

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

Section 1. DEFINITIONS:

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

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

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

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

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

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

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

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

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

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

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

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

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

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

Section 8. MOTION TO DISQUALIFY:

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

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

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

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

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

Section 10. NOTICE OF HEARING:

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

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

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

Section 11. EVIDENCE ADMISSIBLE:

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

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

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

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

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

Section 13. SUBPOENAS:

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

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

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

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

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

Section 15. OWNERSHIP AND CONFIDENTIALITY OF SHOWING OF INTEREST:

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

Section 16. BURDEN OF PROOF:

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

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

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

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

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

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

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

**LABOR MANAGEMENT RELATIONS BOARD
RULES PART 1**

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

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

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

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

Section 26. MEETINGS BY TELEPHONE:

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

Section 27. CHAIRPERSON SUCCESSION:

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