaking body or individual representing a public employer.

C. "Authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative.

D. "Board" means the City of Las Cruces Labor Management Relations Board.

E. "Certification" means the designation by the board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

F. "Collective bargaining" means the act of negotiating between the public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours, and other terms and conditions of employment.

G. "Confidential employee" means a person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines, and effectuates management policies.

H. "Emergency" means a one-time crisis that was unforeseen and unavoidable.

I. "Exclusive representative" means a labor organization that, as a result of certification by the board, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining.

J. "Impasse" means failure of the public employer and an exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

K. "Labor organization" means any employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

L. "Lockout" means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

M. "Management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering, or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical.

N. "Mediation" means assistance by an impartial third party to resolve an impasse in contract negotiation between the public employer and an exclusive representative through interpretation, suggestion, and advice.

O. "Professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

P. "Public Employee" means a regular non-probationary employee of the City of Las Cruces and includes those employees whose work is funded in whole or in part by grants or other third-party sources.

Q. "Public Employer" means the City of Las Cruces.

R. "Strike" means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of public employment.

S. "Supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to hire, promote, or discipline other employees or to recommend such actions effectively but "supervisor" does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include a lead employee or an employee who occasionally participate in peer review or occasional employee evaluation programs.

SECTION 5. RIGHTS OF EMPLOYEES.

A. Employees, other than management, supervisory, confidential, and probationary employees, may form, join, or assist any labor organization for the purpose of collective bargaining through a representative

chosen by the employees without interference, restraint, or coercion. Employees also have the right to refuse to form, join, or assist any labor organization.

B. Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section 15-18 of this ordinance.

SECTION 6. RIGHTS OF EMPLOYERS. Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer may:

A. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;

B. Determine qualifications for employment and the nature and content of personnel examinations;

C. Take actions as may be necessary to carry out the mission of the employer in emergencies; and

D. Retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

SECTION 7. LABOR MANAGEMENT RELATIONS BOARD - CONDITIONS OF CONTINUED EXISTENCE AND TRANSFER OF AUTHORITY UPON TERMINATION.

A. The City of Las Cruces "labor management relations board" created on February 7, 2000, shall continue to exist as provided in NMSA 1978 Section 10-7E-10(B) through 10-7E-10(J) (2020).

B. The board shall be composed of three members appointed by the mayor and approved by the city council. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the city manager, and one member shall be appointed on the recommendation of the first two appointees.

C. Board members shall serve for a period of one year with terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

D. During the term of appointment, no board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees or a public employer.

E. Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

SECTION 8. BOARD - POWERS AND DUTIES.

A. The board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the labor management relations ordinance, including the establishment of procedures for:

1. The designation of appropriate bargaining units;

2. The selection, certification, and decertification of exclusive representatives; and

3. The filing, hearing, and determination of complaints of prohibited practices.

B. The board shall:

1. Hold hearings and make inquiries necessary to carry out its functions and duties;

2. Conduct studies on problems pertaining to employee-employer relations;

3. Request information and data from public employers and labor organizations necessary to carry out its functions and responsibilities; and

4. Hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the Labor Management Relations Board in carrying out its functions and may delegate any or all of its authority to those third parties, subject to final review of the Labor Management Relations Board.

C. The board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to the matter in question. The board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses, and receive evidence.

D. The board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The board has the power to enforce provisions of the Public Employee Bargaining Act and this ordinance, through the imposition of appropriate administrative remedies. Actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the Labor Management Relations Board.

F. No rule or regulation promulgated by the board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the labor management relations ordinance to pay money to any labor organization that is certified as an exclusive representative.

SECTION 9. HEARING PROCEDURES.

A. The board may hold hearings for the purposes of:

1. Information gathering and inquiry;
2. Adopting rules; and
3. Adjudicating disputes and enforcing the provisions of the labor management relations ordinance, and rules adopted pursuant to the ordinance.

B. The board shall adopt rules setting forth procedures to be followed during hearings of the board. Such rules shall meet minimal due process requirements of the state and federal constitution.

C. The Labor Management Relations Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by Labor Management Relations Board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the Labor Management Relations Board for its decision.

D. A rule proposed to be adopted by the Labor Management Relations Board that affects a person or governmental entity outside of the Labor Management Relations Board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the Labor Management Relations Board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings shall be held in Dona Ana County. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in Dona Ana County and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board.

SECTION 10. APPROPRIATE BARGAINING UNITS.

A. The board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-professional, professional, corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the board, may further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the ordinance.

B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within 30 days, the labor management relations board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the labor management relations board.

C. The labor management relations board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial, or confidential employees.

D. Jobs included within a bargaining unit pursuant to a City of Las Cruces labor management relations ordinance in effect on January 1, 2020 shall remain in that bargaining unit after enactment of this ordinance unless otherwise removed by the Labor Management Relations Board in accordance with its rules governing unit clarification.

SECTION 11. ELECTIONS.

A. Whenever, in accordance with regulations prescribed by the board, a petition is filed by a labor organization containing the signatures of at least 30 percent of the employees in an appropriate bargaining unit, the board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the Labor Management Relations Board shall require the City of Las Cruces to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the Labor Management Relations Board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the Labor Management Relations Board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the Labor Management Relations Board; the Labor Management Relations Board shall hold a

fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The Labor Management Relations Board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the Labor Management Relations Board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 13 herein.

SECTION 12. EXCLUSIVE REPRESENTATION.

A. A labor organization that has been certified by the Labor Management Relations Board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

C. City of Las Cruces shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

1. for purposes of newly hired employees in the bargaining unit, reasonable access includes:

(a) the right to meet with new employees, without loss of employee compensation or leave benefits; and
(b) the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and;

2. for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:

(a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

(b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

D. City of Las Cruces shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

E. The meetings described in this section shall not interfere with City of Las Cruces operations.

F. If the City of Las Cruces has the information in its records, it shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:

1. the employee's name and date of hire;
2. contact information, including:
 - (a) cellular, home and work telephone numbers;
 - (b) a means of electronic communication, including work and personal electronic mail addresses; and
 - (c) home address or personal mailing address; and;
3. employment information, including the employee's job title, salary and work site location.

G. The City of Las Cruces shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the public employer shall not disclose the information described in Subsection F of this section, or public employees' dates of birth or social security numbers to a third party.

H. An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:

1. collective bargaining, including the administration of collective bargaining agreements;
2. the investigation of grievances or other disputes relating to employment relations; and
3. matters involving the governance or business of the labor organization.

I. Nothing in this section prevents City of Las Cruces from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor organization to communicate with public employees.

SECTION 13. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.

A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

SECTION 14. SCOPE OF BARGAINING.

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act public employers and exclusive representatives:

1. shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and
2. shall enter into written collective bargaining agreements covering employment relations.

B. Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.

C. In regard to the Public Employees Retirement Act, City of Las Cruces in a written collective bargaining agreement may agree to assume any portion of a public employee's contribution obligation to retirement programs provided pursuant to the Public Employees Retirement Act. Such agreements are subject to the limitations set forth in this section.

D. The obligation to bargain collectively shall not be construed as authorizing City of Las Cruces and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

E. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. City of Las Cruces shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. City of Las Cruces and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by City of Las Cruces or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

F. City of Las Cruces and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:

1. applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and

2. shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.

G. An impasse resolution or an agreement provision by City of Las Cruces and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by the City of Las Cruces and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the re-appropriation of funds.

H. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

I. The following meetings shall be closed:

1. meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between City of Las Cruces and the exclusive representative of the public employees of City of Las Cruces; and
2. collective bargaining sessions; and
3. consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

SECTION 15. IMPASSE RESOLUTION.

A. The following impasse procedures shall be followed by City of Las Cruces and exclusive representatives:

1. if an impasse occurs, either party may request from the Labor Management Relations Board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the Labor Management Relations Board to assist negotiations unless the parties agree to another mediator; and
2. if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Section 14 of this Ordinance and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. City of Las Cruces may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

C. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require City of Las Cruces to increase any employees' levels, steps or grades of compensation contained in the existing contract.

SECTION 16. EMPLOYERS - PROHIBITED PRACTICES.

City of Las Cruces or its representative shall not:

A. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. Interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Resolution or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:

1. addressing a grievance or negotiating or administering a collective bargaining agreement;
2. allowing a labor organization or its representatives access to City of Las Cruces facilities or properties;
3. performing an activity required by federal or state law or by a collective bargaining agreement;
4. negotiating, entering into or carrying out an agreement with a labor organization;
5. paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or
6. representing City of Las Cruces in a proceeding before the board or a local board or in a judicial review of that proceeding;

C. Dominate or interfere in the formation, existence or administration of a labor organization;

D. Discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. Discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of this Ordinance or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. Refuse to bargain collectively in good faith with the exclusive representative;

G. Refuse or fail to comply with a provision of this Ordinance or board rule;

H. Refuse or fail to comply with a collective bargaining agreement; or

I. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

SECTION 17. EMPLOYEES - LABOR ORGANIZATIONS; PROHIBITED PRACTICES.

A. An employee, a labor organization, or its representative shall not:

1. Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin;
2. Solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;
3. Restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;
4. Refuse to bargain collectively in good faith with the employer;
5. Refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;
6. Refuse or fail to comply with any provision of the Labor Management Relations Ordinance;
7. Picket homes or private businesses of employees, appointed individuals, or elected officials of City of Las Cruces;
8. Restrain or coerce the employer in the selection of its agent for bargaining; or

9. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to the public employer, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

SECTION 18. STRIKES AND LOCKOUTS PROHIBITED.

A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate or engage in an employee lockout.

B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The Labor Management Relations Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

SECTION 19. AGREEMENTS VALID - ENFORCEMENT.

All collective bargaining agreements and other agreements between the employer and exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this labor management relations ordinance.

SECTION 20. JUDICIAL ENFORCEMENT - STANDARD OF REVIEW.

A. The Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:

1. Arbitrary, capricious, or an abuse of discretion;
2. Not supported by substantial evidence on the record considered as a whole; or
3. Otherwise not in accordance with law.

B. Any person or party, including any labor organization, affected by a final regulation, order, or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order, or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

1. Arbitrary, capricious, or an abuse of discretion;
2. Not supported by substantial evidence on the record taken as a whole; or
3. Otherwise not in accordance with law.

SECTION 21. SEVERABILITY.

If any part or application of the City of Las Cruces Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this 16 day of February 2021

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Gabe Vasquez

Seconded by: Kasandra Gandara

AYES Kasandra Gandara, Gabe Vasquez, Gill Sorg, Ken Miyagishima, Yvonne Flores, Tessa Abeyta-Stuve, Johana Bencomo

NAYS

Exhibit "A"

Chapter 15 - LABOR-MANAGEMENT RELATIONS¹

Sec. 15-1. - Short title.

Sections 15-1 through 15-21 shall be referred to as labor management relations and may sometimes be referred to as "this chapter."

Sec. 15-2. - Purpose.

The purpose of the labor management relations ordinance is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens.

Sec. 15-3. - Conflicts.

- (a) In the event of conflict with other City of Las Cruces Ordinances, the provisions of the City of Las Cruces Labor Management Relations Ordinance shall supersede other previously enacted ordinances.
- (b) The City of Las Cruces sanctioned rules and regulations, administrative directives, departmental rules and regulations, and workplace practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

Sec. 15-4. - Definitions.

For the purposes of this chapter, the following definitions shall apply ~~unless the context clearly indicates or requires a different meaning:~~

Appropriate bargaining unit means a group of employees designated by the board for the purpose of collective bargaining.

Appropriate governing body means the policymaking body or individual representing a public employer.

Authorization card means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative.

Board means the City of Las Cruces Labor Management Relations Board.

Certification means the designation by the board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

Collective bargaining means the act of negotiating between the public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours, and other terms and conditions of employment.

Confidential employee means a person who devotes a majority of his/her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines, and effectuates management policies.

Exhibit "A"

Emergency means a one-time crisis that was unforeseen and unavoidable.

Exclusive representative means a labor organization that, as a result of certification by the board, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining.

Impasse means failure of the public employer and an exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

Labor organization means any employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

Lockout means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

Management employee means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering, or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical.

Mediation means assistance by an impartial third party to resolve an impasse in contract negotiation between the public employer and an exclusive representative through interpretation, suggestion, and advice.

Professional employee means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

Public Employee means a regular non-probationary employee of the City of Las Cruces and includes those employees whose work is funded in whole or in part by grants or other third-party sources.

Public Employer means the City of Las Cruces.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of public employment.

Supervisor means an employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to hire, promote, or discipline other employees or to recommend such actions effectively but "supervisor" does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include a lead employee or an employee who occasionally participate in peer review or occasional employee evaluation programs.

Sec. 15-5. - Rights of employees.

- (1) Employees, other than management, supervisory, confidential, and probationary employees, may form, join, or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint, or coercion. Employees also have the right to refuse to form, join, or assist any labor organization.

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- (2) Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section 15-18 of this ordinance.

Sec. 15-6. – Rights of employers.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer may:

- (1) Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;
- (2) Determine qualifications for employment and the nature and content of personnel examinations;
- (3) Take actions as may be necessary to carry out the mission of the employer in emergencies; and
- (4) Retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

Sec. 15-7. - Labor management relations board—Conditions of continued existence and transfer of authority upon termination.

The City of Las Cruces "labor management relations board" ~~created on~~ shall continue to exist as provided in NMSA 1978 Section 10-7E-10(B) through 10-7E-10(J) (2020).

The board shall be composed of three members appointed by the mayor and approved by the city council. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the city manager, and one member shall be appointed on the recommendation of the first two appointees ~~and may reside within Doña Ana County.~~

- (1) Board members shall serve for a period of one year. . Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.
- (2) During the term of appointment, no board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees or a public employer.
- (3) Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Sec. 15-8. - Board—Powers and duties.

- (a) The board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the labor management relations ordinance, including the establishment of procedures for:
 - (1) The designation of appropriate bargaining units;
 - (2) The selection, certification, and decertification of exclusive representatives; and
 - (3) The filing, hearing, and determination of complaints of prohibited practices.

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- (b) The board shall:
- (1) Hold hearings and make inquiries necessary to carry out its functions and duties;
 - (2) Conduct studies on problems pertaining to employee-employer relations;
 - (3) Request information and data from public employers and labor organizations necessary to carry out its functions and responsibilities; and
 - ~~(3)(4) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the Labor Management Relations Board in carrying out its functions and may delegate any or all of its authority to those third parties, subject to final review of the Labor Management Relations Board.~~
- (c) The board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents relevant to the matter in question. The board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses, and receive evidence.
- (d) The board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.
- (e) The board has the power to enforce provisions of the Public Employee Bargaining Act and this ordinance, ~~and the board's labor-management relations rules and regulations~~ through the imposition of appropriate administrative remedies. ~~A~~ actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the Labor Management Relations Board.
- (f) ~~The board shall have no power to promulgate policy other than for its own operation.~~
- (g) No rule or regulation promulgated by the board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the labor management relations ordinance to pay money to any labor organization that is certified as an exclusive representative.
- (h) ~~The board may hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the Labor Management Relations Board in carrying out its functions and may delegate any or all of its authority to those third parties, subject to final review of the Labor Management Relations Board.~~

Commented [DH1]: This could remain in (h) below if remove the and at the end of (3) above and place it at the end of (2) above.

Sec. 15-9. - Hearing procedures.

- (a) The board may hold hearings for the purposes of:
- (1) Information gathering and inquiry;
 - (2) Adopting rules ~~and regulations~~; and
 - (3) Adjudicating disputes and enforcing the provisions of the labor management relations ordinance, and rules ~~and regulations~~ adopted pursuant to the ordinance.
- (b) The board shall adopt ~~rules regulations~~ setting forth procedures to be followed during hearings of the board. Such ~~rules regulations~~ shall meet minimal due process requirements of the state and federal constitution.
- (c) The Labor Management Relations Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by Labor Management Relations Board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the Labor Management Relations Board for its decision.
- (d) A rule proposed to be adopted by the Labor Management Relations Board that affects a person or governmental entity outside of the Labor Management Relations Board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before

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the Labor Management Relations Board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings shall be held in ~~Las Cruces~~Dona Ana County. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in ~~Las Cruces~~Dona Ana County and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

(e) All adopted rules shall be filed in accordance with applicable state statutes.

~~(f) A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.~~

~~(g) Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under this ordinance.~~

Sec. 15-10. - Appropriate bargaining units.

(a) The board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-professional, professional, corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the board, may further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the ordinance.

(b) If the labor organization and the employer cannot agree on the appropriate bargaining unit within 30 days, the labor management relations board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the labor management relations board.

(c) The labor management relations board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial, or confidential employees.

(d) Jobs included within a bargaining unit pursuant to a City of Las Cruces labor management relations ordinance in effect on January 1, 2020 shall remain in that bargaining unit after enactment of this ordinance unless otherwise removed by the Labor Management Relations Board in accordance with its rules governing unit clarification.

Sec. 15-11. - Elections.

(a) Whenever, in accordance with regulations prescribed by the board, a petition is filed by a labor organization containing the signatures of at least 30 percent of the employees in an appropriate bargaining unit, the board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the Labor Management Relations Board shall require the City of Las Cruces to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit.

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The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

- (b) Once a labor organization has filed a valid petition calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the Labor Management Relations Board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.
- (c) As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the Labor Management Relations Board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the Labor Management Relations Board; the Labor Management Relations Board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.
- (d) If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The Labor Management Relations Board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the Labor Management Relations Board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.
- (e) An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 13 herein.

Sec. 15-12. - Exclusive representation.

A. A labor organization that has been certified by the Labor Management Relations Board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

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C. City of Las Cruces shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

- (1) for purposes of newly hired employees in the bargaining unit, reasonable access includes:
 - (a) the right to meet with new employees, without loss of employee compensation or leave benefits;
and
 - (b) the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and;
- (2) for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:
 - (a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and
 - (b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

D. City of Las Cruces shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

E. The meetings described in this section shall not interfere with City of Las Cruces operations.

F. If the City of Las Cruces has the information in its records, it shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:

- (1) the employee's name and date of hire;
- (2) contact information, including:
 - (a) cellular, home and work telephone numbers;
 - (b) a means of electronic communication, including work and personal electronic mail addresses;
and
 - (c) home address or personal mailing address; and;
- (3) employment information, including the employee's job title, salary and work site location.

G. The City of Las Cruces shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its

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employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the public employer shall not disclose the information described in Subsection F of this section, or public employees' dates of birth or social security numbers to a third party.

H. An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:

- (1) collective bargaining, including the administration of collective bargaining agreements;
- (2) the investigation of grievances or other disputes relating to employment relations; and
- (3) matters involving the governance or business of the labor organization.

I. Nothing in this section prevents City of Las Cruces from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor organization to communicate with public employees.

Sec. 15-13. - Decertification of exclusive representative.

- (a) A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.
- (b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.
- (c) When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.
- (d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

Sec. 15-14. - Scope of bargaining.

- A. Except for retirement programs provided pursuant to the Public Employees Retirement Act public employers and exclusive representatives:
- (1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and
 - (2) shall enter into written collective bargaining agreements covering employment relations.

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- B. Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.
- C. In regard to the Public Employees Retirement Act, City of Las Cruces in a written collective bargaining agreement may agree to assume any portion of a public employee's contribution obligation to retirement programs provided pursuant to the Public Employees Retirement Act. Such agreements are subject to the limitations set forth in this section.
- D. The obligation to bargain collectively shall not be construed as authorizing City of Las Cruces and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.
- E. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. City of Las Cruces shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. City of Las Cruces and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by City of Las Cruces or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.
- F. City of Las Cruces and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:
 - (1) applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and
 - (2) shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.
- G. An impasse resolution or an agreement provision by City of Las Cruces and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by the board and an exclusive representative that requires the expenditure of

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funds shall be contingent upon ~~the specific appropriation of funds ratification~~ by the appropriate governing body and the availability of funds. An arbitration decision shall not require the re-appropriation of funds.

H. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

I. The following meetings shall be closed:

- (1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between City of Las Cruces ~~governing body~~ and the exclusive representative of the public employees of City of Las Cruces; and
- (2) collective bargaining sessions; and
- (3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

J. ~~The following negotiation procedures shall apply to the employer and exclusive representatives:-~~

- ~~(1) The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days, nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.~~
- ~~(2) All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.~~
- ~~(3) Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.~~
- ~~(4) Tentative agreements reached during negotiations will be reduced to writing, dated, and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.~~
- ~~(5) Agreement on contract negotiations is accomplished when the union president and the city administrator sign the agreement. Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.~~

Sec. 15-15. - Impasse resolution.

A. The following impasse procedures shall be followed by City of Las Cruces and exclusive representatives:

(1) if an impasse occurs, either party may request from the Labor Management Relations Board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the Labor Management Relations Board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Section 14 of this Ordinance and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be

responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. City of Las Cruces may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

C. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require City of Las Cruces to increase any employees' levels, steps or grades of compensation contained in the existing contract.

Sec. 15-16. - Employers—Prohibited practices.

(a) City of Las Cruces or its representative shall not:

- A. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;
- B. Interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Resolution or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:
 - (1) addressing a grievance or negotiating or administering a collective bargaining agreement;
 - (2) allowing a labor organization or its representatives access to City of Las Cruces facilities or properties;
 - (3) performing an activity required by federal or state law or by a collective bargaining agreement;
 - (4) negotiating, entering into or carrying out an agreement with a labor organization;
 - (5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or
 - (6) representing City of Las Cruces in a proceeding before the board or a local board or in a judicial review of that proceeding;
- C. Dominate or interfere in the formation, existence or administration of a labor organization;
- D. Discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;
- E. Discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of this Ordinance or because a public employee is forming, joining or choosing to be represented by a labor organization;
- F. Refuse to bargain collectively in good faith with the exclusive representative;
- G. Refuse or fail to comply with a provision of this Ordinance or board rule;
- H. Refuse or fail to comply with a collective bargaining agreement; or
- I. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-17. - Employees—Labor organizations; prohibited practices.

A. An employee, a labor organization, or its representative shall not:

- 1) Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin;
- 2) Solicit membership for an employee or labor organization during the employee's duty hours. This

does not include the work breaks or lunch periods;

- 3) Restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;
- 4) Refuse to bargain collectively in good faith with the employer;
- 5) Refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;
- 6) Refuse or fail to comply with any provision of the Labor Management Relations Ordinance;
- 7) Picket homes or private businesses of employees, appointed individuals, or elected officials of City of Las Cruces;
- 8) Restrain or coerce the employer in the selection of its agent for bargaining; or
- 9) Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to the public employer, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-18. - Strikes and lockouts prohibited.

- A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate or engage in an employee lockout.
- B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.
- C. The Labor Management Relations Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

Sec. 15-19. - Agreements valid; enforcement.

All collective bargaining agreements and other agreements between the employer and exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this labor management relations ordinance.

(Ord. No. 2564, § I(exh. A), 2-16-10)

Sec. 15-20. - Judicial enforcement; standard of review.

- A. The Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:
 - 1) Arbitrary, capricious, or an abuse of discretion;
 - 2) Not supported by substantial evidence on the record considered as a whole; or
 - 3) Otherwise not in accordance with law.
- B. Any person or party, including any labor organization, affected by a final regulation, order, or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order, or decision of the

Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

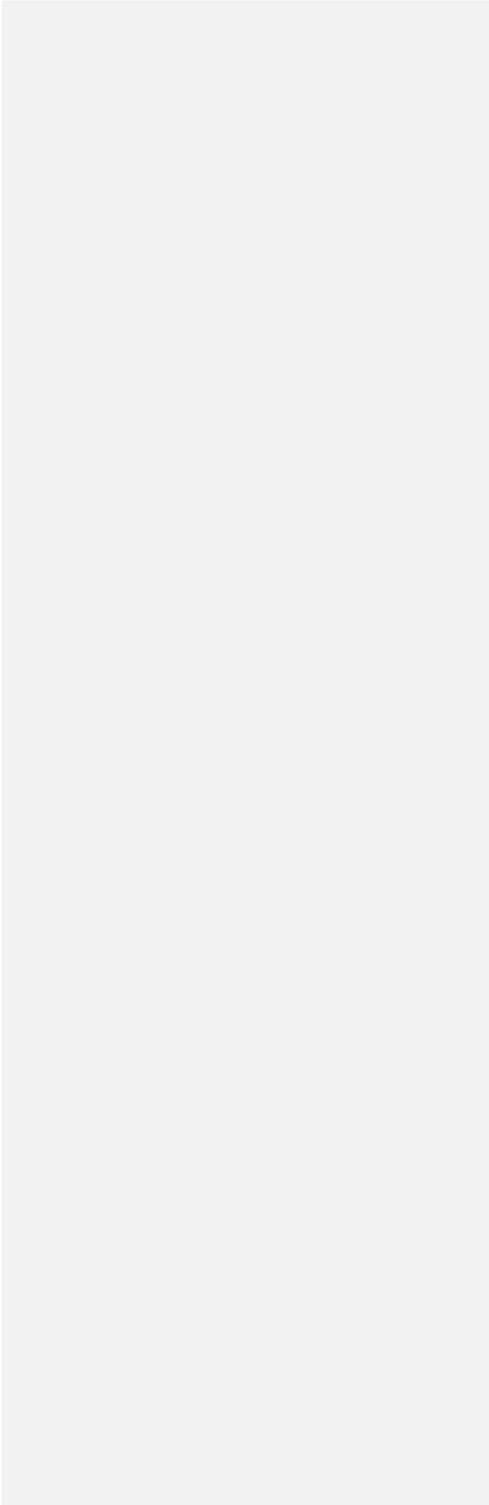


Exhibit "A"

- 1) Arbitrary, capricious, or an abuse of discretion;
- 2) Not supported by substantial evidence on the record taken as a whole; or
- 3) Otherwise not in accordance with law.

Sec. 15-21. - Severability.

If any part or application of the City of Las Cruces Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

1 AN ACT

2 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
3 ADDRESSING COLLECTIVE BARGAINING IN THE PUBLIC SECTOR;
4 ADDRESSING BARGAINING UNIT ELECTION PROCEDURES, REASONABLE
5 ACCESS TO EMPLOYEES, SCOPE OF BARGAINING AND EMPLOYER
6 PROHIBITED PRACTICES; MODIFYING THE PUBLIC EMPLOYEE
7 BARGAINING ACT TO CLARIFY REMEDIES AVAILABLE TO THE PUBLIC
8 EMPLOYEE LABOR RELATIONS BOARD; IMPOSING REQUIREMENTS ON
9 LOCAL LABOR BOARDS; REQUIRING NOTICE OF RULES AND MEMBERSHIP;
10 PROVIDING FOR RETENTION OF JOBS WITHIN A BARGAINING UNIT;
11 REPEALING AND REENACTING SECTION 10-7E-10 NMSA 1978 (BEING
12 LAWS 2003, CHAPTER 4, SECTION 10 AND LAWS 2003, CHAPTER 5,
13 SECTION 10); REPEALING SECTIONS 10-7E-11 AND 10-7E-26 NMSA
14 1978 (BEING LAWS 2003, CHAPTER 4, SECTION 11 AND LAWS 2003,
15 CHAPTER 5, SECTION 11; AND LAWS 2003, CHAPTER 4, SECTION 26
16 AND LAWS 2003, CHAPTER 5, SECTION 26).

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 10-7E-3 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 3 and Laws 2003, Chapter 5, Section 3) is
21 amended to read:

22 "10-7E-3. CONFLICTS.--In the event of conflict with
23 other laws, the provisions of the Public Employee Bargaining
24 Act shall supersede other previously enacted legislation and
25 rules; provided that the Public Employee Bargaining Act shall

1 not supersede the provisions of the Bateman Act, the
2 Personnel Act, the Group Benefits Act, the Per Diem and
3 Mileage Act, the Retiree Health Care Act, public employee
4 retirement laws or the Tort Claims Act."

5 SECTION 2. Section 10-7E-4 NMSA 1978 (being Laws 2003,
6 Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is
7 amended to read:

8 "10-7E-4. DEFINITIONS.--As used in the Public Employee
9 Bargaining Act:

10 A. "appropriate bargaining unit" means a group of
11 public employees designated by the board or local board for
12 the purpose of collective bargaining;

13 B. "appropriate governing body" means the
14 policymaking body or individual representing a public
15 employer as designated in Section 10-7E-7 NMSA 1978;

16 C. "authorization card" means a signed affirmation
17 by a member of an appropriate bargaining unit designating a
18 particular organization as exclusive representative;

19 D. "board" means the public employee labor
20 relations board;

21 E. "certification" means the designation by the
22 board or local board of a labor organization as the exclusive
23 representative for all public employees in an appropriate
24 bargaining unit;

25 F. "collective bargaining" means the act of

1 negotiating between a public employer and an exclusive
2 representative for the purpose of entering into a written
3 agreement regarding wages, hours and other terms and
4 conditions of employment;

5 G. "confidential employee" means a person who
6 devotes a majority of the person's time to assisting and
7 acting in a confidential capacity with respect to a person
8 who formulates, determines and effectuates management
9 policies;

10 H. "emergency" means a one-time crisis that was
11 unforeseen and unavoidable;

12 I. "exclusive representative" means a labor
13 organization that, as a result of certification, has the
14 right to represent all public employees in an appropriate
15 bargaining unit for the purposes of collective bargaining;

16 J. "impasse" means failure of a public employer
17 and an exclusive representative, after good-faith bargaining,
18 to reach agreement in the course of negotiating a collective
19 bargaining agreement;

20 K. "labor organization" means an employee
21 organization, one of whose purposes is the representation of
22 public employees in collective bargaining and in otherwise
23 meeting, consulting and conferring with employers on matters
24 pertaining to employment relations;

25 L. "local board" means a local labor relations

1 board established by a public employer, other than the state,
2 through ordinance, resolution or charter amendment, and which
3 continues to exist by virtue of the election described in
4 Subsection B of Section 10-7E-10 NMSA 1978;

5 M. "lockout" means an act by a public employer to
6 prevent its employees from going to work for the purpose of
7 resisting the demands of the employees' exclusive
8 representative or for the purpose of gaining a concession
9 from the exclusive representative;

10 N. "management employee" means an employee who is
11 engaged primarily in executive and management functions and
12 is charged with the responsibility of developing,
13 administering or effectuating management policies. An
14 employee shall not be deemed a management employee solely
15 because the employee participates in cooperative decision-
16 making programs or whose fiscal responsibilities are routine,
17 incidental or clerical;

18 O. "mediation" means assistance by an impartial
19 third party to resolve an impasse between a public employer
20 and an exclusive representative regarding employment
21 relations through interpretation, suggestion and advice;

22 P. "professional employee" means an employee whose
23 work is predominantly intellectual and varied in character
24 and whose work involves the consistent exercise of discretion
25 and judgment in its performance and requires knowledge of an

1 advanced nature in a field of learning customarily requiring
2 specialized study at an institution of higher education or
3 its equivalent. The work of a professional employee is of
4 such character that the output or result accomplished cannot
5 be standardized in relation to a given period of time;

6 Q. "public employee" means a regular
7 nonprobationary employee of a public employer; provided that,
8 in the public schools, "public employee" shall also include a
9 regular probationary employee and includes those employees
10 whose work is funded in whole or in part by grants or other
11 third-party sources;

12 R. "public employer" means the state or a
13 political subdivision thereof, including a municipality that
14 has adopted a home rule charter, and does not include a
15 government of an Indian nation, tribe or pueblo, provided
16 that state educational institutions as provided in
17 Article 12, Section 11 of the constitution of New Mexico
18 shall be considered public employers other than the state for
19 collective bargaining purposes only;

20 S. "strike" means a public employee's refusal, in
21 concerted action with other public employees, to report for
22 duty or the willful absence in whole or in part from the
23 full, faithful and proper performance of the duties of
24 employment for the purpose of inducing, influencing or
25 coercing a change in the conditions, compensation, rights,

1 privileges or obligations of public employment; and

2 T. "supervisor" means an employee who devotes a
3 majority of work time to supervisory duties, who customarily
4 and regularly directs the work of two or more other employees
5 and who has the authority in the interest of the employer to
6 hire, promote or discipline other employees or to recommend
7 such actions effectively, but "supervisor" does not include
8 an individual who performs merely routine, incidental or
9 clerical duties or who occasionally assumes a supervisory or
10 directory role or whose duties are substantially similar to
11 those of the individual's subordinates and does not include a
12 lead employee or an employee who participates in peer review
13 or occasional employee evaluation programs."

14 SECTION 3. Section 10-7E-5 NMSA 1978 (being Laws 2003,
15 Chapter 4, Section 5 and Laws 2003, Chapter 5, Section 5) is
16 amended to read:

17 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

18 A. Public employees, other than management
19 employees and confidential employees, may form, join or
20 assist a labor organization for the purpose of collective
21 bargaining through representatives chosen by public employees
22 without interference, restraint or coercion and shall have
23 the right to refuse those activities.

24 B. Public employees have the right to engage in
25 other concerted activities for mutual aid or benefit. This

1 right shall not be construed as modifying the prohibition on
2 strikes set forth in Section 10-7E-21 NMSA 1978."

3 SECTION 4. Section 10-7E-9 NMSA 1978 (being Laws 2003,
4 Chapter 4, Section 9 and Laws 2003, Chapter 5, Section 9) is
5 amended to read:

6 "10-7E-9. BOARD AND LOCAL BOARD--POWERS AND DUTIES.--

7 A. The board or a local board shall promulgate
8 rules necessary to accomplish and perform its functions and
9 duties as established in the Public Employee Bargaining Act,
10 including the establishment of procedures for:

11 (1) the designation of appropriate
12 bargaining units;

13 (2) the selection, certification and
14 decertification of exclusive representatives; and

15 (3) the filing of, hearing on and
16 determination of complaints of prohibited practices.

17 B. The board or a local board shall:

18 (1) hold hearings and make inquiries
19 necessary to carry out its functions and duties;

20 (2) conduct studies on problems pertaining
21 to employee-employer relations; and

22 (3) request from public employers and labor
23 organizations the information and data necessary to carry out
24 the board's or the local board's functions and
25 responsibilities.

1 C. The board or a local board may issue subpoenas
2 requiring, upon reasonable notice, the attendance and
3 testimony of witnesses and the production of evidence,
4 including books, records, correspondence or documents
5 relating to the matter in question. The board or a local
6 board may prescribe the form of subpoena, but it shall adhere
7 insofar as practicable to the form used in civil actions in
8 the district court. The board or a local board may
9 administer oaths and affirmations, examine witnesses and
10 receive evidence.

11 D. The board or a local board shall decide issues
12 by majority vote and each shall issue its decisions in the
13 form of written orders and opinions.

14 E. The board or a local board may hire personnel
15 or contract with third parties as each deems necessary to
16 assist it in carrying out its functions and each may delegate
17 any or all of its authority to those third parties, subject
18 to final review of the board or local board.

19 F. The board or a local board each has the power
20 to enforce provisions of the Public Employee Bargaining Act
21 through the imposition of appropriate administrative
22 remedies, actual damages related to dues, back pay including
23 benefits, reinstatement with the same seniority status that
24 the employee would have had but for the violation,
25 declaratory or injunctive relief or provisional remedies,

1 including temporary restraining orders or preliminary
2 injunctions. No punitive damages or attorney fees may be
3 awarded by the board or local board.

4 G. Local board rules shall conform to the rules
5 adopted by the board and shall not be effective until
6 approved by an order of the board. On good cause shown, the
7 board may approve rules proposed by a local board, which
8 rules vary from rules of the board. All rules promulgated by
9 a local board shall comply with state law. A rule
10 promulgated by the board or a local board shall not require,
11 directly or indirectly, as a condition of continuous
12 employment, a public employee covered by the Public Employee
13 Bargaining Act to pay money to a labor organization that is
14 certified as an exclusive representative.

15 H. The board shall maintain current versions of
16 its rules and current versions of the rules of each local
17 board on a publicly accessible website. That website shall
18 also include a current listing of the members of the board
19 and the members of each local board. Each local board shall
20 notify the board, within thirty days of revisions of its
21 rules or changes in its membership, of any such revisions of
22 its rules or changes in its membership."

23 SECTION 5. Section 10-7E-10 NMSA 1978 (being Laws 2003,
24 Chapter 4, Section 10 and Laws 2003, Chapter 5, Section 10)
25 is repealed and a new Section 10-7E-10 NMSA 1978 is enacted

1 to read:

2 "10-7E-10. LOCAL BOARDS--CONDITIONS OF CONTINUED
3 EXISTENCE--TRANSFER OF AUTHORITY UPON TERMINATION--
4 PROHIBITION OF NEW LOCAL BOARDS.--

5 A. All local boards shall continue to exist except
6 as provided in Subsections B through J of this section.

7 B. No later than December 31, 2020, each local
8 board shall submit to the board copies of a revised local
9 ordinance, resolution or charter amendment authorizing
10 continuation of the local board. A local board that fails to
11 meet the submission deadline set forth in this subsection
12 shall cease to exist on January 1, 2021. No later than
13 February 15, 2021, the board shall determine whether the
14 local ordinance, resolution or charter amendment authorizing
15 continuation of a local board provides the same or greater
16 rights to public employees and labor organizations as the
17 Public Employee Bargaining Act, allows for the determination
18 of, and remedies for, an action that would constitute a
19 prohibited practice under the Public Employee Bargaining Act
20 and contains impasse resolution procedures equivalent to
21 those set forth in Section 10-7E-18 NMSA 1978. If the board
22 determines that a local ordinance, resolution or charter
23 amendment authorizing continuation of a local board does not
24 satisfy the requirements of this subsection, defects may be
25 cured by June 30, 2021 or the local board will cease to

1 exist. The board shall certify by written order whether the
2 requirements of this subsection have been met.

3 C. No later than April 30, 2021, each local board
4 shall submit to the board copies of its rules. A local board
5 that fails to meet the submission deadline set forth in this
6 subsection shall cease to exist on July 1, 2021. No later
7 than May 30, 2021, the board shall determine whether the
8 rules of a local board conform to the rules of the board, or
9 for good cause shown, any variances meet the requirements of
10 the Public Employee Bargaining Act. If the board determines
11 that the rules of a local board do not meet the requirements
12 of this subsection, the local board may cure any defects by
13 June 30, 2021, or it will cease to exist. The board shall
14 certify by written order whether the requirements of this
15 subsection have been met by a local board.

16 D. A local board existing as of July 1, 2021 shall
17 continue to exist after December 31, 2021 only if it has
18 submitted to the board an affirmation that:

19 (1) the public employer subject to the local
20 board has affirmatively elected to continue to operate under
21 the local board; and

22 (2) each labor organization representing
23 employees of the public employer subject to the local board
24 has submitted a written notice to the board that it
25 affirmatively elects to continue to operate under the local

1 board.

2 E. The affirmation required pursuant to Subsection
3 D of this section shall be submitted to the board by each
4 local board between November 1 and December 31 of each odd-
5 numbered year. A local board that fails to timely submit the
6 affirmation required by this subsection shall cease to exist
7 as of January 1 of the next even-numbered year.

8 F. Beginning on July 1, 2020, if at any time
9 thereafter a local board has a membership vacancy exceeding
10 sixty days in length, the local board shall cease to exist.

11 G. A local board may cease to exist upon:

12 (1) a repeal of the local ordinance,
13 resolution or charter amendment authorizing continuation of
14 the local board; or

15 (2) a vote of a local board, which vote is
16 filed with the board.

17 H. Once a local board ceases to exist for any
18 reason, it may not be revived.

19 I. Whenever a local board ceases to exist, all
20 matters pending before such local board shall be transferred
21 to the board for resolution.

22 J. After June 30, 2020, no new local board may be
23 created."

24 SECTION 6. Section 10-7E-13 NMSA 1978 (being Laws 2003,
25 Chapter 4, Section 13 and Laws 2003, Chapter 5, Section 13)

1 is amended to read:

2 "10-7E-13. APPROPRIATE BARGAINING UNITS.--

3 A. The board or local board shall, upon receipt of
4 a petition for a representation election filed by a labor
5 organization, designate the appropriate bargaining units for
6 collective bargaining. Appropriate bargaining units shall be
7 established on the basis of occupational groups or clear and
8 identifiable communities of interest in employment terms and
9 conditions and related personnel matters among the public
10 employees involved. Occupational groups shall generally be
11 identified as blue-collar, secretarial clerical, technical,
12 professional, paraprofessional, police, fire and corrections.
13 The parties, by mutual agreement, may further consolidate
14 occupational groups. Essential factors in determining
15 appropriate bargaining units shall include the principles of
16 efficient administration of government, the history of
17 collective bargaining and the assurance to public employees
18 of the fullest freedom in exercising the rights guaranteed by
19 the Public Employee Bargaining Act.

20 B. Within thirty days of a disagreement arising
21 between a public employer and a labor organization concerning
22 the composition of an appropriate bargaining unit, the board
23 or local board shall hold a hearing concerning the
24 composition of the bargaining unit before designating an
25 appropriate bargaining unit.

1 C. The board or local board shall not include in
2 an appropriate bargaining unit supervisors, managers or
3 confidential employees.

4 D. Jobs included within a bargaining unit pursuant
5 to a local ordinance in effect on January 1, 2020 shall
6 remain in that bargaining unit."

7 **SECTION 7.** Section 10-7E-14 NMSA 1978 (being Laws 2003,
8 Chapter 4, Section 14 and Laws 2003, Chapter 5, Section 14)
9 is amended to read:

10 "10-7E-14. ELECTIONS.--

11 A. Whenever, in accordance with rules prescribed
12 by the board or local board, a petition is filed by a labor
13 organization containing the signatures of at least thirty
14 percent of the public employees in an appropriate bargaining
15 unit, the board or local board shall conduct a secret ballot
16 representation election to determine whether and by which
17 labor organization the public employees in the appropriate
18 bargaining unit shall be represented. Upon acceptance of a
19 valid petition, the board or a local board shall require the
20 public employer to provide the labor organization within ten
21 business days the names, job titles, work locations, home
22 addresses, personal email addresses and home or cellular
23 telephone numbers of any public employee in the proposed
24 bargaining unit. This information shall be kept confidential
25 by the labor organization and its employees or officers. The

1 ballot shall contain the name of any labor organization
2 submitting a petition containing signatures of at least
3 thirty percent of the public employees in the appropriate
4 bargaining unit. The ballot shall also contain a provision
5 allowing public employees to indicate whether they do not
6 desire to be represented by a labor organization. An
7 election shall only be valid if forty percent of the eligible
8 employees in the bargaining unit vote in the election.

9 B. Once a labor organization has filed a valid
10 petition with the board or local board calling for a
11 representation election, other labor organizations may seek
12 to be placed on the ballot. Such an organization shall file
13 a petition containing the signatures of not less than thirty
14 percent of the public employees in the appropriate bargaining
15 unit no later than ten days after the board or the local
16 board and the public employer post a written notice that the
17 petition in Subsection A of this section has been filed by a
18 labor organization.

19 C. As an alternative to the provisions of
20 Subsection A of this section, a labor organization with a
21 reasonable basis for claiming to represent a majority of the
22 employees in an appropriate bargaining unit may submit
23 authorization cards from a majority of the employees in an
24 appropriate bargaining unit to the board or local board,
25 which shall, upon verification that a majority of the

1 employees in the appropriate bargaining unit have signed
2 valid authorization cards, certify the labor organization as
3 the exclusive representative of all public employees in the
4 appropriate bargaining unit. The employer may challenge the
5 verification of the board or local board; the board or local
6 board shall hold a fact-finding hearing on the challenge to
7 confirm that a majority of the employees in the appropriate
8 bargaining unit have signed valid authorization cards.

9 D. If a labor organization receives a majority of
10 votes cast, it shall be certified as the exclusive
11 representative of all public employees in the appropriate
12 bargaining unit. Within fifteen days of an election in which
13 no labor organization receives a majority of the votes cast,
14 a runoff election between the two choices receiving the
15 largest number of votes cast shall be conducted. The board
16 or local board shall certify the results of the election,
17 and, when a labor organization receives a majority of the
18 votes cast, the board or local board shall certify the labor
19 organization as the exclusive representative of all public
20 employees in the appropriate bargaining unit.

21 E. An election shall not be conducted if an
22 election or runoff election has been conducted in the twelve-
23 month period immediately preceding the proposed
24 representation election. An election shall not be held
25 during the term of an existing collective bargaining

1 agreement, except as provided in Section 10-7E-16 NMSA 1978."

2 SECTION 8. Section 10-7E-15 NMSA 1978 (being Laws 2003,
3 Chapter 4, Section 15 and Laws 2003, Chapter 5, Section 15)
4 is amended to read:

5 "10-7E-15. EXCLUSIVE REPRESENTATION.--

6 A. A labor organization that has been certified by
7 the board or local board as representing the public employees
8 in the appropriate bargaining unit shall be the exclusive
9 representative of all public employees in the appropriate
10 bargaining unit. The exclusive representative shall act for
11 all public employees in the appropriate bargaining unit and
12 negotiate a collective bargaining agreement covering all
13 public employees in the appropriate bargaining unit. The
14 exclusive representative shall represent the interests of all
15 public employees in the appropriate bargaining unit without
16 discrimination or regard to membership in the labor
17 organization. A claim by a public employee that the
18 exclusive representative has violated this duty of fair
19 representation shall be forever barred if not brought within
20 six months of the date on which the public employee knew, or
21 reasonably should have known, of the violation.

22 B. This section does not prevent a public
23 employee, acting individually, from presenting a grievance
24 without the intervention of the exclusive representative. At
25 a hearing on a grievance brought by a public employee

1 individually, the exclusive representative shall be afforded
2 the opportunity to be present and make its views known. An
3 adjustment made shall not be inconsistent with or in
4 violation of the collective bargaining agreement then in
5 effect between the public employer and the exclusive
6 representative.

7 C. A public employer shall provide an exclusive
8 representative of an appropriate bargaining unit reasonable
9 access to employees within the bargaining unit, including the
10 following:

11 (1) for purposes of newly hired employees in
12 the bargaining unit, reasonable access includes:

13 (a) the right to meet with new
14 employees, without loss of employee compensation or leave
15 benefits; and

16 (b) the right to meet with new
17 employees within thirty days from the date of hire for a
18 period of at least thirty minutes but not more than one
19 hundred twenty minutes, during new employee orientation or,
20 if the public employer does not conduct new employee
21 orientations, at individual or group meetings; and

22 (2) for purposes of employees in the
23 bargaining unit who are not new employees, reasonable access
24 includes:

25 (a) the right to meet with employees

1 during the employees' regular work hours at the employees'
2 regular work location to investigate and discuss grievances,
3 workplace-related complaints and other matters relating to
4 employment relations; and

5 (b) the right to conduct meetings at
6 the employees' regular work location before or after the
7 employees' regular work hours, during meal periods and during
8 any other break periods.

9 D. A public employer shall permit an exclusive
10 representative to use the public employer's facilities or
11 property, whether owned or leased by the employer, for
12 purposes of conducting meetings with the represented
13 employees in the bargaining unit. An exclusive
14 representative may hold the meetings described in this
15 section at a time and place set by the exclusive
16 representative. The exclusive representative shall have the
17 right to conduct the meetings without undue interference and
18 may establish reasonable rules regarding appropriate conduct
19 for meeting attendees.

20 E. The meetings described in this section shall
21 not interfere with the public employer's operations.

22 F. If a public employer has the information in the
23 employer's records, the public employer shall provide to the
24 exclusive representative, in an editable digital file format
25 agreed to by the exclusive representative, the following

1 information for each employee in an appropriate bargaining
2 unit:

3 (1) the employee's name and date of hire;

4 (2) contact information, including:

5 (a) cellular, home and work telephone
6 numbers;

7 (b) a means of electronic
8 communication, including work and personal electronic mail
9 addresses; and

10 (c) home address or personal mailing
11 address; and

12 (3) employment information, including the
13 employee's job title, salary and work site location.

14 G. The public employer shall provide the
15 information described in Subsection F of this section to the
16 exclusive representative within ten days from the date of
17 hire for newly hired employees in an appropriate bargaining
18 unit, and every one hundred twenty days for employees in the
19 bargaining unit who are not newly hired employees. The
20 information shall be kept confidential by the labor
21 organization and its employees or officers. Apart from the
22 disclosure required by this subsection, and notwithstanding
23 any provision contained in the Inspection of Public Records
24 Act, the public employer shall not disclose the information
25 described in Subsection F of this section, or public

1 employees' dates of birth or social security numbers to a
2 third party.

3 H. An exclusive representative shall have the
4 right to use the electronic mail systems or other similar
5 communication systems of a public employer to communicate
6 with the employees in the bargaining unit regarding:

7 (1) collective bargaining, including the
8 administration of collective bargaining agreements;

9 (2) the investigation of grievances or other
10 disputes relating to employment relations; and

11 (3) matters involving the governance or
12 business of the labor organization.

13 I. Nothing in this section prevents a public
14 employer from providing an exclusive representative access to
15 employees within the bargaining unit beyond the reasonable
16 access required under this section, or limits any existing
17 right of a labor organization to communicate with public
18 employees."

19 SECTION 9. Section 10-7E-16 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 16 and Laws 2003, Chapter 5, Section 16)
21 is amended to read:

22 "10-7E-16. DECERTIFICATION OF EXCLUSIVE
23 REPRESENTATIVE.--

24 A. A member of a labor organization or the labor
25 organization itself may initiate decertification of a labor

1 organization as the exclusive representative if thirty
2 percent of the public employees in the appropriate bargaining
3 unit make a written request to the board or local board for a
4 decertification election. Decertification elections shall be
5 held in a manner prescribed by rule of the board. An
6 election shall only be valid if forty percent of the eligible
7 employees in the bargaining unit vote in the election.

8 B. When there is a collective bargaining agreement
9 in effect, a request for a decertification election shall be
10 made to the board or local board no earlier than ninety days
11 and no later than sixty days before the expiration of the
12 collective bargaining agreement; provided, however, a request
13 for an election may be filed at any time after the expiration
14 of the third year of a collective bargaining agreement with a
15 term of more than three years.

16 C. When, within the time period prescribed in
17 Subsection B of this section, a competing labor organization
18 files a petition containing signatures of at least thirty
19 percent of the public employees in the appropriate bargaining
20 unit, a representation election rather than a decertification
21 election shall be conducted.

22 D. When an exclusive representative has been
23 certified but no collective bargaining agreement is in
24 effect, the board or local board shall not accept a request
25 for a decertification election or an election sought by a

1 competing labor organization earlier than twelve months
2 subsequent to a labor organization's certification as the
3 exclusive representative."

4 SECTION 10. Section 10-7E-17 NMSA 1978 (being Laws
5 2003, Chapter 4, Section 17 and Laws 2003, Chapter 5, Section
6 17) is amended to read:

7 "10-7E-17. SCOPE OF BARGAINING.--

8 A. Except for retirement programs provided
9 pursuant to the Public Employees Retirement Act or the
10 Educational Retirement Act, public employers and exclusive
11 representatives:

12 (1) shall bargain in good faith on wages,
13 hours and all other terms and conditions of employment and
14 other issues agreed to by the parties. However, neither the
15 public employer nor the exclusive representative shall be
16 required to agree to a proposal or to make a concession; and

17 (2) shall enter into written collective
18 bargaining agreements covering employment relations.

19 Entering into a collective bargaining agreement shall not
20 obviate the duty to bargain in good faith during the term of
21 the collective bargaining agreement regarding changes to
22 wages, hours and all other terms and conditions of
23 employment, unless it can be demonstrated that the parties
24 clearly and unmistakably waived the right to bargain
25 regarding those subjects. However, no party may be required,

1 by this provision, to renegotiate the existing terms of
2 collective bargaining agreements already in place.

3 B. In regard to the Public Employees Retirement
4 Act and the Educational Retirement Act, a public employer in
5 a written collective bargaining agreement may agree to assume
6 any portion of a public employee's contribution obligation to
7 retirement programs provided pursuant to the Public Employees
8 Retirement Act or the Educational Retirement Act. Such
9 agreements are subject to the limitations set forth in this
10 section.

11 C. The obligation to bargain collectively imposed
12 by the Public Employee Bargaining Act shall not be construed
13 as authorizing a public employer and an exclusive
14 representative to enter into an agreement that is in conflict
15 with the provisions of any other statute of this state;
16 provided, however, that a collective bargaining agreement
17 that provides greater rights, remedies and procedures to
18 public employees than contained in a state statute shall not
19 be considered to be in conflict with that state statute. In
20 the event of an actual conflict between the provisions of any
21 other statute of this state and an agreement entered into by
22 the public employer and the exclusive representative in
23 collective bargaining, the statutes of this state shall
24 prevail.

25 D. Payroll deduction of the exclusive

1 representative's membership dues shall be a mandatory subject
2 of bargaining if either party chooses to negotiate the issue.
3 The amount of dues shall be certified in writing by an
4 official of the labor organization and shall not include
5 special assessments, penalties or fines of any type. The
6 public employer shall honor payroll deductions until the
7 authorization is revoked in writing by the public employee in
8 accordance with the negotiated agreement and this subsection
9 and for so long as the labor organization is certified as the
10 exclusive representative. Public employees who have
11 authorized the payroll deduction of dues to a labor
12 organization may revoke that authorization by providing
13 written notice to their labor organization during a window
14 period not to exceed ten days per year for each employee.
15 The public employer and the labor organization shall
16 negotiate when the commencement of that period will begin
17 annually for each employee. If no agreement is reached, the
18 period shall be during the ten days following the anniversary
19 date of each employee's employment. Within ten days of
20 receipt of notice from a public employee of revocation of
21 authorization for the payroll deduction of dues, the labor
22 organization shall provide notice to the public employer of a
23 public employee's revocation of that authorization. A public
24 employee's notice of revocation for the payroll deduction of
25 dues shall be effective on the thirtieth day after the notice

1 provided to the public employer by the labor organization.
2 No authorized payroll deduction of dues held by a public
3 employer or a labor organization on July 1, 2020 shall be
4 rendered invalid by this provision and shall remain valid
5 until replaced or revoked by the public employee. During the
6 time that a board certification is in effect for a particular
7 appropriate bargaining unit, the public employer shall not
8 deduct dues for any other labor organization.

9 E. Public employers and a labor organization, or
10 their employees or agents, are not liable for, and have a
11 complete defense to, any claims or actions under the law of
12 this state for requiring, deducting, receiving or retaining
13 fair share dues or fees from public employees, and current or
14 former public employees do not have standing to pursue these
15 claims or actions if the fair share dues or fees were
16 permitted at the time under the laws of this state then in
17 force and paid, through payroll deduction or otherwise, on or
18 before June 27, 2018. This subsection:

19 (1) applies to all claims and actions
20 pending on July 1, 2020 and to claims and actions filed on or
21 after July 1, 2020; and

22 (2) shall not be interpreted to infer that
23 any relief made unavailable by this section would otherwise
24 be available.

25 F. The scope of bargaining for the exclusive

1 representative and the state shall include enhancements of
2 employee rights and benefits existing pursuant to the
3 Personnel Act.

4 G. The scope of bargaining for representatives of
5 public schools as well as educational employees in state
6 agencies shall include, as a mandatory subject of bargaining,
7 the impact of professional and instructional decisions made
8 by the employer.

9 H. An impasse resolution or an agreement provision
10 by the state and an exclusive representative that requires
11 the expenditure of funds shall be contingent upon the
12 specific appropriation of funds by the legislature and the
13 availability of funds. An impasse resolution or an agreement
14 provision by a public employer other than the state or the
15 public schools and an exclusive representative that requires
16 the expenditure of funds shall be contingent upon the
17 specific appropriation of funds by the appropriate governing
18 body and the availability of funds. An agreement provision
19 by a local school board and an exclusive representative that
20 requires the expenditure of funds shall be contingent upon
21 ratification by the appropriate governing body. An
22 arbitration decision shall not require the reappropriation of
23 funds.

24 I. An agreement shall include a grievance
25 procedure to be used for the settlement of disputes

1 pertaining to employment terms and conditions and related
2 personnel matters. The grievance procedure shall provide for
3 a final and binding determination. The final determination
4 shall constitute an arbitration award within the meaning of
5 the Uniform Arbitration Act; such award shall be subject to
6 judicial review pursuant to the standard set forth in the
7 Uniform Arbitration Act. The costs of an arbitration
8 proceeding conducted pursuant to this subsection shall be
9 shared equally by the parties.

10 J. The following meetings shall be closed:

11 (1) meetings for the discussion of
12 bargaining strategy preliminary to collective bargaining
13 negotiations between the public employer and the exclusive
14 representative of the public employees of the public
15 employer;

16 (2) collective bargaining sessions; and

17 (3) consultations and impasse resolution
18 procedures at which the public employer and the exclusive
19 representative of the appropriate bargaining unit are
20 present."

21 SECTION 11. Section 10-7E-18 NMSA 1978 (being Laws
22 2003, Chapter 4, Section 18 and Laws 2003, Chapter 5, Section
23 18) is amended to read:

24 "10-7E-18. IMPASSE RESOLUTION.--

25 A. The following negotiations and impasse

1 procedures shall be followed by the state and exclusive
2 representatives for state employees:

3 (1) a request to the state for the
4 commencement of initial negotiations shall be filed in
5 writing by the exclusive representative no later than June 1
6 of the year in which negotiations are to take place.

7 Negotiations shall begin no later than July 1 of that year;

8 (2) in subsequent years, negotiations agreed
9 to by the parties shall begin no later than August 1
10 following the submission of written notice to the state by
11 the exclusive representative no later than July 1 of the year
12 in which negotiations are to take place;

13 (3) if an impasse occurs during negotiations
14 between the parties, either party may request mediation
15 services from the board. A mediator from the federal
16 mediation and conciliation service shall be assigned by the
17 board to assist in negotiations unless the parties agree to
18 another mediator;

19 (4) the mediator shall provide services to
20 the parties until the parties reach agreement or the mediator
21 believes that mediation services are no longer helpful or
22 until thirty days after the mediator was requested, whichever
23 occurs first; and

24 (5) if the impasse continues after the time
25 described in Paragraph (4) of this subsection, either party

1 may request a list of seven arbitrators from the federal
2 mediation and conciliation service. One arbitrator shall be
3 chosen by the parties by alternately striking names from such
4 list. Who strikes first shall be determined by coin toss.
5 The arbitrator shall render a final, binding, written
6 decision resolving unresolved issues pursuant to Subsection H
7 of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act
8 no later than thirty days after the arbitrator has been
9 notified of selection by the parties. The arbitrator's
10 decision shall be limited to a selection of one of the two
11 parties' complete, last, best offer. The costs of an
12 arbitrator and the arbitrator's related costs conducted
13 pursuant to this subsection shall be shared equally by the
14 parties. Each party shall be responsible for bearing the
15 cost of presenting its case. The decision shall be subject
16 to judicial review pursuant to the standard set forth in the
17 Uniform Arbitration Act.

18 B. The following impasse procedures shall be
19 followed by all public employers and exclusive
20 representatives, except the state and the state's exclusive
21 representatives:

22 (1) if an impasse occurs, either party may
23 request from the board or local board that a mediator be
24 assigned to the negotiations unless the parties can agree on
25 a mediator. A mediator with the federal mediation and

1 conciliation service shall be assigned by the board or local
2 board to assist negotiations unless the parties agree to
3 another mediator; and

4 (2) if the impasse continues after a thirty-
5 day mediation period, either party may request a list of
6 seven arbitrators from the federal mediation and conciliation
7 service. One arbitrator shall be chosen by the parties by
8 alternately striking names from such list. Who strikes first
9 shall be determined by coin toss. The arbitrator shall
10 render a final, binding, written decision resolving
11 unresolved issues pursuant to Subsection H of Section
12 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later
13 than thirty days after the arbitrator has been notified of
14 selection by the parties. The arbitrator's decision shall be
15 limited to a selection of one of the two parties' complete,
16 last, best offer. The costs of an arbitrator and the
17 arbitrator's related costs conducted pursuant to this
18 subsection shall be shared equally by the parties. Each
19 party shall be responsible for bearing the cost of presenting
20 its case. The decision shall be subject to judicial review
21 pursuant to the standard set forth in the Uniform Arbitration
22 Act.

23 C. A public employer other than the state may
24 enter into a written agreement with the exclusive
25 representative setting forth an alternative impasse

1 resolution procedure.

2 D. In the event that an impasse continues after
3 the expiration of a contract, the existing contract will
4 continue in full force and effect until it is replaced by a
5 subsequent written agreement. However, this shall not
6 require the public employer to increase any employees'
7 levels, steps or grades of compensation contained in the
8 existing contract."

9 SECTION 12. Section 10-7E-19 NMSA 1978 (being Laws
10 2003, Chapter 4, Section 19 and Laws 2003, Chapter 5, Section
11 19) is amended to read:

12 "10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
13 public employer or the public employer's representative shall
14 not:

15 A. discriminate against a public employee with
16 regard to terms and conditions of employment because of the
17 employee's membership in a labor organization;

18 B. interfere with, restrain or coerce a public
19 employee in the exercise of a right guaranteed pursuant to
20 the Public Employee Bargaining Act or use public funds to
21 influence the decision of its employees or the employees of
22 its subcontractors regarding whether to support or oppose a
23 labor organization that represents or seeks to represent
24 those employees, or whether to become a member of any labor
25 organization; provided, however, that this subsection does

1 not apply to activities performed or expenses incurred:

2 (1) addressing a grievance or negotiating or
3 administering a collective bargaining agreement;

4 (2) allowing a labor organization or its
5 representatives access to the public employer's facilities or
6 properties;

7 (3) performing an activity required by
8 federal or state law or by a collective bargaining agreement;

9 (4) negotiating, entering into or carrying
10 out an agreement with a labor organization;

11 (5) paying wages to a represented employee
12 while the employee is performing duties if the payment is
13 permitted under a collective bargaining agreement; or

14 (6) representing the public employer in a
15 proceeding before the board or a local board or in a judicial
16 review of that proceeding;

17 C. dominate or interfere in the formation,
18 existence or administration of a labor organization;

19 D. discriminate in regard to hiring, tenure or a
20 term or condition of employment in order to encourage or
21 discourage membership in a labor organization;

22 E. discharge or otherwise discriminate against a
23 public employee because the employee has signed or filed an
24 affidavit, petition, grievance or complaint or given
25 information or testimony pursuant to the provisions of the

1 Public Employee Bargaining Act or because a public employee
2 is forming, joining or choosing to be represented by a labor
3 organization;

4 F. refuse to bargain collectively in good faith
5 with the exclusive representative;

6 G. refuse or fail to comply with a provision of
7 the Public Employee Bargaining Act or board rule; or

8 H. refuse or fail to comply with a collective
9 bargaining agreement."

10 SECTION 13. REPEAL.--Sections 10-7E-11 and 10-7E-26
11 NMSA 1978 (being Laws 2003, Chapter 4, Section 11 and Laws
12 2003, Chapter 5, Section 11; and Laws 2003, Chapter 4,
13 Section 26 and Laws 2003, Chapter 5, Section 26) are
14 repealed.

15 SECTION 14. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2020. _____

REPEAL AND REPLACE CHAPTER 15, LABOR MANAGEMENT RELATIONS OF THE LAS CRUCES MUNICIPAL CODE 1978, AS AMENDED

Labor Management Board Meeting
March 10, 2021

BACKGROUND

- Governor Michelle Lujan Grisham signed House Bill (HB) 364 amending certain sections of Chapter 10, Article 7E NMSA 1978, cited as the Public Employee Bargaining Act.
- To retain the Local Labor Management Relations Board (Board) required the City to repeal and replace Chapter 15 of the municipal code.
- Ordinance 2956 repealing and replacing Chapter 15 of the Municipal Code was approved by City Council on December 7, 2020.

BACKGROUND

- The City met the December 31, 2020 deadline established by the State Labor Relations Board.
- The State Labor Relations Board met on January 6, 2021 to review the City's application to approve the revised Ordinance.
- The State Labor Relations Board deferred approval, requiring the document be reformatted with additional amendments.

CHANGES INCLUDE

- Expands or changes some definitions.
- Restructure of certain sections.
- Changes to timelines and requirements for elections.
- Provides for additional duties of the Board.
- Provides specific timelines for information gathering.
- Include the date the local Labor Management Relations Board was created.
- Clarify language in Section 14(G).
- Reformat of the document.