

This is an amendment to 11.21.2 NMAC, Sections 8, 11, 12, 13, 25, 33, 34 and 42, effective 8/9/2022.

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; and a statement of what action the petition is requesting. ~~[In addition, a]~~ A petition ~~[seeking a]~~ for certification or decertification [election, shall] must be supported by [a] at least a thirty percent showing of interest [in the existing or proposed bargaining unit] as described in 11.21.2.11 NMAC. 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 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; A, 8/9/2022]

11.21.2.11 SHOWING OF INTEREST: With the petition and at the same time the petition is filed, the petitioner shall deposit with the director a showing of interest consisting of signed, dated statements, which may be in the form of cards or a petition, by at least thirty percent of the employees in the proposed unit stating, in the case of a petition for [a] certification ~~[election]~~, that each such employee wishes to be represented for the purposes of collective bargaining by the petitioning labor organization, and, in the case of a petition for a decertification election, that each such employee wishes a decertification election. Electronic signatures shall meet the requirements of the Uniform Electronic Transactions Act (Chapter 14, Article 16 NMSA 1978). Each signature shall be separately dated. Signatures dated more than one year prior to the filing of the petition not be considered when determining the sufficiency of a showing of interest or a determination of majority support, except for good cause shown. So long as it meets the above requirements, a showing of interest may be in the form of signature cards or a petition or other writing, or a combination of written forms and shall be presumed valid unless contradicted by the submission of clear and convincing evidence that they were obtained by fraud, forgery or coercion. No showing of interest need be filed in support of a petition for amendment of certification or unit clarification. [11.21.2.11 NMAC - N, 3/15/2004; A, 8/9/2022]

11.21.2.12 INFORMATION REQUESTED OF PARTIES:

A. Within 10 days of the filing of a representation petition, the director shall by letter request of any party that appears to have an interest in the proceeding, including any public employees involved and any incumbent labor organizations, its position with respect to the appropriateness of the bargaining unit petitioned for; a statement of any issues of unit inclusion or exclusion that the party believes may be in dispute, and any other issue that could affect the outcome of the proceeding.

B. From any public employer involved, the director, within 10 days of the filing of a representation petition, shall also request a list of the employees ~~[who would be eligible to vote if]~~ holding positions in the petitioned-for unit [were found to be appropriate] or the unit to be decertified, based on the payroll period that ended immediately preceding the filing of the petition which contains the information described in Subsection A of Section 14 of the Act. The public-employer shall be instructed to file such a list within 10 days of the director's request. The board shall make the list available to the parties. If the petitioned-for unit is altered as a result of a hearing conducted pursuant to Section 13 of the Act, or by agreement of the parties, the employer shall provide an updated list of employees that were in the appropriate unit based on the payroll period that ended immediately preceding the filing of the petition no more than 10 days after receiving notice from the director of the changes to the petitioned-for unit.

[11.21.2.12 NMAC - N, 3/15/2004; A, 2/28/2005; A, 8/9/2022]

11.21.2.13 INITIAL INVESTIGATION OF PETITION: After a petition has been filed, the director shall investigate the petition. The investigation shall include the following steps and shall be completed within 30 days of the filing of the petition.

A. ~~[The director shall check the showing of interest (if applicable) against the list of eligible employees, in the proposed unit filed by the public employer to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth in these rules, they shall be presumed valid unless the director is presented with clear and convincing evidence that they were obtained by fraud, forgery or coercion. In the event that evidence of such fraud, forgery or coercion is presented to the director, the director shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The director shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 23 (opportunity to present additional showing), and shall explain in writing the basis of the dismissal. The director's determination as to the sufficiency of a showing of interest is an administrative matter solely within the director's authority and shall not be subject to questions or review.]~~ The director shall determine the facial validity of the petition, including the facial appropriateness of the petitioned-for unit and may request the petitioner to amend a facially inappropriate petition. In the absence of an appropriate amendment, the director shall dismiss a petition asking for a certification of, or a clarification that would result in, a facially inappropriate unit, or that is otherwise facially improper, in which case he shall explain his reasons in writing.

B. ~~[The director shall determine the facial validity of the petition, including the facial appropriateness of the petitioned for unit and may request the petitioner to amend a facially inappropriate petition. In the absence of an appropriate amendment, the director shall dismiss a petition asking for an election in, or a clarification to, a facially inappropriate unit, or that is otherwise facially improper, in which case he shall explain his reasons in writing.]~~ The director shall determine whether there are significant issues of unit scope, unit inclusion or exclusion, labor organization or public employer status; a bar to the processing of the petition; or other matters that could affect the proceedings. The director shall make the determination pursuant to the provisions of Subsection C of Section 10-7E-13 and Section 10-7E-24 NMSA 1978, of the Public Employee Bargaining Act.

C. ~~[The director shall determine whether there are significant issues of unit scope, unit inclusion or exclusion, labor organization or public employer status; a bar to the processing of the petition; or other matters that could affect the proceedings. The director shall make the determination pursuant to the provisions of Subsection C of Section 10-7E-13 and Section 10-7E-24 NMSA 1978, of the Public Employee Bargaining Act.]~~ The director shall check the showing of interest (if applicable) against the list of employees in the proposed unit filed by the public employer pursuant to Subsection B of 11.21.2.12 NMAC, to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth Section 11 of this rule, they shall be presumed valid unless the director is presented with clear and convincing evidence that they were obtained by fraud, forgery or coercion. In the event that evidence of such fraud, forgery or coercion is presented to the director, the director shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The director shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 23 (opportunity to present additional showing), and shall explain in writing the basis of the dismissal. The director's determination as to the sufficiency of a showing of interest is an administrative matter solely within the director's authority and shall not be subject to questions or review.

[11.21.2.13 NMAC - N, 3/15/2004; A, 2/28/2005; A, 8/9/2022]

11.21.2.33 CERTIFICATION:

A. If, after all issues concerning representation have been resolved, and the expiration of the intervention period described in Section 16, above, only one labor organization is seeking to represent the appropriate bargaining unit, the director shall compare the showing of interest with the employee list provided by the employer pursuant to Subsection B of Section 12 above, and determine whether the petitioning labor organization has demonstrated majority support. In cases where the showing of interest demonstrates majority support the director shall issue a certificate showing the name of the labor organization selected as the exclusive representative and setting forth the bargaining unit it represents as well as the numerical basis for the determination. In cases where more than one labor organization seeks to represent the unit, or has intervened pursuant to Section 16, above, or where the showing of interest does not demonstrate majority support, the director shall proceed with an election as described in these rules.

B. In cases where an election is conducted, if no objections are filed pursuant to Section 34, below, then the director shall issue 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; A, 8/9/2022]

11.21.2.34 OBJECTIONS: Within five days following the service of a tally of ballots or the issuance of a certification pursuant to Subsection A of Section 33 above, a party may file objections to conduct affecting the determination of majority support without an election of the result of the election. Objections shall set forth all grounds for the objection with supporting facts and shall be served on all parties to the proceeding. The director shall, within 30 days of the filing of such objections, investigate the objections and issue a report thereon. Alternatively, the director may schedule a hearing on the objections within 30 days of the filing of the objections. A determination to hold a hearing is not reviewable by the board and shall follow the same procedures set forth in Subsections B, C and D of Section 19, Section 20 and Section 21 above. A party adversely affected by the director's or hearing examiner's report may file a request for review with the board under the same procedures set forth in Section 22, above. If the director, hearing examiner or board finds that the objections have merit and that conduct improperly interfered with the results of the election, then the results of the election may be set aside and a new election ordered. In that event, the director in his or her discretion may retain the same period for determining eligibility to vote as in the election that was set aside, or may establish a new eligibility period for the new election.

[11.21.2.34 NMAC - N, 3/15/2004; A, 8/9/2022]

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 and direct staff to dismiss any petitions to decertify the exclusive representative of the disclaimed unit.

[11.21.2 NMAC – N, 2/11/2020; A, 8/9/2022]