

**TITLE 11      LABOR AND WORKERS COMPENSATION**  
**CHAPTER 21    LABOR UNIONS/LABOR RELATIONS**  
**PART 1        GENERAL PROVISIONS**

**11.21.1.1      ISSUING AGENCY:** Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM 87120, (505) 831-5422.  
[11.21.1.1 NMAC - N, 3-15-04]

**11.21.1.2      SCOPE:** The scope of part 1 of chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (10-7E-1 to 10-7E-26 NMSA 1978).  
[11.21.1.2 NMAC - N, 3-15-04]

**11.21.1.3      STATUTORY AUTHORITY:** Authority for Part 1 of Chapter 21 is the Public Employee Bargaining Act NMSA 1978 Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).  
[11.21.1.3 NMAC - N, 3-15-04]

**11.21.1.4      DURATION:** Permanent.  
[11.21.1.4 NMAC - N, 3-15-04]

**11.21.1.5      EFFECTIVE DATE:** March 15, 2004, unless otherwise cited at the end of the section.  
[11.21.1.5 NMAC - N, 3-15-04]

**11.21.1.6      OBJECTIVE:** The objective for part 1 of chapter 21 is to establish principles governing implementation of the New Mexico Public Employee Bargaining Act (NMSA 1978, Section 10-7E-1 through 10-7E-26) and to establish fair and expeditious procedures that further the purposes of that act, which are: (1) to guarantee public employees the right to organize and bargain collectively with their employers; (2) to promote harmonious and cooperative relationships between public employers and public employees; and (3) to protect the public interest by assuring, at all times, the orderly operation and functioning of the state and its political subdivisions. (NMSA 1978, Section 10-7E-2) These rules should be interpreted consistently with the Public Employee Bargaining Act as presently written or as later amended.  
[11.21.1.6 NMAC - N, 3-15-04]

**11.21.1.7      DEFINITIONS:**

**A.** Statutory definition: The terms defined in Section 4 of the act (NMSA 1978, Sec. 10-7E-4) shall have the meanings set forth therein.

**B.** Additional definitions: The following terms shall have the meanings set forth below.

**(1)** "Act" means the New Mexico Public Employee Bargaining Act (NMSA 1978, Sections 10-7E-1 through 10-7E-26 including any amendments to that statute.

**(2)** "Amendment of certification" means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

**(3)** "Certification of incumbent bargaining status" shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Section 24(B) of the act (NMSA 1978, Section 10-7E-24(B).

**(4)** "Challenged ballot" means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

**(5)** "Complainant" means an individual, organization, or public employer, that has filed a prohibited practices complaint.

**(6)** "Confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

**(7)** "Director" means the director of the public employee labor relations board.

**(8)** "Document" means any writing, photograph, film blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(9) "Probationary employee" for state employees shall have the meaning set forth in the State Personnel Act and accompanying regulations; for other public employees, other than public school employees, shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for non-state employees a public employee may not be considered to be a probationary employee for more than one (1) year after the date he or she is hired by a public employer. If otherwise undefined, the term shall refer to an employee who has held his or her position, or a related position, for less than six months.

(10) "Prohibited practice" means a violation of Section 10-7E-19, 10-7E-20 or 10-7E-21(A) of the act (NMSA 1978, Section 10-7E-19, 10-7E-20 or 10-7E-21(A)).

(11) "Public employer" means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.

(12) "Public employee" means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee.

(13) "Representation case" or "representation proceeding" means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

(14) "Respondent" means a party against whom a prohibited practices complaint has been filed.

(15) "Rules" means the rules and regulations of the board (these rules), including any amendments to them.

(16) "Unit accretion" means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit and who share a community of interest with the employees in the existing unit and whose inclusion will not render the existing unit inappropriate.

(17) "Unit clarification" means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope and description of an existing bargaining unit; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of state employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to be an appropriate bargaining unit and no question concerning representation arises.

(18) "Unit inclusions or exclusions" means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

[11.21.1.7 NMAC - N, 3-15-04]

**11.21.1.8 COMPUTATION OF TIME:** When these rules state a specific number of days in which some action must or may be taken after a given event, the date of the given event is not counted in computing the time, and the last day of the period is deemed to end at close of business on that day. Saturday's, Sundays and state recognized legal holidays observed in New Mexico shall not be counted when computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday observed in New Mexico, then the last day for taking the action shall be the following business day.

[11.21.1.8 NMAC - N, 3-15-04]

**11.21.1.9 EXTENSION OF TIME:** A party seeking an extension of time in which to file with the director, the board or a hearing examiner any required or permitted document may file with the director or the hearing examiner, an appropriate written request for an extension. Such a request shall be filed at least three (3) days prior to the due date and shall state the position of all other parties, or that the filing party was unable to reach another party. The director, the board or the hearing examiner may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

[11.21.1.9 NMAC - N, 3-15-04]

**11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD:** To file a document with the director or the board, the document may be either hand-delivered to the board's office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government

interagency mail. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director. A document will be deemed filed when it is received by the director. Documents sent to the board via facsimile ("fax") transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent.

[11.21.1.10 NMAC - N, 3-15-04]

**11.21.1.11 REPRESENTATION OF A PARTY:** A party may represent his, her, or itself, or be represented by counsel or other representative. Any representative of a party who is not an employee of the party shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

[11.21.1.11 NMAC - N, 3-15-04]

**11.21.1.12 EX PARTE COMMUNICATIONS:** Except as otherwise provided in this rule, no party to a pending representation, prohibited practices, or factfinding proceeding shall communicate, or attempt to communicate, with a hearing examiner assigned to the case, with the director, or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with the director during the investigatory phase of a representation, prohibited practices, or impasse resolution proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with the director, a mediator, or board member at the director's mediator's, or member's request.

[11.21.1.12 NMAC - N, 3-15-04]

**11.21.1.13 DISQUALIFICATION:** No board agent, member nor hearing examiner shall decide or otherwise participate in any case or proceeding in which he or she (a) has a financial interest in the outcome; (b) is indebted to any party, or related to any party or any agent or officer of a party by consanguinity within the third degree; (c) has acted on behalf of any party within two years of the commencement of the case or proceeding; or (d) for some other reason or prejudice, he or she cannot fairly or impartially consider the issues in the proceeding.

[11.21.1.13 NMAC - N, 3-15-04]

**11.21.1.14 MOTION TO DISQUALIFY:**

**A.** A motion to disqualify a board agent, member or hearing examiner in any matter, based upon the foregoing criteria, shall be filed with the board, with copies served on all parties, prior to any hearing or the making of any material ruling involving the pending issues.

**B.** Such motion shall set out the basis for the disqualification and all facts in support thereof.

**C.** If the board finds such motion meritorious upon due inquiry, it shall disqualify the board agent, member or hearing examiner and he or she shall withdraw from the proceeding. If the motion is denied, the board shall so rule and the matter shall proceed.

[11.21.1.14 NMAC - N, 3-15-04]

**11.21.1.15 RECORDS OF PROCEEDINGS:** All meetings of the board (whether general, special or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the board or a hearing examiner of the board shall be audio-recorded, or, upon order of the board may be transcribed, except that board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the board. Following the board's approval of the minutes of a meeting of the board, the minutes shall become the sole official record of the meeting, and the audio tape of the meeting may be erased. The director shall keep audio tapes of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials. The board's recording or transcript shall be the only official record of a hearing.

[11.21.1.15 NMAC - N, 3-15-04]

**11.21.1.16 NOTICE OF HEARING:**

**A.** After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the director shall hold a status and scheduling conference with the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

**B.** Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

**C.** Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may obtain copies of proposed rules, notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

**D.** A party to a representation, prohibited practices, or impasse resolution case in which a hearing is scheduled may request postponement of the hearing by filing a written request with the director, and serving the request upon all other parties, at least five (5) days before commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than twenty (20) days later than the previously set hearing date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.

[11.21.1.16 NMAC - N, 3-15-04]

**11.21.1.17 EVIDENCE ADMISSIBLE:**

**A.** The technical rules of evidence shall not apply, but, in ruling of the admissibility of evidence, the hearing examiner or board may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

**B.** Irrelevant, immaterial, unreliable, unduly repetitious or cumulative evidence, and evidence protected by the rules of privilege (such as attorney-client, physician-patient or special privilege) shall be excluded upon timely objection.

**C.** The hearing examiner or board may receive any evidence not objected to, or may, upon the hearing examiner's or board's own initiative, exclude such evidence if it is irrelevant, immaterial, unreliable, unduly repetitious, cumulative or privileged.

**D.** Evidence may be tentatively received by the hearing examiner or board, reserving a ruling on its admissibility until the issuance of a report or decision.

[11.21.1.17 NMAC - N, 3-15-04]

**11.21.1.18 MISCONDUCT:** The hearing examiner or body conducting a hearing or official conducting any other proceeding, may exclude or expel from the hearing or proceeding any person, whether or not a party, who engages in violent, threatening, disruptive, or unduly disrespectful behavior. In the event of such exclusion or expulsion of a person for misconduct, the hearing examiner, body or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate.

[11.21.1.18 NMAC - N, 3-15-04]

**11.21.1.19 SUBPOENAS:**

**A.** Any party to a proceeding in which a notice of hearing has issued may file a written request with the director for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; identify the person(s) or documents sought; and state the general relevance to an issue in the case of the testimony or documents sought. The director may refuse to issue a subpoena where the request fails to meet these requirements,

or where it appears to the director that the documents or testimony sought are not relevant to issues in the case. Otherwise, the director shall immediately issue a subpoena to the requesting party.

**B.** The director, a hearing examiner, or the board may issue subpoenas on the initiative of the director, hearing examiner or board, in which case a showing of relevance is not required, and a notice of hearing need not have been issued.

**C.** A person upon whom a subpoena is served may move to quash the subpoena. A motion to quash shall be filed according to the scheduling order, or as permitted by the board, director or the hearing examiner.

**D.** Any applicable witness and travel fees shall be the responsibility of the subpoenaing party.  
[11.21.1.19 NMAC - N, 3-15-04]

**11.21.1.20 EXCHANGE OF DOCUMENTS AND LISTS OF WITNESSES:** Pursuant to the scheduling order, each party shall serve upon all other parties all documents it intends to introduce at the hearing and a list of all witnesses it intends to call, along with a brief statement of the subjects about which each witness is expected to testify. No party may compel discovery other than as provided in this rule and Section 19 (subpoenas), except by a specific order of the board upon good cause shown. The hearing examiner may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule if, in the hearing examiner's judgment, there was sufficient reason for the failure to timely supply the names or documents.

[11.21.1.20 NMAC - N, 3-15-04]

**11.21.1.21 OWNERSHIP AND CONFIDENTIALITY OF SHOWING OF INTEREST:** Evidence of a showing of interest submitted to the director in support of a representation petition shall remain the property of the party submitting such evidence; shall not become property of the director or the board, shall be kept confidential by the director and the board; and shall be returned to the party that submitted the same upon the close of the case.

[11.21.1.21 NMAC - N, 3-15-04]

**11.21.1.22 BURDEN OF PROOF:**

**A.** Except in unit clarification proceedings, no party shall have the burden of proof in a representation or factfinding proceeding. Rather, the director in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made, and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

**B.** In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

[11.21.1.22 NMAC - N, 3-15-04]

**11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS:** All motions and responses to motions, except those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order.

[11.21.1.23 NMAC - N, 3-15-04]

**11.21.1.24 SERVICE:** Service of papers upon parties may be made by personal delivery or by depositing in United States mail, first class postage prepaid, or by both facsimile ("fax") transmission and, by the next scheduled work day after sending a "fax", either personally delivering the document or depositing it in first class mail, in which case the date of "fax" transmission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed on the document served.

[11.21.1.24 NMAC - N, 3-15-04]

**11.21.1.25 TESTIMONY OF BOARD AGENTS:** Agents of the board (including the director, investigators, hearing examiner, and board members), whether employees of the board or contractors, may not be compelled to testify in board proceedings.

[11.21.1.25 NMAC - N, 3-15-04]

**11.21.1.26 FORM OF PAPERS:** All papers required or permitted to be filed with the director, a hearing examiner, or the board shall be on an official form prepared by the director, if available, or on 8 ½ by 11 white paper, double spaced. All papers shall show at or near the top of the first page the case name and, if available, the case number, and shall be signed.

[11.21.1.26 NMAC - N, 3-15-04]

**11.21.1.27 APPEAL OR REVIEW BY THE BOARD:** Unless otherwise provided in these rules, appeal or request for review by the board shall be permitted only upon completion of proceedings before a hearing examiner or the director. Review by the board shall be based on the evidence presented or offered at the earlier stages of the proceeding, and shall not be de novo. An interlocutory appeal may be allowed with the permission of the board, director or the hearing examiner.

[11.21.1.27 NMAC - N, 3-15-04]

**11.21.1.28 DIRECTOR'S AUTHORITY:** Except as otherwise provided in these rules, the director shall have authority to delegate to other board employees or outside contractors any of the authority delegated to the director by these rules. In every case where these rules or the act provide for the appointment of a hearing examiner, the director or the board shall appoint the hearing examiner, and may appoint the director or a board member as the hearing examiner.

[11.21.1.28 NMAC - N, 3-15-04]

**11.21.1.29 CLOSING OF CASES:** The director shall close a case following completion of all administrative and judicial proceedings related to the case. The director may, after notice to the parties, summarily close any case in which the moving party has taken no action within the previous six months, unless the delay is caused by factors beyond the party's control.

[11.21.1.29 NMAC - N, 3-15-04]

**11.21.1.30 PUBLICATION OF BOARD DECISIONS:** At the times and in the manner prescribed by the board, the director shall reproduce multiple copies of board decisions, classify and index the decisions, and make tables and indexes of the decisions, as well as compilations of the decisions, available to the public.

[11.21.1.30 NMAC - N, 3-15-04]

**11.21.1.31 TIME LIMITS FOR BOARD ACTIONS:** Whenever these rules set forth a period of time within which the board, the director, or a hearing officer must take any action, the board, director or hearing examiner may, for good cause, extend for a reasonable time, not to exceed twenty (20) workdays for each extension, the date by which such action must be taken, unless the date is controlled by statute.

[11.21.1.31 NMAC - N, 3-15-04]

**11.21.1.32 MEETINGS BY TELEPHONE:**

**A.** Pursuant to 10-15-1(C) NMSA, 1978, a member of the board may participate in a meeting of the public employee labor relations board by means of a conference telephone or other similar communications equipment in accordance with the provisions enumerated in Subsections B through E of 11.21.1.32 NMAC.

**B.** This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.

**C.** Each member participating by conference telephone must be identified when speaking.

**D.** All participants must be able to hear each other at the same time.

**E.** Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[11.21.1.32 NMAC - N, 3-15-04]

**History of 11.21.1 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives:

PELRB 1, General Provisions, filed 3-18-93.

**History of Repealed Material:** 11 NMAC 21.1, General Provisions (filed 6-24-96), repealed as a result of the internal duration of rule, stated as 7-1-99.

**Other History:**

PELRB 1, General Provisions, filed 3-18-93 was renumbered and replaced by 11 NMAC 21.1, General Provisions, filed 6-24-96.

11 NMAC 21.1, General Provisions, filed 6-24-96, was **replaced** by 11.21.1 NMAC, General Provisions, effective 3-15-04.