

This is an amendment to 11.21.3 NMAC, Sections 16, 18 & 22, effective 7/1/2020.

Explanatory note: Statute citations were corrected throughout the rule to conform to current legislative styles.

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 called by the parties, call additional witnesses, or call for the introduction of documents.
[11.21.3.16 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.3.18 HEARING EXAMINER REPORTS: The hearing examiner shall issue [~~his or her report~~] a "report and recommended decision" within the same time limits and following the same requirements provided in 11.21.2.21 NMAC for hearing examiner reports in representation cases.
[11.21.3.18 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020]

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~~] deemed 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~~] and remedies pursuant to Subsection F of Section 10-7E-9 NMSA 1978 appropriate for the prohibited practice issues.

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 and in the absence of good cause shown to the contrary, 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, 3/15/2004; A, 2/28/2005; A, 7/1/2020]