

**This is an amendment to 11.21.1 NMAC, Sections 7, 10 and 24, effective 10/16/2018.  
Statute citations throughout the rule were corrected to conform to correct legislative styles.**

**11.21.1.7 DEFINITIONS:**

**A. Statutory definition:** The terms defined in Section 10-7E-4 NMSA 1978, 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, Sections 10-7E-1 through 10-7E-26 NMSA 1978 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 Subsection B of Section 10-7E-24 NMSA 1978.

(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, labor 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) **“Delivering a copy”** as it pertains to service or filing of pleadings or other documents means: (1) handing it to the board, to its agent(s), to opposing counsel or unrepresented parties; (2) sending a copy by facsimile or electronic submission in accordance with 11.21.1.10 NMAC or 11.21.1.24 NMAC; (3) leaving it at the board's, opposing attorney's or party's office with a clerk or other person in charge thereof; or (4) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the unrepresented person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

~~[(7)]~~ (8) **“Director”** means the director of the public employee labor relations board.

~~[(8)]~~ (9) **“Document”** means any writing, photograph, film, blueprint, microfiche, audio or video tape, ~~[date]~~ data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(10) **“Electronic submission”** means the filing of a pleading or other document with the board using the electronic system established by the PELRB, service by the parties, or email communications.

(11) **“On a form prescribed by the director”** as used in these rules pertaining to the filing of documents with the board, shall include the electronic data submitted by use of any interactive form posted for that purpose on the board's website.

~~[(9)]~~ (12) **“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, it shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for determining rights under the PEBA non-state employees a public employee may not be considered to be a probationary employee for more than one 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.

~~[(40)]~~ (13) **“Prohibited practice”** means a violation of Section 10-7E-19, 10-7E- 20 or Subsection A of Section 10-7E-21 NMSA 1978.

~~[(44)]~~ (14) **“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.

~~[(42)]~~ (15) **“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.

~~[(43)]~~ (16) **“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.

~~[(44)]~~ (17) **“Respondent”** means a party against whom a prohibited practices complaint has been filed.

~~[(45)]~~ (18) **“Rules”** means the rules and regulations of the board (these rules), including any amendments to them.

~~[(46)]~~ (19) **“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.

~~[(47)]~~ (20) **“Unit clarification”** means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope ~~and~~ or description of an existing bargaining unit; a change in union affiliation; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of ~~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.

~~[(48)]~~ (21) **“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, 3/15/2004; A, 2/28/2005; A, 10/16/2018]

**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 or by sending a copy by facsimile or electronic submission. 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. ~~[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.]~~

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

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

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

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

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

[11.21.1.10 NMAC - N, 3/15/2004; A, 10/16/2018]

**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~~] submission or by electronic submission and, by the next scheduled work day after sending a "fax" or electronic submission, either personally delivering the document or depositing it in first class mail, in which case the date of "fax" [~~transmission~~] or electronic submission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served. The board may serve any document by electronic transmission to an attorney or party or its representative under this rule.  
[11.21.1.24 NMAC - N, 3/15/2004; A, 10/16/2018]