

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Employee Labor Relations Board (“PELRB”) hereby gives notice that it will conduct a public hearing at its offices at 2929 Coors Blvd. NW, Albuquerque, NM 87120 on December 2, 2019, from 1:30 p.m. to 4:00 p.m. The purpose of the public hearing will be to obtain input on the proposed amendment of PELRB administrative rules as described below. Copies of the full text of the proposed rules may be accessed on the PELRB website (www.pelrb.state.nm.us) or at the PELRB offices. Concerned parties may provide comments at the public hearing or submit written comments prior to the hearing. Written comments may be submitted to the PELRB via US Mail c/o Matthew Huchmala, Administrative Assistant; New Mexico Public Employee Labor Relations Board; 2929 Coors Blvd. NW, Suite 303; Albuquerque, NM 87120; or by electronic mail to matt.huchmala@state.nm.us. The submission of written comments as soon as possible is encouraged. Written comments must be received no later than 5:00 p.m. on December 1, 2019.

This information can be provided in a variety of accessible formats. If you are an individual who requires an alternative format or any other form of auxiliary aid to attend or participate in the rulemaking process, please contact the administrative assistant at 505-831-5422 or matt.huchmala@state.nm.us as soon as possible to arrange the appropriate accommodations.

Statutory Authority

Authority for this rulemaking is the Public Employee Bargaining Act, NMSA 1978 §§ 10-7E-1 through 10-7E-26 (2003, amended 2005).

Summary of Proposed Changes

This list provides a concise statement of the various ways the proposed rules change or codify current practice, and the general reasoning in support of the changes. It is not an elaborate analysis of the rules or of the detailed considerations upon which they are based; rather, it is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. As this list shows, the amendments provide targeted solutions to discrete, specifically identified problems.

11.21.1.11 REPRESENTATION OF A PARTY: This change will eliminate an apparent exception to the requirement that a representative of a party file a notice of appearance for employees of a party to reflect the reality that all representatives of a party to file a notice of appearance, typically upon the filing of an initial pleading. This will enable PELRB staff to ensure all appropriate individuals receive notice of Board action.

11.21.1.12 EX PARTE COMMUNICATIONS: This change removes the specific enumeration of types of proceedings (specifically, the outdated reference to “fact finding” which is a term of art related to impasse resolution proceedings) to which the prohibition of ex parte communications applies and makes it applicable to any proceeding before the Board

11.21.1.15 RECORDS OF PROCEEDINGS: This change removes references to the now obsolete practice of “tape recording” to encompass modern audio recording technologies.

11.21.1.16 NOTICE OF HEARING: This change clarifies the duties of PELRB staff in notifying parties of proceedings and expands the scope to include conferences in addition to hearings.

11.21.1.18 MISCONDUCT: This change clarifies the duty and power of the Board to control its proceedings. The added language clarifies the statutory authority for the rule, adds abusive behavior to the list of prohibited conduct, includes examples of the possible remedies for misconduct, and provides for Board review of the exercise of this power by one of its agents.

11.21.1.22 BURDEN OF PROOF: This change removes outdated language related to impasse resolution

proceedings applicable under PEBA I but inapplicable since the passage of PEBA II.

11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS: This change adds language to provide a deadline for responses to motions not addressed in a scheduling order or filed in the absence of a scheduling order.

11.21.1.33 CHAIRPERSON SUCCESSION: This new rule is intended to ensure that the chairperson has at least one year of experience in PELRB rules and procedures as well as parliamentary procedure, and that a chairperson with such experience is always in place regardless of the expiration of terms.

11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST: This change corrects an error in punctuation to provide more clarity.

11.21.2.25 PRE-ELECTION CONFERENCE: These changes have two major components: 1) adding language that allows for conducting an election using electronic ballots, and 2) allowing the waiver of the requirement for a pre-election conference if the parties can stipulate to a satisfactory consent election agreement that is approved by the director at or soon after a Status and Scheduling Conference.

11.21.2.27 BALLOTS AND VOTING: This rule adds language referring to electronically conducted elections in light of the changes to 11.21.2.25 allowing electronic balloting. It also allows the director to delegate the responsibility of conducting elections to an election supervisor pursuant to the authority granted by 11.21.1.28.

11.21.2.30 CHALLENGED BALLOTS: In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.

11.21.2.31 TALLY OF BALLOTS: In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.

11.21.2.33 CERTIFICATION: This change clarifies the action required of the director after an election and adds language that codifies the Board's longstanding practice of reviewing the results of representation elections before issuing a certification, a practice that might not take place within ten (10) days.

11.21.2.39 VOLUNTARY RECOGNITION: This change corrects a grammatical error.

11.21.2.42 DISCLAIMER OF INTEREST: This new rule codifies the right of a labor organization to disclaim its interest in a bargaining unit without the necessity of undergoing decertification, so long as its conduct is not inconsistent with such disclaimer.

11.21.3.17 BRIEFS: This change corrects a typographical error which incorrectly cited the rule for briefs.

11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD: The changes to subsection (A) and (B) and (D) clarify the types of enactments that can be submitted for Board approval to better reflect the reality that the Board does not approve "boards," which might not be constituted at the time of approval, but rather the ordinances, charter amendments, or resolutions authorizing their creation. The changes to subsection (C) clarify the Board's jurisdiction over public employee labor relations matters in the absence of a "fully functional" local labor board complying with section 10 of the Act and ensure that public employees have a mechanism for exercising the rights established by the PEBA regardless of the functional status of a local labor board.

11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS: The first change ("and" to "any") corrects a typographical error. The added language clarifies the duty of local boards to comply with section 9 of the PEBA. The third change conforms the citation to NMSC citation guidelines.