

This is an amendment to 11.21.2 NMAC, Sections 8, 25, 27, 36, 37 & 40, effective 7/1/2020.

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 unit 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. 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~~ the filer is a member of the labor organization to whom the decertification petition applies.

[11.21.2.8 NMAC - N, 3/15/2004; A, 2/28/2005; A, 6/14/2013; A, 7/1/2020]

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, electronic, or mail ballots 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.

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~~ mail or electronic 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; A, 7/1/2020]

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 electronically, 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; A, 7/1/2020]

11.21.2.36 CERTIFICATION OF INCUMBENT BARGAINING REPRESENTATIVE 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 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.] Such recognition shall not be affected by a local labor board ceasing to exist pursuant to Section 10-7E-10 NMSA 1978 (2020). Such labor organization may petition for declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978 (2003)~~
[11.21.2.36 NMAC - N, 3/15/2004; A, 7/1/2020]

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. In such a case, the petitioner may proceed otherwise under these rules.

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 30 days of the filing of the petition if no hearing is determined necessary, or within 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 shall be dismissed.

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, 3/15/2004; A, 2/28/2005; A, 7/1/2020]

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 or deny such]~~ has discretion to grant or deny 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, 3/15/2004; A, 7/1/2020]