

INCORPORATED COUNTY OF LOS ALAMOS
LABOR MANAGEMENT RELATIONS BOARD
RULES AND REGULATIONS

Part I – General Provisions

1.1. Authority

These Rules and Regulations (“Rules”) are formulated and adopted by the County of Los Alamos Labor Management Relations Board (“Board”) in accordance with and pursuant to the authority of the County of Los Alamos Labor Management Relations Ordinance, Chapter 30, Article II, Los Alamos County Code (“Ordinance”).

1.2. Purpose and Objective

The Rules are necessary for the accomplishment and performance of the Board’s functions and duties described in the Ordinance and for the establishment of fair and expeditious procedures that further the purposes of the Ordinance. The functions of the Board are: (a) to guarantee public employees the right to organize and bargain collectively with their employer; (b) to promote harmonious and cooperative relationships between public employers and public employees; and (c) to protect the public interest by assuring, at all times, the orderly operation and functioning of the County. These Rules should be interpreted consistently with the Ordinance and the Public Employee Bargaining Act as presently written or as later amended.

1.3. Filing, Effective Date

These Rules and any amendments thereto shall be filed in the Office of the Clerk, County of Los Alamos, and shall be effective on the date of their filing.

1.4. Definitions

As used in these Rules, each of the following terms shall have the meaning set forth below:

- A. "Act" means the New Mexico Public Employee Bargaining Act, *Sections 10-7E-1 through 10-7E-26 NMSA 1978* including any amendments to that statute.
- B. “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.
- C. “Board” means the County of Los Alamos Labor Management Relations Board.
- D. “Certification of incumbent bargaining status” shall mean a procedure whereby a labor organization recognized by the employer as the exclusive representative of an appropriate bargaining unit on March 16, 2021 petitions the Board for a declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978.

- E. "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.
- F. "Complainant" means any individual, organization or public employer that has filed a prohibited practice complaint with the Board pursuant to these Rules.
- G. "County" means the Incorporated County of Los Alamos.
- H. "Days" refers to regular business days unless a particular Rule specifies the use of calendar days. Saturdays, Sundays, and County recognized legal holidays are not regular business days.
- I. "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 Rules 1.7 and 1.21 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 unrepresented person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
- J. "Document" means any writing, photograph, film, blueprint, microfiche, audio or videotape, electronic memory data, or data stored and reproducible in a visible or audible form by any other means.
- K. "Electronic submission" means the filing of a pleading or other document with the Board using the electronic system established by the Board, service by the parties, or email communications.
- L. "Employee" means a regular non-probationary employee of the Incorporated County of Los Alamos.
- M. "Employer" or "public employer" means the Incorporated County of Los Alamos.
- N. "Ordinance" means the County of Los Alamos Labor Management Relations Ordinance, Chapter 30, Article II, Los Alamos County Code.
- O. "Probationary employee" shall have the meaning set forth in any applicable County of Los Alamos ordinance, resolution, policy, work practice, regulation, or, in the absence of such a definition, in an applicable collective bargaining agreement; provided, however, that for determining rights under the Act an employee may not be considered a probationary employee for more than one (1) year after the date he or she is hired by a public employer. If otherwise undefined, the term shall refer to an employee who has held his or her position, or a related position, for less than six months.
- P. "Prohibited practice" means a violation of Sections 30-46 or 30-47 of the Ordinance.
- Q. "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.
- R. "Respondent" means a party against whom a prohibited practices complaint has been filed.
- S. "Rules" means the Rules and Regulations of the Board (these Rules), including any amendments to them.
- T. "Unit accretion" means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit and who share a community

of interest with the employees in the existing unit and whose inclusion will not render the existing unit inappropriate.

- U. "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.
- V. "Unit inclusion or exclusion" 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.

1.5. Computation of Time

- A. When these Rules state a specific number of days in which some action must or may be taken after or before a given event, the day 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.
- B. Saturdays, Sundays and County recognized legal holidays are not regular business days and shall not be counted when computing the time, unless a particular Rule specifies the use of calendar days, in which case Saturdays, Sundays and County recognized legal holidays shall be counted when computing the time.
- C. When the last day of the period falls on a Saturday, Sunday, or County recognized legal holiday, then the last day of taking the action shall be the following business day.

1.6. Extension of Time

A party seeking an extension of time in which to file any required or permitted document may file with the Board a written request for an extension. Such a request shall be filed at least three (3) 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 may grant an extension of time for good cause shown and, in granting an extension, may shorten the time requested.

1.7. Filing with the Board

To file a document with the Board, the document may be either hand-delivered to the Los Alamos County Clerk's Office during regular business hours, or sent to the County Clerk's Office by first class United States mail, postage prepaid, or by sending a copy by facsimile ("fax") or electronic submission. A document will be deemed filed when the County Clerk's Office receives it. A document sent to the County Clerk's Office via fax or electronic transmission during regular business hours will be accepted for filing upon receipt by the County Clerk's Office. For hand

delivered or mailed documents the date and time stamp affixed by the receiving County Clerk's Office will be determinative. For faxed or electronically transmitted documents the time and date affixed on the cover page or the document itself by the County Clerk's Office facsimile machine or receiving computer will be determinative.

- A. Additional time after service by mail: Whenever a party has the right or is required to do 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 (3) days shall be added to the prescribed period. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) 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.
- B. 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.
- C. 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.

1.8. Representation of a Party

A party may represent his, her, or itself, 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 proceeding 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.

1.9. Ex Parte Communications

Except as otherwise provided in this Rule, no party to a pending representation or prohibited practices proceeding before the Board shall communicate, or attempt to communicate with a Board member concerning any issue in the proceeding without, at the same time, transmitting the same communication to all other parties of the proceeding. It shall not be a violation of this Rule to communicate concerning the status of a proceeding, such procedural matters as the location or time of 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 respond to communications from the Board or its agent during the investigatory phase of a representation or prohibited practices proceeding. Nor shall it be a violation of this Rule for a party

to communicate with anyone on the Board concerning any rule making proceeding of the Board, or to communicate with a mediator, or Board member at the mediator's, or Board member's request.

1.10. Disqualification

No Board member or the Board's agent shall decide or otherwise participate in any proceeding in which he or she: (a) has a financial interest in the outcome; (b) is indebted to any party or is related to any party by consanguinity within the third degree; (c) has represented or otherwise acted on behalf of any party within two (2) years of the commencement of case or the proceeding; or (d) for some other reason or prejudice cannot fairly or impartially consider the issues in proceeding. A Board member or the Board's agent who believes that any of the foregoing is applicable shall disclose such information and voluntarily recuse himself or herself from the proceeding.

1.11. Motion to Disqualify

- A. A motion to disqualify a Board member or the Board's agent in any matter for any of the reasons in Rule 1.10 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 member or the Board's agent from participation in the proceeding. If the motion is denied, the Board shall so rule, and the matter shall proceed.

1.12. Records of Proceedings

All meetings of the Board (whether general, special, or emergency) and all hearings before the Board shall be audio-recorded, or upon order of the Board, may be transcribed, except that Board meetings or hearings or portions thereof lawfully closed shall not be recorded or transcribed unless so directed by the Board. Following the Board's approval of the written minutes of a meeting of the Board, the minutes shall become the sole official record of the meeting, and the audiotape of the meeting may be erased. However, the Board shall keep audio tapes of rulemaking, representation and prohibited practice hearings for a period of at least one (1) year following the close of the proceeding in which the hearing is held, or one (1) year following the close of the last judicial or Board proceeding (including any appeal or request for review) related to the proceeding 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 audio recording or transcript shall be the only official record of a hearing.

1.13. Notice of Hearings

- 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 hearing or conference before the Board in any proceeding, the Board shall cause a notice of hearing to be served on all parties of record setting forth the name and number of the proceeding, the general nature of the hearing, and the time and place of the hearing or conference. All hearings shall be held in the County of Los Alamos. The notice shall be served by first class United States mail at least ten (10) days prior to the commencement of the hearing.
- C. A party to a representation, prohibited practices or impasse resolution proceeding in which a hearing or conference is scheduled may request postponement of the hearing by filing a written request with the Board, and serving the request upon all other parties. Such request and service shall be made at least five (5) days before the commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the Board shall grant a postponement to a date not more than twenty (20) calendar days later than the previously set hearing date. Only in extraordinary circumstances may the Board grant a further postponement, or a postponement to a date more than twenty (20) calendar days after the previously set date, or a postponement with less than five (5) days' notice.
- D. Upon setting a rulemaking hearing, the Board shall cause a 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. The notices of a rulemaking hearing shall be sent by regular First Class United States mail to all persons who have made a request for such notice, and shall be published in a newspaper of general circulation in the County of Los Alamos at least thirty (30) calendar days prior to the hearing.

1.14. Evidence Admissible

- A. The technical rules of evidence shall not apply, but in ruling of the admissibility of evidence, the 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.
- C. The Board may receive any evidence not objected to, or may, upon the Board's own initiative, exclude such evidence if it is irrelevant, immaterial, unreliable, unduly repetitious, cumulative, or privileged.
- D. The Board, reserving a ruling on its admissibility until the issuance of a report or decision, may tentatively receive evidence.

1.15. Misconduct

The Board while conducting a hearing or any official meeting may exclude or expel from the hearing or meeting any person, whether or not a party, who engages in violent, threatening, disruptive, 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 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 of a person for misconduct, the Board shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded or expelled person or recess such hearing or meeting and continue at another time, as may be appropriate.

1.16. Subpoenas

Any party to a proceeding in which a notice of hearing has been issued may file a written request with the Board or its agent 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. The subpoena request shall specifically identify the name and number of the case; the person(s) or document(s) sought, shall state the relevance of the testimony or document sought to an issue in the case and shall be filed in sufficient time to permit the provision of documents and the identity of witnesses required by Rule 1.17. The Board or its agent may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears to the Board or its agent that the document or testimony sought is not relevant to issues in the case. Otherwise, the Board or its agent shall immediately issue a subpoena to the requesting party. The Board or its agent may issue subpoenas on the initiative of the Board or its agent, in which case a showing of relevance is not required, and a notice of hearing need not have been issued. A person upon whom a subpoena is served may file a motion to quash the subpoena with the Board or its agent. A motion to quash shall be filed according to the scheduling order, or as permitted by the Board or its agent. Witness and travel fees required by state law shall be the responsibility of the party requesting a subpoena.

1.17. Exchange of Documents and Lists of Witnesses

Pursuant to the scheduling order, and no later than five (5) days before the commencement of a hearing, or at such date set by the Board, 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 Rule 1.16 (Subpoenas), except by a specific order of the Board upon good cause shown. The Board may permit the admission in evidence of witness testimony or of documents not timely supplied under this Rule if, in the Board's judgment, there was sufficient reason for the failure to timely supply the names or documents.

1.18. Ownership and Confidentiality of Showing of Interest

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 proceeding.

1.19. Burden of Proof

- A. In prohibited practice proceedings before the Board, the complainant shall have the burden of proof and the burden of going forward with the evidence.
- B. In a unit clarification proceeding, any 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 in support of the change.
- C. In all other representation proceedings, no party shall have the burden of proof and the Board may request any party to present evidence or arguments in any order.

1.20. Motions and Responses to Motions

All motions and responses to motions, except those made at a hearing, shall be in writing and shall be filed with the Board and served simultaneously upon all parties to the proceeding. 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 ten (10) days.

1.21. Service

Service of papers upon parties may be made by hand-delivery, by first class United States mail, postage prepaid, or by facsimile ("fax") transmission 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 United States mail no later than the first business day after the facsimile is sent, in which case the date of the "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 included as part of the document served. The Board may serve any document by electronic transmission to an attorney or party or its representative under this Rule.

1.22. Testimony of Board members and Board Representatives

The Board's members, agents, contractors, and staff members may not be compelled to testify in Board meetings or hearings.

1.23. Form of Papers

All written documents required or permitted to be filed with the Board shall be on 8 ½ by 11-inch white paper, double-spaced. All documents shall show at or near the top of the first page the case name and, if available, the case number. Each written document shall be signed.

1.24. 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 (6) months, unless the delay, in the judgment of the Board, is caused by factors beyond the party's control.

1.25. 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.

1.26. Time Limits for Board Actions

Whenever these Rules set forth a period of time within which the Board must take any action, the Board may, for good cause, extend for a reasonable time, not to exceed twenty (20) days for each extension, the date by which such action must be taken, unless the date is controlled by Ordinance.

1.27. Quorum

Two (2) Board members shall constitute a quorum. Pursuant to Sec. 30-37(d) of the Ordinance, the Board shall decide all issues by a majority vote.

1.28. Meetings by Telephone

Members of the Board may participate in a meeting of the Board by means of a conference telephone or other similar communications equipment. This Rule shall only apply when a member declares that it is otherwise difficult or impossible for the member to attend the meeting in person. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time. Members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.

1.29. Chairperson Succession

- A. From among the three (3) members appointed to the Board pursuant to the Ordinance, the Board shall appoint a chair to serve as the primary point of contact, 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 (1) year. Upon completion of the chair's one (1) 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 (2) most senior members either by acclamation or by a coin toss supervised by the Board.

1.30. Conflicts

In the event of conflict between the Rules and the Ordinance, the Ordinance shall govern.

1.31. Severability

If any part or application of these Rules is determined invalid by a court of law, the remainder of the Rules or their application to other situations shall not be affected.

INCORPORATED COUNTY OF LOS ALAMOS
LABOR MANAGEMENT RELATIONS BOARD
RULES AND REGULATIONS

Part II – Representation Proceedings

2.1 Initiation of Representation Proceeding

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 number of employees in the proposed 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 (30%) 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 he or she is a member of the labor organization to whom the petition applies.

2.2. Service of Petition

Upon filing a petition under this Rule, the petitioner shall also serve it upon the employer and any incumbent labor organization. Within ten (10) days of the filing, the Board shall cause notice of the filing to be sent to any other interested party.

2.3. 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.

2.4. Showing of Interest

A. 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 (30) 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. No signature that is dated more than nine (9) months before the filing of the petition shall be counted toward the showing of interest. 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.

- B. No showing of interest need be filed in support of a petition for amendment of certification or unit clarification.

2.5. Information Requested of Parties

- A. Within ten (10) days of the filing of a representation election petition, the Board or its agent by letter shall request from any party with apparent interest in the proceeding, including the employer and any incumbent labor organization, their positions with respect to the appropriateness of the bargaining unit petitioned for, a statement of any unit inclusion or exclusion issues believed to be in dispute, and any other issue that could affect the outcome of the proceeding.
- B. Within ten (10) days of the filing of a representation petition, the Board or its agent shall request from the employer a current 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 immediately preceding the filing of the petition. The employer shall be instructed to file such a list within ten (10) days of the Board's request. The Board shall make the list available to all parties.

2.6. Initial Investigation of Petition

Following the filing of the petition, the Board or its agent shall investigate the petition. The investigation shall include the following steps and shall be completed within thirty (30) calendar days of the filing of the petition:

- A. The Board or its agent shall check the showing of interest (if applicable) against the list of eligible employees in the proposed unit filed by the 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 the petition does not include a sufficient number of signatures, the Board or its agent shall notify the petitioner of that finding and the petitioner will be allowed to submit additional signatures within five (5) days of the notification. 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 that evidence of such fraud, forgery or coercion is presented to the Board, the Board or its agent 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 signatures and shall explain in writing the basis for the dismissal. The Board's determination as to the propriety or sufficiency of signatures is an administrative matter solely within the Board's authority and shall not be subject to question or review.
- B. The Board or its agent 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 employer status; a bar to the processing of the petition; or other matters that could affect the proceedings.

2.7. Notice of Petition Filing

Unless the Board has determined that there is need for a representation hearing pursuant to Rule 2.10, then within thirty (30) calendar 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 Rule 2.8, below, including the date by which an intervener 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 (5) days.

2.8. Intervention

- A. At any time within ten (10) days after the employer's posting of the notice of filing of petition, a labor organization other than the petitioner may file with the Board an intervener's petition seeking to represent some or all of the employees in the petitioned-for unit. The intervener's petition shall contain the same information set forth above in Rule 2.1.
- B. The intervener's petition shall be accompanied by a showing of interest showing that at least thirty (30) percent of the employees in the petitioned-for unit wish to be represented by the intervener for purposes of collective bargaining. The showing of interest shall otherwise meet the requirements set forth in Rule 2.4. The Board or its agent shall check the showing of interest in the same manner as provided by Rule 2.6(A).
- C. An intervener 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 intervener status if it is not the petitioner.

2.9. 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 or its agent shall draw up a consent election agreement to be signed by all parties and by the Board. Consent election agreements are subject to Board review and may be set aside by the Board on its own initiative. If a consent election agreement is not set aside at the Board's next regular meeting or the following regular meeting, the Board shall proceed to an election on the basis of agreement.

2.10. Representation Hearing

- A. In the absence of a consent election agreement, and where there are significant issues, which the Board feels require a hearing, the Board shall issue a notice of hearing. A hearing concerning unit composition, where the parties are in dispute on that issue, shall be set for a date not later than thirty (30) days following the Board's notice of hearing or the Board's receipt of notice of the dispute, whichever is sooner.
- B. The Board shall take evidence sufficient to make a full and complete record on all unresolved issues necessary to process the petition. The Board may administer oaths, call witnesses, examine witnesses, and call for the introduction of documents.
- C. Election details, such as time, date, and place of 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 Rule 2.14.

2.11. Briefs

If any party requests permission to file a post-hearing brief, all parties will be permitted to file briefs. The Board shall set a time for the filing of briefs, which shall be no longer than ten (10) days following the close of the hearing unless the Board determines additional time is appropriate. Briefs shall be filed with the Board and copies shall be served to all parties.

2.12. Board Decisions

Within fifteen (15) calendar days following the close of the hearing or the date by which post-hearing briefs are due, whichever is later, the Board shall issue its decision on the issues heard. The Board may incorporate in its decision findings of fact, conclusions of law, and such other matters as adequately explain the decision.

2.13. 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 the normal post of duty, leave of absence, vacation at a location more than fifty (50) miles distant from the polling place, or other legitimate cause, may request an absentee ballot from the Board. Except for good cause shown, such a request must be received by the Board at least ten (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, the Board must receive an absentee ballot at least one (1) day before the ballot count. Absentee ballots may be challenged as provided in Rule 2.19.
- C. The employer shall submit to the Board and to all other parties a list of all employees eligible to vote in the election no later than ten (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 Rule 2.19.

2.14. Pre-election Conference

At a reasonable time at least fifteen (15) days before the election, the Board or its agent shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual or mail ballots or both, 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 (and email if available) of the time and place of the pre-election conference, at least five (5) days in advance of the conference. The conference may proceed in the absence of any party. The Board or its agent will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, the Board shall determine the details. In deciding the polling location(s) and the use of manual or mail participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting. 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, or its agent, in which case the requirement for a pre-election conference shall be waived.

2.15. 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 Rule 2.14, no later than ten (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 ten (10) days before the election and shall take reasonable measure to assure that they are not removed, covered, altered or defaced.

2.16. Ballots and Voting

- A. All voting shall be by secret ballot prepared by the Board. Positions on the ballot shall be determined randomly. Ballots in an initial election shall include a choice of "no representation".
- B. The Board shall conduct all elections, whether by mail in ballots or on-site elections. For on-site elections, a quorum of the Board will be present to conduct the election.
- C. Any voter who arrives at a polling area before the polls close will be permitted to vote.
- D. The employer shall allow employees eligible to vote in an election sufficient time away from their duties to cast their ballots and shall allow their employees who have been selected as election observer's sufficient time away from their duties to serve as observers. This Rule does not impose on the employer an obligation to change the work schedules of employees to accommodate voting hours or to pay employees serving as an observer.

2.17. Electioneering

No electioneering shall be permitted within fifty (50) feet of any room in which balloting is taking place.

2.18. 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.

2.19. Challenged Ballots

- A. The Board, or its agent, or any party to an election, through its observer, 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 or its agent 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 or its agent 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 or its agent 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 fifteen (15) calendar 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.

2.20 Tally of Ballots

Immediately following the counting of ballots, the Board shall serve a tally of ballots upon 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 of 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 (40) percent of the employees in the unit voted, or that the choice of "no representation" received fifty (50) percent or more of the valid votes cast, then the tally shall reflect that no collective bargaining representative was selected.

2.21. Run-off Elections

In an election where there are three (3) or more choices on the ballot, if no ballot choice receives a majority of the valid votes cast, and at least forty (40) 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 (2) choices that received the highest number of votes. A new tally shall be issued and served on the parties following the counting of the votes of a run-off election. A run-off election must be conducted within fifteen (15) calendar days following completion of the initial election.

2.22. Certification

If no objections are filed pursuant to Rule 2.23, then, the Board shall issue a certification of representative, showing the name of the labor organization selected and setting forth the bargaining unit, or a certification of results, showing that no labor organization was selected as bargaining representative.

2.23. Objections

Within five (5) 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 thirty (30) calendar 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 thirty (30) calendar days of the filing of the objections. The hearing shall follow the same procedures set forth in Rules 2.10, 2.11 and 2.12 above. If the Board 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 re-run election.

2.24. Amendment of Certification

An exclusive representative or an employer may file a petition for amendment of certification at any time 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 thirty (30) calendar 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 thirty (30) calendar days of the filing of the petition.

2.25. 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) calendar days of the filing of the petition. Through the investigation or the hearing, the Board shall determine whether a question concerning representation exists and, if so, shall dismiss the petition, and the petitioner may proceed otherwise under these Rules.
- C. If the Board determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the Board shall issue a report clarifying the unit within thirty (30) calendar days of the petition if no hearing is determined necessary, or within thirty (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.

2.26. 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 (10) 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 (30) 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 (10) 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 (30) 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.

2.27. Voluntary Recognition

- A. A labor organization representing the majority of employees in an appropriate collective bargaining unit and the employer, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which the employer recognized the labor organization as the exclusive representative of all 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 Rule 2.4.

- B. Prior to Board approval of any voluntary recognition, the Board shall post notice of filing of petition in the manner provided for in Rule 2.7. 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 no petition for intervention is filed within ten (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 approved the same as a relationship established through Board election and certification, unless the Board finds 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 intervener files a proper petition pursuant to Rule 2.8 within the ten (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 as provided in these Rules.

2.28. 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 may grant such a withdrawal request only after soliciting the positions of all parties and, in its discretion, may decline to approve the withdrawal request.

2.29. 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 30-40 of the Ordinance from an existing unit for the purpose of forming a separate, appropriate unit. It must be accompanied by a thirty percent (30%) showing of interest among the employees in the petitioned-for unit. It may be filed no earlier than ninety (90) days and no later than sixty (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 (3) years.

2.30. 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, a notice that the union has chosen to relinquish representation of the employees.

INCORPORATED COUNTY OF LOS ALAMOS
LABOR MANAGEMENT RELATIONS BOARD
RULES AND REGULATIONS

Part III – Prohibited Practice Proceedings

3.1. Initiation of Proceedings

- A. A prohibited practices case shall be initiated by filing with the Board a complaint that shall include, at a minimum, the following information:
- name, address and phone number of the employer, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative if known;
 - the specific section of the Ordinance alleged to have been violated;
 - name, address and phone number of the complainant;
 - a concise description of the facts constituting the asserted violation; and
 - a declaration that the information provided is true and correct to the knowledge of the complaining party.
- B. The complaint shall be signed and dated, filed with the Board, and served upon the respondent.
- C. When an individual employee files a prohibited practices complaint alleging a violation of Sections 30-46(F), 30-46(H), 30-47(a)(4) and/or 30-47(a)(5) of the Ordinance, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.

3.2. Limitations Period

A complaint shall be dismissed if filed more than six (6) months following the conduct claimed to violate the Ordinance or more than six (6) months after the complainant discovered or reasonably should have discovered each conduct.

3.3. Answers, Default Determinations

- A. Within fifteen (15) days after service of a complaint, the respondent shall file with the Board and serve upon the complainant its answer admitting, denying, or explaining each allegation of the complaint. For purposes of this Rule, the term “allegation” shall mean any statement of fact or assertion of law contained in a complaint.
- B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the Board may find the allegation to be true.
- C. If a respondent fails to file a timely answer, the Board shall serve on the parties a determination of violation by default, based upon the allegations of the complaint and any evidence submitted in support of the complaint.
- D. A respondent may move to set aside a default determination within thirty (30) days after the service thereof. Said motion shall be filed with the Board, served on all parties, and sets out in detail the reasons in support thereof. A response to the motion may be filed and simultaneously served within ten (10) days after service of the motion.

- E. Upon finding good cause for the motion, the Board shall order such further proceeding as it deems appropriate. The failure to act within thirty (30) days after the filing of such motion shall constitute a denial of the motion.

3.4. Complaint Review, Dismissal, Investigation

- A. Upon receipt of a complaint, the Board or its agent shall review the complaint for facial adequacy. If the complaint is facially deficient, the Board or its agent shall notify the complainant of the deficiency and give the complainant an opportunity to amend the complaint within five (5) days from the date of notification. Absent an amendment curing a facially deficient complaint, the Board shall dismiss the complaint, stating the reasons in writing and serving the dismissal on the parties. A complaint that is untimely filed shall be dismissed.
- B. After screening a complaint, the Board or its agent shall investigate the allegations. The Board or its agent need not await the filing of an answer before commencing the investigation. At the Board or its agent's request, the complainant shall immediately present to the Board or its agent all evidence available to the complainant in support of the complaint, including documents and the testimony of witnesses.
- C. If a complainant fails to timely produce evidence in support of its complaint pursuant to the Board or its agent's request, or fails to produce evidence that in the Board or its agent's opinion is sufficient to support the allegations of the complaint, the Board or its agent shall request the complainant withdraw the complaint within five (5) days and, absent such withdrawal, shall dismiss the complaint stating the Board or its agent's reasons in writing and serving the dismissal on all parties.

3.5. Notice of Hearing

If the complaint is not dismissed for reasons arising out of the review, and the filing of an answer, the Board shall within thirty (30) calendar days of the complaint filing set a date for the hearing. The hearing shall be held within forty-five (45) calendar days of the complaint filing. The Board shall serve notice of the hearing on all parties.

3.6. Settlements, Complaint Withdrawals

The complaint may be withdrawn at any time prior to hearing without Board approval. If the parties achieve a settlement, they shall reduce it to writing and submit it to the Board or its agent for approval. After commencement of the hearing, the complaint shall not be settled or withdrawn without Board approval.

3.7. Hearings

In the absence of an approved settlement agreement, the Board shall conduct a formal hearing assigning the burden of proof and the burden of going forward with evidence to the complainant, as stated in Rule 1.20 herein. The Board, at its discretion, may call witnesses, examine witnesses, call for the introduction of documents, and order the submission of post-hearing briefs.

3.8. Briefs

If any party requests permission to file a post-hearing brief, all parties will be permitted to file briefs. The Board shall set a time for the filing of briefs, which shall be no longer than ten (10) days following the close of the hearing unless the Board determines additional time is appropriate. Briefs shall be filed with the Board and copies shall be served on all parties.

3.9. Board Decisions

Within fifteen (15) calendar days following the close of the hearing or the date by which post-hearing briefs are due, whichever is later, the Board shall issue its decision on the issues heard. The Board may incorporate in its decision findings of fact, conclusions of law, and such other matters as adequately explain the decision.

3.10. Duplicate Complaint Proceedings

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

- The Board may hold the proceedings under the Ordinance in abeyance pending the outcome of the other proceeding.
- The Board may go forward with its own proceeding. In so doing, the Board may request that the other proceedings be held in abeyance pending outcome of the Board proceeding.
- The Board may go forward with the proceeding before it in the event the resolution of the other proceeding is contrary to the Ordinance or all issues raised before the Board are not resolved.

3.11. Arbitration Deferral

- A. If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the Board determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, the Board shall, on a motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.
- B. Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the Board, and shall advise the Board in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.
- C. If the complaining party advises the Board that it wishes to proceed with the prohibited practice complaint, or if the Board on its own motion so determines, then the Board shall review the arbitrator's award. If in the opinion of the Board, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the Ordinance and sufficient to remedy any violation found, then the Board shall

dismiss the complaint. If the Board finds that the prohibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the Ordinance, or that the remedy is inadequate, then the Board shall take such other action, as it deems appropriate. Among such other actions, the Board may accept the arbitrator's factual findings while substituting its own legal conclusions and/or remedial requirements.

- D. In the event that no arbitrator's award has been issued within one (1) year following deferral under this Rule, then the Board may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.