

PELRB GUIDELINES FOR UTILIZING ELECTRONIC SIGNATURES FOR A SHOWING OF INTEREST

The New Mexico Public Employee Labor Relations Board (NMPELRB) is subject to the New Mexico Uniform Electronic Transaction Act (UETA).¹ NMSA 1978, §§ 14-16-2 and 18. The UETA was enacted in 2001. The UETA applies to electronic records and electronic signatures relating to a transaction unless otherwise excluded by law. NMSA 1978, §§ 14-16-3. The UETA states that if the law requires a signature, an electronic signature satisfies the law. NMSA 1978, § 14-16-7(D). However, the electronic signature must be attributable to a person. NMSA 1978, § 14-16-9. The UETA mandates that:

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law. NMSA 1978, § 14-16-9.

The UETA provides that government agencies who accept electronic signatures on electronic records may define the format for the signature. NMSA 1978, § 14-16-18.

NMPELRB's current rules include a process for filing a showing of interest by submitting petitions or cards signed by electronic signatures.

Currently, NMPELRB's rules require a filing of a showing of interest as follows:

11.21.2.11 SHOWING OF INTEREST: With the petition and at the same time the petition is filed, the petitioner shall deposit with the director 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

¹ The Global and National Commerce Act ("E-sign Act") is a similar federal law concerning rules for electronic signature but applies to transactions affecting interstate and foreign commerce. 15 USC § 7001. Therefore, the NMPELRB is not subject to the E-sign Act, however, most of the provisions under the state UETA track the federal E-sign Act.

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.

Requirements for submitting documents using electronic signatures is located under NMPELRB's general provisions section, Rule 11.21.1 NMAC. The general provisions section of the rules is intended to provide clarification, procedures and structure when implementing the New Mexico Employee Bargaining Act. NMSA 1978, §§ 10-7E-1 through 10-7E-26. As part of those procedures, NMPELRB adopted rules allowing a party to submit documents signed by electronic signature. "Document" is defined under the rule as "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." 11.21.1.7(B)(8) NMAC. A petition or cards for a showing of interest is included under the definition of document, and therefore, fall under the requirements for filing with the Director or the Board.

In order to submit documents signed by electronic signature, NMPELRB requires the following:

11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD (in relevant part):

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.

NMPELRB, as provided by rule, accepts electronic signatures on documents, including petitions and cards showing of interest, and defines the manner in which electronic signatures may be accepted in compliance with the UETA. NMAC 11.21.1.10(C) and NMSA 1978, § 14-16-18(B).

A. Requirements for Acceptance of Electronic Signatures

An acceptable submission supported by electronic signature in support of a showing of interest must have the following elements to establish its authenticity and provide a mechanism for the Agency to investigate allegations of forgery or fraud where appropriate.

1. Submissions supported by electronic signature must contain the following:

- a. the signer's name;
- b. the signer's email address or other known contact information (e.g., social media account);
- c. the signer's telephone number;
- d. the language to which the signer has agreed (e.g., that the signer wishes to be represented by ABC Union for purposes of collective bargaining or no

longer wishes to be represented by ABC Union for purposes of collective bargaining);

- e. the date the electronic signature was submitted; and,
- f. the name of the employer.²

2. Declaration

A party submitting either electronic or digital signatures must submit a declaration identifying what electronic or digital signature technology was used and explaining how its controls ensure:

- a. that the electronic or digital signature is that of the signatory employee, and
- b. that the employee herself signed the document; and
- c. that the electronically transmitted information regarding what and when the employees signed is the same information seen and signed by the employees.³

3. Confirmation Transmission

When the electronic signature technology being used does not support digital signatures that can be independently verified by a third party as in the example in the second paragraph of n.2, above, the submitting party must submit evidence that, after the electronic signature was obtained, the submitting party promptly transmitted a communication stating and confirming all the information listed in 1a through 1f above (the “Confirmation Transmission”)

² If an employee fails to name the petitioned-for employer in his/her electronic submission, then, at the time that the showing of interest is provided to the Agency, the petitioner shall attest, in writing, that the employee is currently employed by the petitioned-for employer.

³ For example, a party submitting a simple electronic signature could submit a declaration explaining that electronic signatures were collected through a website set up by the organizers, and asserting that the organizers believe that the employee herself signed the showing of interest because the employee submitted her contact information to the website, and because the organizers sent a Confirmation Transmission as described in Paragraph 3 below. For illustrative purposes only, see Example 1, attached to this form. Similarly, a party submitting showings of interest collected via email could submit a declaration explaining that the submitter knows the showing was signed because the text of the email contains evidence that the employee acted with the intent to sign the showing of interest, and that the submitting party believes the employee herself signed the showing of interest because (1) the email was sent from an address known to be used by the employee and (2) because the organizers sent a Confirmation Transmission as described in Paragraph 3 below. See Example 2.

Additionally, a party using digital signature technology based on public key infrastructure (“PKI”) could submit a declaration identifying this technology. Because commercially available PKI solutions allow for identity verification by an independent third party, a submitting party can rely on PKI technology when asserting that it knows that the electronic signature is that of the signatory employee, that the employee herself signed the document, and that what is being submitted is the same information seen and signed by the employee. Therefore, if these solutions are used, the Confirmation Transmission described in Paragraph III (A)(3) need not be sent.

- a. The Confirmation Transmission must be sent to an individual account (i.e., email address, text message via mobile phone, social media account, etc.) provided by the signer.⁴
- b. If any responses to the Confirmation Transmission are received by the time of submission to the PELRB of the showing of interest to support a petition, those responses must also be provided to the PELRB.

The requirements set forth above are more stringent than what is currently required for non-electronic signatures. Presently, signature lists are not required to contain any personal contact information. However, the contact information (email address, phone number or other social media account) is easy to obtain electronically from the signer and will enable the PELRB to promptly investigate forgery or fraud, where appropriate.⁵ Moreover, the Confirmation Transmission will allow an employee, who receives the notification but did not actually intend to sign the document, with the means to alert the Agency, the employer, a union, or others that he or she did not, in fact, electronically sign a showing of interest.

These additional requirements for electronic signatures should reassure those who expressed reservations about acceptance of electronic signatures, that the Agency takes seriously their concerns and is committed to ensuring the integrity of the process. It should be further stressed that parties will not be required to submit electronic signatures in support of their showing of interest and can continue to submit written signatures on paper for all or part of their showing of interest. However, when parties choose to submit electronic signatures, it is important that the public, employees, and other parties have confidence in the process and in the PELRB's ability to investigate potential forgery or fraud, when appropriate.

B. How to Submit the Electronic Signature to the PELRB

If you wish to submit an electronic signature in support of a showing of interest, your submission must provide the information required in Section A, above. Additionally, your submission must meet all requirement set forth in the PELRB Rules (NMAC Title 11, Chapter 21).

The information you have establishing electronic signatures could be in different forms. For example, it could be an email sent soliciting information and support to which the signer replied or it could be a copy of a webpage soliciting information along with a spreadsheet showing data received after the electronic signer clicked a "Submit" button. The petitioner will retain ownership of the documents submitted pursuant to NMAC 11.21.1.21 and they will be returned to the petitioner when the file is closed.

⁴ For illustrative purposes only, a sample Confirmation Transmission to support an RC and RD petition are attached to this memorandum as Examples 3 and 4, respectively.

⁵ As is now the case with handwritten signatures, an electronic signature submitted in support of a showing of interest that meets the requirements set forth herein will be presumed to be valid absent sufficient probative evidence warranting an investigation of possible fraud. Mere speculation or assertions of fraud are not now, and will not in the future, be sufficient to cause the Agency to investigate.

Example 1

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Public Workers Local 1,

Petitioner

PELRB No:

State or National Affiliation: _____
(If Applicable)

and

City of Centerville,

Respondent

**DECLARATION IN SUPPORT OF ELECTRONIC SIGNATURES USED IN SUPPORT
OF PETITION FOR INITIAL CERTIFICATION OF A NEW BARGAINING UNIT**

I, Margaret Alpha, under penalty of perjury under the laws of the State of New Mexico, hereby declare the following:

1. I am the Business Agent for Public Workers Local 1 (Union), the petitioner in *Workers Local 1 & City of Centerville*, which was filed concurrently with this Declaration.
2. Each individual employee interested in joining the Union organizing drive went to the website we set up. They filled out their names, email addresses, phone numbers and employer name on an online form containing language providing that they wished to be represented for collective-bargaining purposes by the Union and clicked on "I agree".
3. The electronic signatures we are providing identify the signing employee, because that is the information that they typed onto the form.
4. Upon receipt of the email, a Union agent sent a Confirmation Transmission to the employees' email accounts stating and confirming all the information that the employees sent and that the Union received in the employees' emails. We are also including any responses to the Confirmation Transmission that we received from signatory employees prior to the filing of this showing of interest.

Example 2

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Public Workers Local 1,

Petitioner

PELRB No:

State or National Affiliation: _____
(If Applicable)

and

City of Centerville,

Respondent

**DECLARATION IN SUPPORT OF ELECTRONIC SIGNATURES USED IN SUPPORT
OF PETITION FOR INITIAL CERTIFICATION OF A NEW BARGAINING UNIT**

I, Joseph Beta, under penalty of perjury under the laws of the State of New Mexico, hereby declare the following:

1. I am the Business Agent for Public Workers Local 1 (Union), the petitioner in *Public Workers Local 1 & City of Centerville*, which was filed concurrently with this Declaration.
2. The petitioner collected electronic signatures from unit employees for the purposes of its showing of interest in the following manner:

Agents of the Union directed each individual employee who wanted the Union to represent him or her for the purposes of collective bargaining to send an email to organizing@PWUlocal1.org. They included their name, email address, phone number and employer name in the email, with language indicating that they wished to be represented for collective-bargaining purposes by the Union. The electronic signatures we're providing identify the signing employees, because the employees sent the emails from email addresses that are known to be used by the employees.

Upon receipt of the email, a Union agent sent a Confirmation Transmission to the employees' email accounts stating and confirming all the information that the employees sent and that the Union received in the employees' emails. We are also including any responses to the Confirmation Transmission that we received from signatory employees prior to the filing of this showing of interest.

Example 3

To: jane.smith@gmail.com

Subject: Confirmation of Submission of Electronic Authorization to Public Workers Local 1 to Represent You for the purposes of collective bargaining

Dear Jane Smith:

This email is to confirm that Public Workers Local 1 received an electronic submission of authorization from you to represent you and other employees of The City of Centerville for purposes of collective bargaining.

The information that we received from you was as follows:

- a. **Name:** Jane Smith
- b. **Email address:** jane.smith@gmail.com
- c. **Telephone number:** (555) 555-5555
- d. **Language You Agreed To:** "I wish to be represented by Public Workers Local 1 for purposes of collective bargaining."
- e. **Date Submitted:** June 30, 2020
- f. **Employer Name:** City of Centerville

If you did *not* submit this authorization, please immediately reply to this email and let us know that you did not submit the authorization.

If you submitted the information and it is correct, you do not need to do anything. We will provide you with further information about our efforts to represent you.

If you submitted the information but you see there is an error in some of the information provided, please reply and provide the corrected information.

Thank you.

Public Workers Local 1

www.PWUlocal1.org

Example 4

To: jane.smith@gmail.com

Subject: Confirmation of Electronic Submission That You Do Not Want to be Represented by Public Workers Local 1

Dear Jane Smith:

This email is to confirm that I received an electronic submission from you stating that you do not wish to be represented by Public Workers Local 1 for purposes of collective bargaining.

The information that I received from you was as follows:

- a. **Name:** Jane Smith
- b. **Email address:** jane.smith@gmail.com
- c. **Telephone number:** (555) 555-5555
- d. **Language You Agreed To:** "I do not wish to be represented Public Workers Local 1 for purposes of collective bargaining."
- e. **Date Submitted:** June 30, 2020
- f. **Employer Name:** City of Centerville

If you did *not* submit this authorization, please immediately reply to this email and let me know that you did not submit the authorization.

If you submitted the information and it is correct, you do not need to do anything. I will provide you with further information about our efforts to no longer be represented by Public Workers Local 1.

If you submitted the information but see there is an error in some of the information provided, please reply and provide the corrected information.

Thank you,
Oscar Organizer