

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

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

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

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

**Section 5. INFORMATION REQUESTED OF PARTIES:**

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

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

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

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

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

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

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

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

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

**Section 9. INTERVENTION:**

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

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

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

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

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

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

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

**Section 12. REPRESENTATION HEARING:**

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

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

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

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

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

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

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

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

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

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

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

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

**Section 16. OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:**

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

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

**Section 17. ELIGIBILITY TO VOTE:**

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

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

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

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

**Section 18. PRE-ELECTION CONFERENCE:**

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

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

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

**Section 19. NOTICE OF ELECTION:**

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

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

**Section 20. BALLOTS AND VOTING:**

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

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

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

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

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change the work schedules of employees to accommodate voting hours.

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

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

**Section 23. CHALLENGED BALLOTS:**

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

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

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

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

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

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

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

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

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

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

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

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

**Section 30. UNIT CLARIFICATION:**

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

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

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

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

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

**Section 31. ACCRETION:**

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

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

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

**Section 32. VOLUNTARY RECOGNITION:**

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

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

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

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



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

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

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

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

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