



**2961; Council  
Bill 21-028**

# City Council Action and Executive Summary

Type of Action:

- Resolution
- Ordinance
- TIDD Resolution

|                     |  |                          |                      |
|---------------------|--|--------------------------|----------------------|
| <b>District:</b>    | <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   |                          |                      |
| <b>1st Reading:</b> | February 1, 2021   | <b>Adopted:</b>          | February 16, 2021    |
| <b>Drafter:</b>     | Christine Rivera   | <b>Department:</b>       | Legal                |
| <b>Program:</b>     | Compliance   | <b>Line of Business:</b> | Office of City Clerk |
| <b>Title:</b>       | <b>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.</b> |                          |                      |

**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

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Mayor

ATTEST:

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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**

Chapter 15 - LABOR-MANAGEMENT RELATIONS<sup>1</sup>

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.

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*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

Exhibit "A"

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:

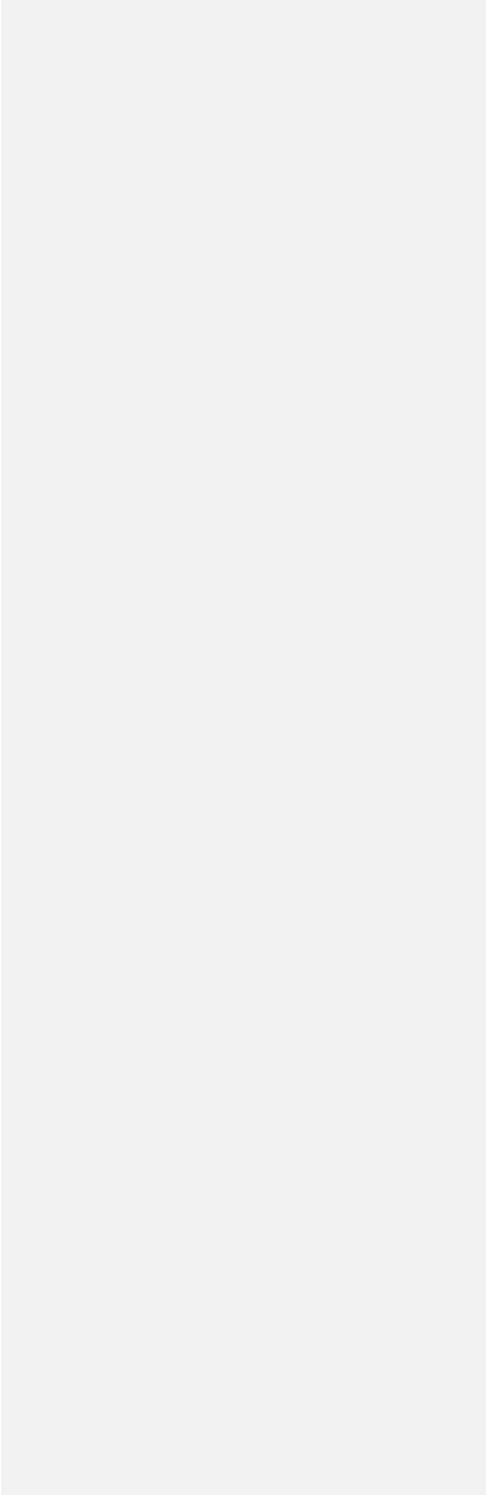


Exhibit "A"

- 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. \_\_\_\_\_