

This is an amendment to 11.21.2 NMAC, Sections 23, 25, 27, 30, 31, 33, 39, and 42 effective 2/11/2020. Statute citations throughout the rule were corrected to conform to correct legislative styles.

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 [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, 3/15/2004; A, 2/11/2020]

11.21.2.25 PRE-ELECTION CONFERENCE: At a reasonable time at least 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 (and email if available) of the time and place of the pre-election conference, at least five 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) and the use of manual or mail participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.]~~

A. 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) and the use of manual or mail participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.

B. The parties may stipulate to a consent election agreement without the necessity of a pre-election conference subject to approval of its terms by the director, in which case the requirement for a pre-election conference shall be waived.

[11.21.2.25 NMAC - N, 3/15/2004; A, 2/28/2005; A, 2/11/2020]

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, subject to the provisions of 11.21.1.28 NMAC regarding the director’s authority to delegate duties.

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, 3/15/2004; A, 2/11/2020]

11.21.2.30 CHALLENGED BALLOTS:

A. Any party to an election, through its observer, or the ~~[director]~~ election supervisor, 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~~ 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 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, 3/15/2004; A, 2/11/2020]

11.21.2.31 TALLY OF BALLOTS: Immediately following the counting of ballots, the ~~director~~ election supervisor 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 of the employees in the unit voted, or that the choice of “no representation” received fifty percent 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, 3/15/2004; A, 2/11/2020]

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.]~~ as may be appropriate either a certificate showing the name of the labor organization selected as the exclusive representative and setting forth the bargaining unit it represents, or a certification of results, showing that no labor organization was selected as bargaining representative. The results of each election shall be reviewed by the board and appropriate action taken at the next regularly scheduled meeting of the board after the objection period following the election.

[11.21.2.33 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.2.39 VOLUNTARY RECOGNITION:

A. A labor organization representing the majority 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]~~ recognizes 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 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 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, 3/15/2004; A, 2/28/2005; A, 2/11/2020]

11.21.2.42 DISCLAIMER OF INTEREST: Any labor organization holding exclusive recognition for a unit of employees may disclaim its representational interest in those employees at any time by submitting a letter to the PELRB and the employer disclaiming any representational interest in a unit for which it is the exclusive representative. Upon receipt of a letter disclaiming an interest under this rule, the board shall cause to be posted in a place or places frequented by employees in the affected bargaining unit, a notice that the union has chosen to relinquish representation of the employees.
[11.21.2 NMAC – N, 2/11/2020]