

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 1 GENERAL PROVISIONS

11.21.1.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM 87120, (505) 831-5422.
[11.21.1.1 NMAC - N, 3-15-04]

11.21.1.2 SCOPE: The scope of part 1 of chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.1.2 NMAC - N, 3-15-04]

11.21.1.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 21 is the Public Employee Bargaining Act NMSA 1978 Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.1.3 NMAC - N, 3-15-04]

11.21.1.4 DURATION: Permanent.
[11.21.1.4 NMAC - N, 3-15-04]

11.21.1.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.1.5 NMAC - N, 3-15-04]

11.21.1.6 OBJECTIVE: The objective for part 1 of chapter 21 is to establish principles governing implementation of the New Mexico Public Employee Bargaining Act (NMSA 1978, Section 10-7E-1 through 10-7E-26) and to establish fair and expeditious procedures that further the purposes of that act, which are: (1) to guarantee public employees the right to organize and bargain collectively with their employers; (2) to promote harmonious and cooperative relationships between public employers and public employees; and (3) to protect the public interest by assuring, at all times, the orderly operation and functioning of the state and its political subdivisions. (NMSA 1978, Section 10-7E-2) These rules should be interpreted consistently with the Public Employee Bargaining Act as presently written or as later amended.
[11.21.1.6 NMAC - N, 3-15-04]

11.21.1.7 DEFINITIONS:

A. Statutory definition: The terms defined in Section 4 of the act (NMSA 1978, Sec. 10-7E-4) shall have the meanings set forth therein.

B. Additional definitions: The following terms shall have the meanings set forth below.

(1) “Act” means the New Mexico Public Employee Bargaining Act (NMSA 1978, Sections 10-7E-1 through 10-7E-26 including any amendments to that statute.

(2) “Amendment of certification” means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

(3) “Certification of incumbent bargaining status” shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Section 24(B) of the act (NMSA 1978, Section 10-7E-24(B).

(4) “Challenged ballot” means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

(5) “Complainant” means an individual, organization, or public employer, that has filed a prohibited practices complaint.

(6) “Confidential employee” means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

(7) “Director” means the director of the public employee labor relations board.

(8) “Document” means any writing, photograph, film blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(9) "Probationary employee" for state employees shall have the meaning set forth in the State Personnel Act and accompanying regulations; for other public employees, other than public school employees, shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for non-state employees a public employee may not be considered to be 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.

(10) "Prohibited practice" means a violation of Section 10-7E-19, 10-7E-20 or 10-7E-21(A) of the act (NMSA 1978, Section 10-7E-19, 10-7E-20 or 10-7E-21(A)).

(11) "Public employer" means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.

(12) "Public employee" means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee.

(13) "Representation case" or "representation proceeding" means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

(14) "Respondent" means a party against whom a prohibited practices complaint has been filed.

(15) "Rules" means the rules and regulations of the board (these rules), including any amendments to them.

(16) "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.

(17) "Unit clarification" means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope and description of an existing bargaining unit; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of state 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.

(18) "Unit inclusions or exclusions" means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

[11.21.1.7 NMAC - N, 3-15-04]

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

[11.21.1.8 NMAC - N, 3-15-04]

11.21.1.9 EXTENSION OF TIME: A party seeking an extension of time in which to file with the director, the board or a hearing examiner any required or permitted document may file with the director or the hearing examiner, an appropriate 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 director, the board or the hearing examiner may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

[11.21.1.9 NMAC - N, 3-15-04]

11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD: To file a document with the director or the board, the document may be either hand-delivered to the board's office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government

interagency mail. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director. A document will be deemed filed when it is received by the director. Documents sent to the board via facsimile ("fax") transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent.

[11.21.1.10 NMAC - N, 3-15-04]

11.21.1.11 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 who is not an employee of the party shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

[11.21.1.11 NMAC - N, 3-15-04]

11.21.1.12 EX PARTE COMMUNICATIONS: Except as otherwise provided in this rule, no party to a pending representation, prohibited practices, or factfinding proceeding shall communicate, or attempt to communicate, with a hearing examiner assigned to the case, with the director, or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with the director during the investigatory phase of a representation, prohibited practices, or impasse resolution proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with the director, a mediator, or board member at the director's mediator's, or member's request.

[11.21.1.12 NMAC - N, 3-15-04]

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

[11.21.1.13 NMAC - N, 3-15-04]

11.21.1.14 MOTION TO DISQUALIFY:

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

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

C. If the board finds such motion meritorious upon due inquiry, it shall disqualify the board agent, member or hearing examiner and he or she shall withdraw from the proceeding. If the motion is denied, the board shall so rule and the matter shall proceed.

[11.21.1.14 NMAC - N, 3-15-04]

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

[11.21.1.15 NMAC - N, 3-15-04]

11.21.1.16 NOTICE OF HEARING:

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

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

C. Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may obtain copies of proposed rules, notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

D. A party to a representation, prohibited practices, or impasse resolution case in which a hearing is scheduled may request postponement of the hearing by filing a written request with the director, and serving the request upon all other parties, at least five (5) days before commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than twenty (20) days later than the previously set hearing date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.

[11.21.1.16 NMAC - N, 3-15-04]

11.21.1.17 EVIDENCE ADMISSIBLE:

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

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

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

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

[11.21.1.17 NMAC - N, 3-15-04]

11.21.1.18 MISCONDUCT: The hearing examiner or body conducting a hearing or official conducting any other proceeding, may exclude or expel from the hearing or proceeding any person, whether or not a party, who engages in violent, threatening, disruptive, or unduly disrespectful behavior. In the event of such exclusion or expulsion of a person for misconduct, the hearing examiner, body or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate.

[11.21.1.18 NMAC - N, 3-15-04]

11.21.1.19 SUBPOENAS:

A. Any party to a proceeding in which a notice of hearing has issued may file a written request with the director for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; identify the person(s) or documents sought; and state the general relevance to an issue in the case of the testimony or documents sought. The director may refuse to issue a subpoena where the request fails to meet these requirements,

or where it appears to the director that the documents or testimony sought are not relevant to issues in the case. Otherwise, the director shall immediately issue a subpoena to the requesting party.

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

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

D. Any applicable witness and travel fees shall be the responsibility of the subpoenaing party.
[11.21.1.19 NMAC - N, 3-15-04]

11.21.1.20 EXCHANGE OF DOCUMENTS AND LISTS OF WITNESSES: Pursuant to the scheduling order, each party shall serve upon all other parties all documents it intends to introduce at the hearing and a list of all witnesses it intends to call, along with a brief statement of the subjects about which each witness is expected to testify. No party may compel discovery other than as provided in this rule and Section 19 (subpoenas), except by a specific order of the board upon good cause shown. The hearing examiner may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule if, in the hearing examiner's judgment, there was sufficient reason for the failure to timely supply the names or documents.

[11.21.1.20 NMAC - N, 3-15-04]

11.21.1.21 OWNERSHIP AND CONFIDENTIALITY OF SHOWING OF INTEREST: Evidence of a showing of interest submitted to the director in support of a representation petition shall remain the property of the party submitting such evidence; shall not become property of the director or the board, shall be kept confidential by the director and the board; and shall be returned to the party that submitted the same upon the close of the case.

[11.21.1.21 NMAC - N, 3-15-04]

11.21.1.22 BURDEN OF PROOF:

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

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

[11.21.1.22 NMAC - N, 3-15-04]

11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS: All motions and responses to motions, except those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order.

[11.21.1.23 NMAC - N, 3-15-04]

11.21.1.24 SERVICE: Service of papers upon parties may be made by personal delivery or by depositing in United States mail, first class postage prepaid, or by both facsimile ("fax") transmission and, by the next scheduled work day after sending a "fax", either personally delivering the document or depositing it in first class mail, in which case the date of "fax" transmission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served.

[11.21.1.24 NMAC - N, 3-15-04]

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

[11.21.1.25 NMAC - N, 3-15-04]

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

[11.21.1.26 NMAC - N, 3-15-04]

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

[11.21.1.27 NMAC - N, 3-15-04]

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

[11.21.1.28 NMAC - N, 3-15-04]

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

[11.21.1.29 NMAC - N, 3-15-04]

11.21.1.30 PUBLICATION OF BOARD DECISIONS: At the times and in the manner prescribed by the board, the director 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.

[11.21.1.30 NMAC - N, 3-15-04]

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

[11.21.1.31 NMAC - N, 3-15-04]

11.21.1.32 MEETINGS BY TELEPHONE:

A. Pursuant to 10-15-1(C) NMSA, 1978, a member of the board may participate in a meeting of the public employee labor relations board by means of a conference telephone or other similar communications equipment in accordance with the provisions enumerated in Subsections B through E of 11.21.1.32 NMAC.

B. This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.

C. Each member participating by conference telephone must be identified when speaking.

D. All participants must be able to hear each other at the same time.

E. Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[11.21.1.32 NMAC - N, 3-15-04]

History of 11.21.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:

PELRB 1, General Provisions, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.1, General Provisions (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 1, General Provisions, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.1, General Provisions, filed 6-24-96.

11 NMAC 21.1, General Provisions, filed 6-24-96, was **replaced** by 11.21.1 NMAC, General Provisions, effective 3-15-04.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 2 REPRESENTATION PROCEEDINGS

11.21.2.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM, 87120, (505) 831-5422.
[11.21.2.1 NMAC - N, 3-15-04]

11.21.2.2 SCOPE: The scope of Part 2 of Chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.2.2 NMAC - N, 3-15-04]

11.21.2.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.2.3 NMAC - N, 3-15-04]

11.21.2.4 DURATION: Permanent.
[11.21.2.4 NMAC - N, 3-15-04]

11.21.2.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.2.5 NMAC - N, 3-15-04]

11.21.2.6 OBJECTIVE: The objective of Part 2 of Chapter 21 is to establish a standard for uniform petition filings in an easily understood form in which all pertinent information is given to the public employee labor relations board to determine an appropriate bargaining unit.
[11.21.2.6 NMAC - N, 3-15-04]

11.21.2.7 DEFINITIONS: [Reserved]
[11.21.2.7 NMAC - N, 3-15-04]

11.21.2.8 COMMENCEMENT OF CASE: A representation case is commenced by filing a representation petition with the director on a form prescribed by the director. The form 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 or public employers 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 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; a statement of what action the petition is requesting; and a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge. 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 he or she is a member of the labor organization to whom the decertification petition applies.
[11.21.2.8 NMAC - N, 3-15-04]

11.21.2.9 SERVICE OF PETITION: Upon filing a petition, the petitioner shall serve it upon the employer and any incumbent labor organization. Within ten (10) days of the filing of a petition, the director shall cause notice of the filing of the petition to be sent to any other interested party.
[11.21.2.9 NMAC - N, 3-15-04]

11.21.2.10 FILING OF COLLECTIVE BARGAINING AGREEMENT: Along with a representation petition, the petitioner shall file with the director a copy of any collective bargaining agreement, then in effect or recently expired, covering any of the employees in the petitioned-for unit.
[11.21.2.10 NMAC - N, 3-15-04]

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 (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. 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.
[11.21.2.11 NMAC - N, 3-15-04]

11.21.2.12 INFORMATION REQUESTED OF PARTIES:

A. Within ten (10) days of the filing of a representation petition, the director 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 any public employer involved, the director, within ten (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 immediately preceding the filing of the petition. The public-employer shall be instructed to file such a list within ten (10) days of the director's request. The board shall make the list available to the parties.
[11.21.2.12 NMAC - N, 3-15-04]

11.21.2.13 INITIAL INVESTIGATION OF PETITION: After a petition has been filed, the director shall investigate the petition. The investigation shall include the following steps and shall be completed within thirty (30) days of the filing of the petition.

A. The director 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 director 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 director, the director shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The director shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 23 (opportunity to present additional showing), and shall explain in writing the basis of the dismissal. The director's determination as to the sufficiency of a showing of interest is an administrative matter solely within the director's authority and shall not be subject to questions or review.

B. The director 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 director 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 he shall explain his reasons in writing.

C. The director 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 director shall make the determination pursuant to the provisions of 10-7E-13(C) and 10-7E-24 of the Public Employee Bargaining Act.
[11.21.2.13 NMAC - N, 3-15-04]

11.21.2.14 SETTLEMENT/STIPULATION OF UNIT ISSUES: If the director finds that there are significant issues affecting the proceeding that are or may be in dispute, the director 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 or sought by the director.
[11.21.2.14 NMAC - N, 3-15-04]

11.21.2.15 NOTICE OF FILING OF PETITION: Unless the director has determined that there is need for a representation hearing pursuant to Section 19, then within thirty (30) days of receipt of a petition, the director 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 16, below, including the date by which an intervenor must file its petition and showing of interest. The director shall issue sufficient copies of the notice to each employer involved, and each such employer shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for a least five days.
[11.21.2.15 NMAC - N, 3-15-04]

11.21.2.16 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 director 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 8 above.

B. The intervenor's petition shall be accompanied by a showing of interest showing that at least thirty (30%) 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 11, 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 10-7E-24(B) of the Public Employee Bargaining Act.
[11.21.2.16 NMAC - N, 3-15-04]

11.21.2.17 CONSENT ELECTION: Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the director is satisfied that the issues are so resolved, including unit scope, are acceptable to the board; the director shall draw up a consent election agreement to be signed by all parties and by the director. 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 director shall proceed to an election on the basis of the agreement.
[11.21.2.17 NMAC - N, 3-15-04]

11.21.2.18 INVESTIGATION, REPORT, NOTICE OF HEARING:

A. In the absence of a consent election agreement, the director 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 forty-five (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 director is satisfied that the issues can best be resolved in a hearing, the director 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 thirty (30) days following the director's notice of hearing or the director's receipt of notice of the dispute, whichever is sooner.

B. A report and direction of election or a report and dismissal of petition shall be subject to board review under the procedures set forth in Section 22 below. The issuance of a notice of hearing shall not be subject to board review.
[11.21.2.18 NMAC - N, 3-15-04]

11.21.2.19 REPRESENTATION HEARING:

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

B. Except in cases where the board appoints the hearing examiner, the director shall appoint the hearing examiner, and may appoint himself or herself 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 25.

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

[11.21.2.19 NMAC - N, 3-15-04]

11.21.2.20 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 ten (10) days following the close of the hearing. Briefs shall be filed with the director and copies shall be served on all parties.

[11.21.2.20 NMAC - N, 3-15-04]

11.21.2.21 HEARING EXAMINER REPORTS: The hearing examiner 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 fifteen (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 hearing examiner shall serve the report on all parties and the board.

[11.21.2.21 NMAC - N, 3-15-04]

11.21.2.22 BOARD REVIEW OF HEARING EXAMINER REPORTS AND DIRECTOR DECISIONS:

A. Within ten (10) days after service of the hearing examiner's report, or, in a case where no hearing has been held, within 10 days after the issuance of a director's decision, any party may file a request for board review of the hearing examiner's or the director's recommended disposition. The request for review shall state the specific portion of the hearing examiner's or director'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 or director. The request must be served on all other parties.

B. Within ten (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 sixty (60) days, shall review any recommended disposition regarding the scope of a bargaining unit made by the director or a 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 sixty (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 or director's decision.

[11.21.2.22 NMAC - N, 3-15-04]

11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:

A. When the director finds that the petitioner or an intervenor has submitted an insufficient showing of interest in the unit petitioned for, the director shall notify the petitioner or intervenor, and that party shall have the opportunity to submit an additional showing of interest. The director 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 director, hearing examiner or board determines that a unit other than the unit petitioned for is appropriate and it appears to the board or director that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate the director 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 director shall dismiss the petition or deny intervenor status.

[11.21.2.23 NMAC - N, 3-15-04]

11.21.2.24 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 director or 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 fifty (50) miles distant from the polling place, or other legitimate cause, may request an absentee ballot from the director. Such a request must be received by the director at least ten (10) days before the

election, in which case the director, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the director by mail. To be counted, an absentee ballot must be received by the director at least one day before the ballot count. The director shall establish procedures to permit an absentee ballot to be challenged, as provided in Section 30, below.

C. The employer or employer's whose employees comprise the bargaining unit shall submit to the director 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 Section 30, below.

[11.21.2.24 NMAC - N, 3-15-04]

11.21.2.25 PRE-ELECTION CONFERENCE: At a reasonable time at least fifteen (15) days before the election, the director 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 director shall notify all parties by mail 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 director 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), 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.

[11.21.2.25 NMAC - N, 3-15-04]

11.21.2.26 NOTICE OF ELECTION:

A. The director shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Section 25 above, 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 director shall provide a sufficient number of copies of the notice of election to each 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.

[11.21.2.26 NMAC - N, 3-15-04]

11.21.2.27 BALLOTS AND VOTING:

A. All voting shall be by secret ballot prepared by the director, 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 director, whether by mail in ballots or on-site elections.

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 change the work schedules of employees to accommodate voting hours.

[11.21.2.27 NMAC - N, 3-15-04]

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

[11.21.2.28 NMAC - N, 3-15-04]

11.21.2.29 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 director 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.

[11.21.2.29 NMAC - N, 3-15-04]

11.21.2.30 CHALLENGED BALLOTS:

A. Any party to an election, through its observer, or the director, 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 director shall challenge any voter whose name does not appear on the list of employees eligible to vote.

B. The director shall furnish “challenge envelopes” on the outside of each challenge envelope, the director 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 director 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 director 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) days of the election. Any party may request board review of the director’s report, following the procedures set forth in Section 22 above.

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

[11.21.2.30 NMAC - N, 3-15-04]

11.21.2.31 TALLY OF BALLOTS: Immediately following the counting of ballots, the director 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 (40%) of the employees in the unit voted, or that the choice of “no representation” received fifty percent (50%) or more of the valid votes cast, then the tally shall reflect that no collective bargaining representation was selected.

[11.21.2.31 NMAC - N, 3-15-04]

11.21.2.32 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 (40%) of eligible voters voted, the director 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 the fifteen (15) day statutory period following completion of the initial election.

[11.21.2.32 NMAC - N, 3-15-04]

11.21.2.33 CERTIFICATION: If no objections are filed pursuant to Section 34, below, then within ten (10) days following service of the final tally, the director 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.

[11.21.2.33 NMAC - N, 3-15-04]

11.21.2.34 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 director shall, within thirty (30) days of the filing of such objections, investigate the objections and issue a report thereon. Alternatively, the director may schedule a hearing on the objections within thirty (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 Section 19(2)(3), and (4), Section 20 and Section 21 above. A party adversely affected by the director’s or hearing examiner’s report may file a request for review with the board under the same procedures set forth in Section 22, above. If the director, hearing examiner or 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 director in his or her 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.

[11.21.2.34 NMAC - N, 3-15-04]

11.21.2.35 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 director shall dismiss such a petition within thirty (30) days of its filing if the director determines that it raises a question concerning representation. If the director finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within thirty (30) days of the filing of the petition. The director's decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above.

[11.21.2.35 NMAC - N, 3-15-04]

11.21.2.36 CERTIFICATION OF INCUMBENT BARGAINING STATUS: A labor organization that was recognized by a 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 Section 24(B) of the act by submitting a petition accompanied by a showing of majority support within that unit such a petition for certification of incumbent based on prior recognition shall not raise an issue of representation. The director shall investigate the petition and, within thirty (30) days of the filing of the petition, shall issue a report and certification, a report and dismissal, or a notice of hearing. A determination by the director certifying the petitioner or dismissing the petitioner shall be appealable to the board under the procedures set forth in Section 22, above.

[11.21.2.36 NMAC - N, 3-15-04]

11.21.2.37 UNIT CLARIFICATION:

A. Except as provided in Section 24(A) of the act, 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 director a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and processed only when it relates to state employees.

B. Upon the filing of a petition for unit clarification, the director 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 director's investigation or through the hearing, the director or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition.

C. If the director or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the director or hearing examiner shall issue a report clarifying the unit within thirty (30) days of the filing 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 director determines that a question concerning representation exists, he or she shall dismiss the petition.

D. A director or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 22, above.

[11.21.2.37 NMAC - N, 3-15-04]

11.21.2.38 ACCRETION

A. The exclusive representative of an existing collective bargaining unit, or the employer of employees who belong to 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 (10%) 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 (30%) 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 (10%) 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 (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.
[11.21.2.38 NMAC - N, 3-15-04]

11.21.2.39 VOLUNTARY RECOGNITION:

A. A labor organization representing greater than majority support of employees in an appropriate collective bargaining unit and a public 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 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 11, above.

B. Prior to board approval of any voluntary recognition, the director shall post notice of filing of petition in the manner provided for in Section 15, above. The director shall also give notice to any individuals or labor organizations that register with the director to be informed of such petitions.

C. If an intervenor does not file a petition for intervention 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 intervenor files a proper petition pursuant to Section 16 above, within the ten (10) day time period, then the board may not approve a voluntary recognition, and the director shall proceed in the manner set forth for representation petitions as provided in Section 10 to 14 and 17 to 34 above.
[11.21.2.39 NMAC - N, 3-15-04]

11.21.2.40 PETITION WITHDRAWAL: The petitioner in a representation proceeding may request permission of the director to withdraw the petition at any time prior to an initial election. The director may grant such a withdrawal request only after soliciting the positions of all parties and, in his or her discretion, may decline to approve the withdrawal request.
[11.21.2.40 NMAC - N, 3-15-04]

11.21.2.41 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 10-7E-13 NMSA from an existing unit for the purpose of forming a separate, appropriate unit. It must be accompanied by a thirty (30%) percent 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.
[11.21.2.41 NMAC - N, 3-15-04]

History of 11.21.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:
PELRB 2, Representation Proceedings, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.2, Representation Proceedings (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 2, Representation Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.2, Representation Proceedings, filed 6-24-96.
11 NMAC 21.2, Representation Proceedings, filed 6-24-96, was replaced by 11.21.2 NMAC, Representation Proceedings, effective 3-15-04.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 3 PROHIBITED PRACTICES PROCEEDINGS

11.21.3.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM, 87120, (505) 831-5422.
[11.21.3.1 NMAC - N, 3-15-04]

11.21.3.2 SCOPE: The scope of Part 3 of Chapter 21 applies to public employers, public employees and labor organization as defined by the Public Employee Bargaining Act (10-7E1 to 10-7E-26 NMSA 1978).
[11.21.3.2 NMAC - N, 3-15-04]

11.21.3.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.3.3 NMAC - N, 3-15-04]

11.21.3.4 DURATION: Permanent.
[11.21.3.4 NMAC - N, 3-15-04]

11.21.3.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.3.5 NMAC - N, 3-15-04]

11.21.3.6 OBJECTIVE: The objective of Part 3 of Chapter 21 is to set forth an efficient and effective investigative process for collection and evaluating information to determine whether public employers, public employees or labor organizations have engaged in activities or conduct that constitutes a violation of the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.3.6 NMAC - N, 3-15-04]

11.21.3.7 DEFINITIONS: [RESERVED]
[11.21.3.7 NMAC - N, 3-15-04]

11.21.3.8 COMMENCEMENT OF CASE:

A. A prohibited practices case shall be initiated by filing with the director a complaint on a form furnished by the director. The form shall set forth, at a minimum, name, address and phone number of the public employer, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative if known, the specific section of the act claimed to have been violated; the 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. The complaint shall be signed and dated, filed with the director, and served upon the respondent.

B. When an individual employee files a prohibited practices complaint alleging a violation of Section 19(F), 19(H), 20(C), or 20 (D) of the act, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.
[11.21.3.8 NMAC - N, 3-15-04]

11.21.3.9 LIMITATIONS PERIOD: Any complaint filed more than six (6) months following the conduct claimed to violate the act, or more than six (6) months after the complainant either discovered or reasonably should have discovered each conduct, shall be dismissed.
[11.21.3.9 NMAC - N, 3-15-04]

11.21.3.10 FILING OF ANSWER:

A. Within fifteen (15) days after service of a complaint, the respondent shall file with the director 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. No particular form is required either to state allegations or to answer them.

B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the director, hearing examiner or board may find the allegation to be true.

[11.21.3.10 NMAC - N, 3-15-04]

11.21.3.11 DEFAULT DETERMINATION: If a respondent fails to file a timely answer, the director 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.

[11.21.3.11 NMAC - N, 3-15-04]

11.21.3.12 SCREENING/INVESTIGATION:

A. Upon receipt of a complaint, the director shall screen the complaint for facial adequacy. If the complaint is facially deficient, the director shall advise the complainant of the deficiency and give the complainant an opportunity to amend the complaint within five (5) days. Absent an amendment curing a facially deficient complaint, the director shall dismiss the complaint, stating the reasons in writing and serving the dismissal on the parties. A complaint that is facially untimely pursuant to Section 9 shall be dismissed.

B. After screening a complaint, the director shall investigate the allegations. The director need not await the filing of an answer before commencing the investigation. At the director's request, the complainant shall immediately present to the director 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 director's request, or fails to produce evidence that in the director's opinion is sufficient to support the allegations of the complaint, the director shall request the complainant withdraw the complaint within five (5) days and, absent such withdrawal, shall dismiss the complaint stating the director's reasons in writing and serving the dismissal on all parties.

[11.21.3.12 NMAC - N, 3-15-04]

11.21.3.13 APPEAL TO BOARD OF DIRECTOR'S DISMISSAL:

A. The director's decision to dismiss a complaint shall be subject to board review by the complainant filing with the board and serving upon the other parties a notice of appeal within ten (10) days following service of the dismissal decision. In its appeal, the complainant shall state the particular findings or conclusions of the director to which it takes exception and shall identify specific evidence that the complainant presented or offered to the director which supports the complainant's position on appeal.

B. Within ten (10) days after service of a notice of appeal, any other party may file and serve a response to the appeal.

C. The board may consider the case on the papers filed with it or, in its discretion, may also hear oral argument. The board shall issue its decision affirming the director's dismissal, ordering further investigation, or setting a hearing as soon as feasible following its consideration of the appeal but in any event no later than its next or the following regular meeting. The board may approve and incorporate in its decision all or any part of the director's dismissal decision.

[11.21.3.13 NMAC - N, 3-15-04]

11.21.3.14 NOTICE OF HEARING: If the director, following investigation and the filing of an answer, believes that there is sufficient evidence that the respondent has committed a prohibited practice to warrant a hearing, the director shall designate a hearing examiner, set a hearing, and serve a notice of the hearing upon all parties. The director shall dismiss the complaint or set a hearing within thirty (30) days of filing of the complaint. A hearing shall be scheduled within forty-five (45) days of the filing of the complaint.

[11.21.3.14 NMAC - N, 3-15-04]

11.21.3.15 PRE-HEARING SETTLEMENT EFFORTS:

A. Following service of a notice of hearing and before commencement of the hearing, the director shall attempt to settle the complaint with the parties. If the parties achieve a settlement, they shall reduce it to writing and submit it to the director for approval.

B. If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. However, the complaint may be settled by the parties at any time prior to hearing.

C. The director or hearing examiner may submit a proposed settlement agreement to the board for its approval before the settlement becomes final.

D. The complainant may withdraw the complaint at any time prior to hearing, without approval by the director or the board. After commencement of the hearing, the complaint shall not be withdrawn or settled

without the approval of the hearing examiner. After a hearing examiner's report has been issued, a complaint may not be withdrawn without board approval.
[11.21.3.15 NMAC - N, 3-15-04]

11.21.3.16 PROHIBITED PRACTICES HEARINGS:

A. In the absence of an approved settlement agreement, the hearing examiner shall conduct a formal hearing, assigning the burden of proof and the burden of going forward with the evidence to the complainant, as stated in 11.21.1.22 NMAC.

B. The hearing examiner, in his or her discretion, may examine witnesses, call witnesses, or call for the introduction of documents.
[11.21.3.16 NMAC - N, 3-15-04]

11.21.3.17 BRIEFS: The filing of post-hearing briefs shall be permitted on the same basis as provided by 11.21.1.20 NMAC for briefs in representation cases.
[11.21.3.17 NMAC - N, 3-15-04]

11.21.3.18 HEARING EXAMINER REPORTS: The hearing examiner shall issue his or her report within the same time limits and following the same requirements provided in 11.21.1.21 NMAC for hearing examiner reports in representation cases.
[11.21.3.18 NMAC - N, 3-15-04]

11.21.3.19 APPEAL TO BOARD OF HEARING EXAMINER'S RECOMMENDATION:

A. Any party aggrieved by the hearing officer's recommendation may obtain board review by filing with the board and serving on the other parties a notice of appeal within ten (10) days following service of the hearing officer's report. The notice of appeal shall specify which findings, conclusions, or recommendations to which exception is taken and shall identify the specific evidence presented or offered at the hearing that supports each exception.

B. Any other party may file a response to notice of appeal within ten (10) days of service of the notice of appeal.

C. The board may determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The board shall decide the appeal and issue its decision within sixty (60) days of the notice of appeal. The board may issue a decision adopting, modifying, or reversing the hearing examiner's recommendations or taking other appropriate action. The board may incorporate all or part of the hearing examiner's report in its decision.

D. If notice of appeal is not filed within the time set out in Subsection A of 11.21.3.19 NMAC, the hearing examiner's report and recommended decision shall be transmitted immediately to the board which may pro forma adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent.
[11.21.3.19 NMAC - N, 3-15-04]

11.21.3.20 RELIEF FROM PROHIBITED PRACTICES DETERMINATION: A party may move to set aside a default determination entered against it within thirty (30) days after the service thereof. Said motion shall be served upon all other parties and shall set out in detail the reasons in support thereof. Upon finding good cause for the motion and within thirty (30) days of the filing of such motion, the director or 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.
[11.21.3.20 NMAC - N, 3-15-04]

11.21.3.21 ADMINISTRATIVE AGENCY DEFERRAL: 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 may take any of the following actions, at the board's discretion:

A. The board may hold the proceedings under the act in abeyance pending the outcome of the other proceeding.

B. The board may go forward with its own processing. In so doing, the board may request that the other proceedings be held in abeyance pending outcome of the board proceeding.

In the event that the resolution of the proceedings in such other forum is contrary to the act, or all issues raised before the board are not resolved, the board may proceed under the provisions of 11.21.3 NMAC.

C. For purposes of this rule, “board” shall mean the board or the director.
[11.21.3.21 NMAC - N, 3-15-04]

11.21.3.22 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 director determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the director may, on the 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 director, and shall advise the director 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 director that it wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, then the director shall review the arbitrator’s award. If in the opinion of the director, 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 act and sufficient to remedy any violation found, then the director shall dismiss the complaint. If the director 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 act, or that the remedy is inadequate, then the director shall take such other action as he or she deems appropriate. Among such other actions, the director may accept the arbitrator’s factual findings while substituting his or her own legal conclusions and/or remedial requirements.

D. In the event that no arbitrator’s award has been issued within one year following deferral under this rule, then the director may, after notice, dismiss the complaint.

E. The director’s decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in 11.21.3.13 NMAC. Interim decisions of the director under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board.

[11.21.3.22 NMAC - N, 3-15-04]

History of 11.21.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:
PELRB 3, Prohibited Practices Proceedings, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.3, Prohibited Practices Proceedings (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 3, Prohibited Practices Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.3, Prohibited Practices Proceedings, filed 6-24-96.

11 NMAC 21.3, Prohibited Practices Proceedings, filed 6-24-96, was replaced by 11.21.3 NMAC, Prohibited Practices Proceedings, effective 3-15-04.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 4 IMPASSE RESOLUTION

11.21.4.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, New Mexico (505) 831-5422.
[11.21.4.1 NMAC - N, 3-15-04]

11.21.4.2 SCOPE: The scope of Part 1 of Chapter 21 applies to public employers, public employees and labor organization as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.4.2 NMAC - N, 3-15-04]

11.21.4.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.4.3 NMAC - N, 3-15-04]

11.21.4.4 DURATION: Permanent.
[11.21.4.4 NMAC - N, 3-15-04]

11.21.4.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.4.5 NMAC - N, 3-15-04]

11.21.4.6 OBJECTIVE: The objective of Part 4 of Chapter 21 is to explain the process in which a public employer or exclusive representative at the state or local level may request third party assistance for mediation to address a collective bargaining negotiation impasse arising under the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.4.6 NMAC - N, 3-15-04]

11.21.4.7 DEFINITIONS: [RESERVED]
[11.21.4.7 NMAC - N, 3-15-04]

11.21.4.8 STATE BARGAINING MEDIATION: In collective bargaining negotiations involving the state and an exclusive representative of state employees, if the parties have failed to reach agreement by October 1 of the year in which bargaining commenced, either party may file a request with the director for mediation services. If the parties have not agreed on a mediator, the director shall, as quickly as possible, request the federal mediation and conciliation service to provide a mediator. The mediator shall provide services until the parties have reached agreement or the mediator believes mediation is no longer helpful, or November 1, whichever occurs first.
[11.21.4.8 NMAC - N, 3-15-04]

11.21.4.9 STATE BARGAINING ARBITRATION:

A. If an impasse occurs, either party may request from the board or local board that an arbitrator from the federal mediation and conciliation service be appointed. A list of seven (7) arbitrator's will be provided to the parties, the parties shall alternately strike names from the list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act. (44-7(A)-1 to 44-7(A)-32 NSMA 1978)

B. The arbitrator's decision shall be limited to a selection of one of the two parties complete, last, best offer.

C. The cost of an arbitrator and the arbitrator's related costs conducted pursuant to the sub-section shall be shared equally by the parties.

D. The decision of the arbitrator shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

E. A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

F. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement.

[11.21.4.9 NMAC - N, 3-15-04]

11.21.4.10 LOCAL BARGAINING: PROCEDURES ESTABLISHED BY AGREEMENT: If parties other than the state and an exclusive representative of public employees have entered into a written agreement setting forth procedures for the resolution of collective bargaining impasses between them, the parties shall follow those procedures.

[11.21.4.10 NMAC - N, 3-15-04]

11.21.4.11 LOCAL BARGAINING MEDIATION: In the absence of a written agreement between non-state parties, stating their impasse resolution procedures, if the parties reach impasse, they may proceed to mediation with the assistance of an agreed-upon mediator, or, if they have not agreed upon a mediator, either party may file a request with the director for the assignment of a mediator. Upon receiving such a request, the director shall request the federal mediation and conciliation service to provide a mediator.

[11.21.4.11 NMAC - N, 3-15-04]

11.21.4.12 LOCAL BARGAINING: FACTFINDING:

A. If, sixty (60) days following commencement of mediation, the parties have not reached agreement, either may file a request with the director to assign a factfinder to the negotiations. The director, after receiving such a request, shall assign a factfinder and shall issue a notice of factfinding hearing. The factfinder may be one agreed to by the parties or one selected from the list provided by the director, in accordance with the procedure set forth in Subsection A of 11.21.4.9 NMAC.

B. No longer than fifteen (15) days following the close of the hearing, the factfinder shall serve upon the director and the parties a written report making findings and stating his or her recommendations for the resolution of the issues that caused the impasse.

C. If the parties have not entered into a collective bargaining agreement within ten (10) days following their receipt of the factfinder's report, the director shall publish the report by making a copy of it available to the parties, the elected officials of the local governing body, and local news media.

[11.21.4.12 NMAC - N, 3-15-04]

11.21.4.13 MEDIATION AND FACTFINDING FEES: All fees of mediation and/or factfinding shall be shared equally by the parties.

[11.21.4.13 NMAC - N, 3-15-04]

History of 11.21.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives: PELRB 4, Impasse Resolution Proceedings, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.4, Impasse Resolution Proceedings (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 4, Impasse Resolution Proceedings, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.4, Impasse Resolution Proceedings, filed 6-24-96.

11 NMAC 21.4, Impasse Resolution Proceedings, filed 6-24-96, was replaced by 11.21.4 NMAC, Impasse Resolution, effective 3-15-04.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 5 APPROVAL OF LOCAL BOARDS

11.21.5.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM 87120, (505) 831-5422.
[11.21.5.1 NMAC - N, 3-15-04]

11.21.5.2 SCOPE: The scope of Part 5 of Chapter 21 applies to public employers and labor organizations as defined by the Public Employee Bargaining Act (1-7E-1 to 10 7E-26 NMSA 1978).
[11.21.5.2 NMAC - N, 3-15-04]

11.21.5.3 STATUTORY AUTHORITY: Authority for Part 5 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 1-7E-26 NMSA 1978).
[11.21.5.3 NMAC - N, 3-15-04]

11.21.5.4 DURATION: Permanent.
[11.21.5.4 NMAC - N, 3-15-04]

11.21.5.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.5.5 NMAC - N, 3-15-04]

11.21.5.6 OBJECTIVE: The objective of Part 5 Chapter 21 is to identify and process information necessary for a public employer other than the state to file an application with the public employee labor relations board to obtain approval for establishing and operating a local labor board and post-approval reporting requirements.
[11.21.5.6 NMAC - N, 3-15-04]

11.21.5.7 DEFINITIONS: [RESERVED]
[11.21.5.7 NMAC - N, 3-15-04]

11.21.5.8 APPLICATION: Any public employer other than the state that wishes to create a local public employee labor relations board shall file an application for approval with the state board.
[11.21.5.8 NMAC - N, 3-15-04]

11.21.5.9 ABATEMENT: The board shall abate, for a period of sixty (60) days, the processing of any matter filed with it which would come within the cognizance of the local board whose application is pending approval. All limitations periods, whether applicable to representation or prohibited practice matters, shall be tolled during the pendency of any such application.
[11.21.5.9 NMAC - N, 3-15-04]

11.21.5.10 LETTER OF INTENT: A public employer may file with the board a letter of intent to establish a local board within the meaning of the act. In the event such a letter of intent is filed, the processing of any matter thereafter filed with the board, which would fall within the cognizance of such local board, shall be abated for thirty (30) days during which period the public employer shall file a formal application for approval of a local board as provided in 11.21.5.8 NMAC.
[11.21.5.10 NMAC - N, 3-15-04]

11.21.5.11 CRITERIA FOR REVIEW: The board shall review all application for approval of local boards in light of the requirements of Section 10 of the act (NMSA 10-7E-10) and upon a finding that the application for the local board meets the statutory standards shall approve such application and remand to the local board any proceedings held in abeyance.
[11.21.5.11 NMAC - N, 3-15-04]

11.21.5.12 CORRECTION FOLLOWING REVIEW: In the event that an application demonstrates that the local board does not meet the standards of Section 10 of the act (NMSA 10-7E-10) the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have a period of the balance of

the sixty (60) days, or an additional ten (10) days from receipt of the notice of rejection, whichever is later, in which it may make such changes as are necessary to qualify for approval and then may resubmit its application, or may take such other action as it may deem to be appropriate. Any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures.
[11.21.5.12 NMAC - N, 3-15-04]

11.21.5.13 CONTENTS OF APPLICATION: The application for approval shall include, at a minimum, the following:

- A. the name of the local public employer;
- B. the name, address and phone number of the local governing body;
- C. a certified copy of the ordinance; resolution, or charter amendment creating, or which will create the proposed local board;
- D. a description of the composition of the local board and the method of appointment of the members to the local board;
- E. a statement or representation that the term of the local board members shall not exceed one year, and a representation that a local board member may serve an unlimited number of terms;
- F. a description of the manner in which vacancies to the local board shall be filled;
- G. a statement or representation that no local board member shall hold or seek any other public office or public employment or be an employee of any organization representing public employees or public employers;
- H. a representation that all compensation to local board members shall be in accordance with the provisions of the New Mexico Per Diem and Mileage Act.

[11.21.5.13 NMAC - N, 3-15-04]

11.21.5.14 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD: Upon receiving an application for approval of a local board, the board shall conduct an administrative review of the application and at a properly noticed public meeting or hearing, shall formally consider and approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law. In considering an application for approval of a local board, the board shall approve such application upon finding that the local board meets the requirements of Section 10 of the act (NMSA 10-7E-10). The board may require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 (NMSA 10-7E-10) and to be approved.

[11.21.5.14 NMAC - N, 3-15-04]

11.21.5.15 POST-APPROVAL REPORTING REQUIREMENTS: Following board approval of a local board, the local board, or the public employer that created it, shall file with the board any amendments to the ordinance, resolution, or charter amendment, creating the local board which are relevant to Section 10 of the act (NMSA 10-7E-10). Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the act (NMSA 10-7E-10), the local board shall be so notified and be given a period of thirty (30) days to come into compliance or prior approval shall be revoked.

[11.21.5.15 NMAC - N, 3-15-04]

11.21.5.16 REVOCATION OF APPROVAL OF LOCAL BOARD: Upon the issuance of a final order or judgment by a court of competent jurisdiction, find that a local board is not in compliance with the act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.

[11.21.5.16 NMAC - N, 3-15-04]

History of 11.21.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:
PELRB 5, Approval of Local Boards, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.5, Approval of Local Boards (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 5, Approval of Local Boards, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.5, Approval of Local Boards, filed 6-24-96.
11 NMAC 21.5, Approval of Local Boards, filed 6-24-96, was replaced by 11.21.5 NMAC, Approval of Local Boards, effective 3-15-04.

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 6 CONCURRENT PENDING RELATED CASES

11.21.6.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, New Mexico 87120, (505) 831-5422.
[11.21.6.1 NMAC - N, 3-15-04]

11.21.6.2 SCOPE: The scope of Part 6 of Chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.6.2 NMAC - N, 3-15-04]

11.21.6.3 STATUTORY AUTHORITY: Authority for Part 6 of Chapter 21 is the Public Employee Labor Relations Act NMSA Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.6.3 NMAC - N, 3-15-04]

11.21.6.4 DURATION: Permanent.
[11.21.6.4 NMAC - N, 3-15-04]

11.21.6.5 EFFECTIVE DATE: March 15, 2004, unless otherwise cited at the end of the section.
[11.21.6.5 NMAC - N, 3-15-04]

11.21.6.6 OBJECTIVE: The objective of 11.21.6 NMAC is to clarify other rules and to identify the methods used by the public employee labor relations board for handling inter-related matters in situations not expressly governed by other rules such as processing and adjudication concurrently pending representation petitions, prohibited practice complaint proceedings, and applications for local boards.
[11.21.6.6 NMAC - N, 3-15-04]

11.21.6.7 DEFINITIONS: [RESERVED]
[11.21.6.7 NMAC - N, 3-15-04]

11.21.6.8 RELATED MATTERS: When two or more related matters as set forth below are currently pending before the board, the following procedures shall apply irrespective of the order of filing. The provisions of 11.21.6 NMAC are intended to clarify other rules and to provide for the board's handling of inter-related matters in situations not expressly covered by other rules, however, in the event of a conflict between this and any previously adopted rule, this rule supersedes any contrary provision of any order rule.
[11.21.6.8 NMAC - N, 3-15-04]

11.21.6.9 LETTER OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND REPRESENTATION PETITIONS: Where a letter of intent and/or application for approval of a local board and a representation petition(s) involving the same public employer are pending before the board, the director, in his/her discretion, may abate the processing of the representation petition(s) as provided for in 11.21.5 NMAC. In no event, shall the processing of a representation petition be abated when either a notice of hearing pursuant to 11.21.2.19 NMAC or a notice of election pursuant to 11.21.2.26 NMAC has issued.
[11.21.6.9 NMAC - N, 3-15-04]

11.21.6.10 LETTER OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND PROHIBITED PRACTICE COMPLAINTS: Where a letter of intent and/or application for approval of a local board is pending and a prohibited practice complaint is filed alleging that the public employer's ordinance, resolution or charter amendment, providing for bargaining for its employees violates the relevant provisions of the Public Employee Bargaining Act, the board shall abate consideration of the approval of the local board until such time that the prohibited practice complaint has been disposed of pursuant to the provisions of 11.21.3 NMAC. The board, in its discretion, may consolidate for purposes of hearing and decision the application for approval of the local board and the prohibited practice complaint. Where a local ordinance, resolution or charter amendment specifically authorizes the local board to decide whether its enabling ordinance, resolution or charter amendment violates the relevant provisions of the Public Employee Bargaining Act and a joint request to transfer

the prohibited practice complaint to the jurisdiction of the local board is submitted, the board shall forthwith consider the application for approval of the local board pursuant to the relevant provisions of 11.21.5 NMAC and upon the approval of the local board, the board shall transfer the prohibited practice complaint to the local board. [11.21.6.10 NMAC - N, 3-15-04]

11.21.6.11 LETTERS OF INTENT AND/OR APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND IMPASSE RESOLUTION PROCEEDINGS: Where a letter of intent and/or application for approval of a local board and a request to invoke the board’s impasse resolution proceedings involving the same public employer are pending before the board, the director, in his/her discretion, may abate the processing of the impasse resolution request. In no event, shall action on such request be abated when the director has requested in writing the services of a mediator. [11.21.6.11 NMAC - N, 3-15-04]

11.21.6.12 MEANING OF TERM: For purposes of this Part 6 the term “pending before the board” is meant to include matters pending before the director and matters pending before the board. [11.21.6.12 NMAC - N, 3-15-04]

History of 11.21.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives: PELRB 6, Concurrently Pending Cases, filed 3-18-93.

History of Repealed Material: 11 NMAC 21.6, Concurrently Pending Related Cases (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

Other History:

PELRB 6, Concurrently Pending Cases, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.6, Concurrently Pending Related Cases, filed 6-24-96. 11 NMAC 21.6, Concurrently Pending Related Cases, filed 6-24-96, was replaced by 11.21.6 NMAC, Concurrently Pending Related Cases, effective 3-15-04.