

UNIVERSITY OF NEW MEXICO LABOR MANAGEMENT RELATIONS BOARD

RULES AND REGULATIONS

I. GENERAL PROVISIONS

1.1 General

These Rules and Regulations ("Rules") are established by the University of New Mexico Labor Management Relations Board (the "Board") pursuant to, and in accordance with, the University of New Mexico Labor Management Relations Resolution, effective May 31, 2006 (the "UNM Resolution"). These Rules should be interpreted consistently with the UNM Resolution.

1.2 Definitions

A. The terms defined in Section 4 of the UNM Resolution shall have the meaning set forth therein.

B. Additional Definitions: The following terms shall have the meaning set forth below.

1. "Amendment of certification" means a procedure whereby an incumbent labor organization certified by the Board to represent a unit of employees or the employer petitions 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.

2. "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 Board.

3. "Complainant" means an individual, organization or employer that has filed a prohibited practices complaint.

4. "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.

5. "Prohibited practice" means a violation of Sections 16 or 17 of the UNM Resolution.

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

7. "Respondent" means a party against whom a prohibited practices complaint has been filed.

8. "Rules" means the Rules and Regulations established by the Board pursuant to, and in accordance with, the UNM Resolution, including any amendments to them.

9. "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.

10. "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 or to consolidate existing bargaining units represented by the same labor

organization where the Board finds the unit as clarified to be an appropriate bargaining unit and no question concerning representation arises.

11. "Unit inclusion or exclusion" means the status of an individual, occupational group or group of employees in clear and identifiable communities of interest on 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 content, principles of efficient administration, the history of collective bargaining and the assurance to employees of the fullest freedom in exercising the rights guaranteed by the UNM Resolution.

1.3 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 day 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. Saturdays, Sundays and legal holidays observed by the employer shall not be counted when computing the time, unless specified otherwise herein. If the last day of the period falls on a Saturday, Sunday or legal holiday, then the last day for taking the action shall be the following business day.

1.4 Extension of Time

A party seeking an extension of time in which to file with the Board any required or permitted document, may file with the Board an appropriate written request for an extension. Such a request shall, absent good cause shown, 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 Board, or its agent, may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

1.5 Filing with the Board

To file a document with the Board, the document may be either hand-delivered during regular business hours, or sent by first class mail, postage prepaid, to such address as the Board may designate from time to time. A document filed by mail will be deemed filed when it is received at the address designated by the Board. Documents sent to the Board via facsimile ("fax") or electronic transmission ("email") 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 fax or email is sent. An original and four (4) copies of each document shall be filed along with proof of service on the other party. Any fax or email to the Board pursuant to this rule shall be simultaneously transmitted to the other party.

1.6 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 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.

1.7 Ex Parte Communications

Except as otherwise provided in this rule, no party to a pending representation, prohibited practices, or fact finding proceeding shall communicate, or attempt to communicate 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 Board during the investigatory phase of a representation, prohibited practices, or impasse resolution proceeding regarding that investigation. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the Board, regarding that rulemaking.

1.8 Disqualification

No Board agent or member 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 (2) 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.

1.9 Motion to Disqualify

A. A motion to disqualify a Board agent or member 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 or member and he or she shall withdraw from the proceeding. If the motion is denied, the Board shall so rule and the matter shall proceed.

1.10 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 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 Board shall keep the audiotapes of rule making, unit determination, and prohibited practices hearings for a period of at least one (1) year following the close of the proceeding in which the hearing was held, or for one (1) year following the close of the last judicial or Board proceeding related to the case in which the hearing was held, whichever is later, or such longer period as maybe 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. Any party to a unit determination, prohibited practice or other adjudicatory proceeding may, in the absence of

an order of the Board, arrange privately for certified transcription of the proceeding at that party's own expense. That party shall send a copy of the transcript to the Board and shall make the transcript available for review by the other party to the proceeding. The Board may order that such transcript be the official record of the proceeding.

1.11 Notice of Hearing

A. Upon setting a hearing in a representation or prohibited practices matter, the Board shall issue a notice of hearing to be served on all parties, stating the name of the case, the general nature of the hearing, and the time and place of the hearing. The notice shall be served by first class mail at least ten (10) days prior to the commencement of the hearing. Notice may also be served by fax or email (read receipt) in which case the date of the fax or email is the date of service provided an original is deposited in the mail no later than the first work day after the fax or email is sent.

B. Upon setting a rulemaking hearing, the Board shall issue a notice of hearing 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 to all parties that request notice of such hearings and shall be published in a newspaper of general circulation in Albuquerque at least thirty (30) *calendar* days prior to the hearing.

C. 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 Board and serving the request upon all other parties at least five (5) days before the commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the Board 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 Board grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.

1.12 Evidence Admissible

A. The technical rules of evidence shall not apply but in ruling on the admissibility of evidence, the 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 Board may receive any evidence not objected to, or may, upon the 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 Board, reserving a ruling on its admissibility until the issuance of a report or decision.

1.13 Misconduct

The Board 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 Board 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.

1.14 Subpoenas

A. Any party to a proceeding in which a notice of hearing has been issued may file a written request with the Board 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. A subpoena request shall state the name of the case, identify the person(s) or document(s) sought, and state the general relevance to an issue in the case of the testimony or document sought. The Board may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears to the Board that the documents or testimony sought is not relevant to issues in the case. Otherwise, the Board, or its agent, shall immediately issue a subpoena to the requesting party.

B. The Board may issue subpoenas on its own initiative, 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 a reasonable time after service of the subpoena and, if feasible, before the hearing. The motion to quash shall be filed with the Board.

D. Any applicable witness and travel fees shall be the responsibility of the subpoenaing party.

1.15 Exchange of Documents and Lists of Witnesses

No later than five (5) days before the commencement of a hearing, 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 except as provided in this rule and Rule 1.14 (Subpoenas) or as provided by a specific order of the Board upon good cause shown. The Board may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule only if, in the Board's judgment, there was good cause for the failure to timely supply the names or documents.

1.16 Ownership and Confidentiality of Showing of Interest

Evidence of a showing of interest, as specified in §2.4 herein, submitted to the Board in support of a representation petition shall remain the property of the party submitting such evidence; shall not become property of the Board; shall be kept confidential by the Board; and shall be returned to the party that submitted the same upon the close of the case.

1.17 Burden of Proof

A. In a representation proceeding, no party shall have the burden of proof. Rather, the Board 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.

B. 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.

C. In a prohibited practices proceeding or any issue before the Board, the complaining or moving party has the burden of proof and the burden of going forward with the evidence.

1.18 Motions and Responses to Motions.

A. 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, in order to be considered at a hearing, shall be filed and served on all parties at least three (3) days before the hearing. Motions and responses made at hearings may be made orally.

B. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served within ten (10) days after service of the motion.

1.19 Service

Service of papers upon parties may be made by personal delivery or served by first class mail, postage prepaid. Service may also be served by fax or email (read receipt) in which case the date of the fax or email is the date of service, provided an original is personally delivered or deposited in the mail no later than the first work day after the fax or email is sent. 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 in the document served.

1.20 Testimony of Board Agents

Agents of the Board, whether members, employees of the Board or contractors, may not be compelled to testify in Board proceedings.

1.21 Form of Papers

All papers required or permitted to be filed with the Board shall be on an official form prepared by the Board, 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 shall be signed.

1.22 Closing of Cases

The Board shall close a case following completion of all administrative and judicial proceedings related to the case. The Board may, after notice to the parties, summarily close any case in which the moving party has taken no action within the previous six (6) months, unless the delay is caused by factors beyond the party's control.

1.23 Publication of Board Decisions

At the times and in the manner prescribed by the Board, the Board shall make 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.

1.24 Time Limits for Board Actions

Wherever these Rules set forth a period of time within which the Board must take any action, the Board may, for good cause, extend for a reasonable time, not to exceed twenty (20) days for each extension, the date by which such action must be taken, unless the date is otherwise controlled by law.

1.25 Quorum

Three (3) Board members shall constitute a quorum. Pursuant to Section 8.D of the UNM Resolution, the Board shall decide all issues by majority vote.

1.26 Meetings by Telephone

A member of the Board may participate in a meeting of the Board by means of a conference telephone or other similar communications equipment. This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time. Members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.

II. REPRESENTATION PROCEEDINGS

2.1 Commencement of Case

A representation case is commenced by filing a representation petition with the Board. The petition 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; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups and estimated number of employees in the proposed 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 (30%) showing of interest in the existing or proposed bargaining unit. A petition shall contain 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 is a member of the labor organization to whom the petition applies.

2.2 Service of Petition

Upon filing a petition, the petitioner shall serve it upon the employer and any incumbent labor organization. Within ten (10) days of the filing of a petition, the Board shall cause notice of the filing of the petition to be sent to any interested party identified in the petition or other party who notified the Board, in writing, of its interest in receiving such notice.

2.3 Filing of Collective Bargaining Agreement

Along with a representation petition, the petitioner shall file with the Board a copy of any collective bargaining agreement, then in effect or recently expired, covering any of the employees in the petitioned-for unit.

2.4 Showing of Interest

With the petition and at the same time the petition is filed, the petitioner shall deposit with the Board 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 (30%) of the employees in the proposed unit stating, in the case of a petition for 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 decertification election, that each such employee wishes a

decertification election. Each signature shall be separately dated. No signature that is dated more than twelve (12) months before the filing of the petition shall be counted toward the showing of interest. 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. No showing of interest need be filed in support of a petition for amendment of certification or unit clarification.

2.5 Information Requested of Parties

A. Within ten (10) days of the filing of a representation petition, the Board, or its agent, shall by letter request of the employer, any incumbent labor organization and any party that appears to have an interest in the proceeding, 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. Within ten (10) days of the filing of a representation petition, the Board, or its agent, shall request from the employer a current list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately preceding the filing of the petition. The employer shall be instructed to file such list within ten (10) days of the date of the Board's request. The Board shall make the list available to all parties.

2.6 Initial Investigation of Petition

After a petition has been filed, the Board, or its agent, shall investigate the petition. The showing of interest statements shall remain confidential. The investigation shall include the following steps and shall be completed within thirty (30) days of the filing of the petition.

A. The Board, or its agent, shall check the showing of interest (if applicable) against the list of eligible employees in the proposed unit filed by the 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 Board 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 Board, the Board shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The Board shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Rule 2.14 (Opportunity to Present Further Showing), and shall explain in writing the basis of the dismissal.

B. The Board, or its agent, shall determine the facial validity of the petition as outlined by the required elements contained in Section 2.1 above, 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 Board 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 it shall explain its reasons in writing.

C. The Board shall determine whether there are significant issues of unit scope; unit inclusion or exclusion; labor organization; a bar to the processing of the petition; or other matters that could affect the proceedings.

2.7 Settlement/Stipulation of Issues.

If the Board finds that there are significant issues affecting the proceeding that are or may be in dispute, the Board, or its agent, shall confer with all parties to attempt to resolve the issues and to enter into a written stipulation stating the agreement.

2.8 Notice of Filing of Petition

Unless the Board has determined that there is need for a representation hearing pursuant to Rule 2.12, then within thirty (30) days of receipt of a petition, the Board shall issue a notice stating that the petition has been filed, naming the petitioner, stating the unit petitioned-for, and stating the procedures for intervention as set forth in Rule 2.9, below, including the date by which an intervenor must file its petition and showing of interest. The Board shall issue sufficient copies of the notice to the employer, and the employer shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for at least five (5) days.

2.9 Intervention

A. At any time within ten (10) days after the employer's posting of the notice of filing of petition, a labor organization other than the petitioner may file with the Board an intervenor's petition seeking to represent some or all of the employees in the petitioned-for unit. The intervenor's petition shall contain the same information set forth in Rule 2.1 above.

B. The intervenor's petition shall be accompanied by a showing of interest showing that at least thirty percent (30%) of the employees in the petitioned-for unit wish to be represented by the intervenor for purposes of collective bargaining. The showing of interest shall otherwise meet the requirements set forth in Rule 2.4, above.

C. An intervenor that has presented a sufficient showing of interest in the unit found to be appropriate shall be placed on the ballot and shall be considered a party to the proceeding.

2.10 Consent Election

Where the parties are in agreement on all issues required to be resolved in order to proceed to an election and the Board is satisfied that the issues so resolved, including unit scope, are acceptable, the Board, or its agent, shall draw up a consent election agreement to be signed by all parties and the Board, or its agent. The parties shall proceed to an election on the basis of the agreement.

2.11 Investigation, Report and Notice of Hearing

A. In the absence of a consent election agreement, the Board, or its agent, shall investigate the outstanding issues. The Board shall issue and serve a report and direction of election, a report and dismissal of petition, or a notice of hearing within forty-five (45) days of the posting of the notice of filing of petition.

B. If there is a dispute between the parties regarding unit composition, the Board shall issue and serve a notice of hearing without first conducting a further investigation. The hearing shall be set for a date not later than thirty (30) days following the Board's receipt of notice of the dispute.

2.12 Representation Hearing

A. In the absence of a consent election agreement, and where there are significant unit issues that, in the Board's view, should be resolved in a hearing, the Board shall issue a notice of hearing.

B. The Board shall take evidence sufficient to make a full and complete record on all unresolved unit issues and any other issues necessary to process the petition. Details such as the time, date, and place of the election, and whether there will be manual or mail ballots or a combination, shall not be resolved through the hearing process, but shall be resolved instead through the pre-election conference process described in Rule 2.17.

C. The Board may examine witnesses, call witnesses, and call for the introduction of documents.

2.13 Briefs

If any party requests permission to file a post-hearing brief, the Board shall permit all parties to file briefs and set a date for the filing which normally shall be no longer than ten (10) days following the close of the hearing. Briefs shall be filed with the Board and copies shall be served on all parties.

2.14 Board Reports

The Board shall issue its report following the close of the hearing. Except in extraordinary circumstances, which shall be set forth in the report, the report shall be issued no longer than fifteen (15) days following the close of the hearing or the submission of post-hearing briefs, whichever is later. The report shall make findings of fact, conclusions of law, and decide the issue(s), and shall adequately explain the Board's reasoning.

2.15 Opportunity to Present Further Showing of Interest

A. When the Board, or its agent, finds that the petitioner or an intervenor has submitted an insufficient showing of interest in the unit petitioned for, the Board, or its agent, shall notify the petitioner or intervenor, and that party may, upon good cause shown to the Board, have the opportunity to submit an additional showing of interest within a reasonable amount of time. The Board, or its agent, 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 Board determines that a unit other than the unit petitioned for is appropriate and it appears to the Board, or its agent, that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate, the Board, or its agent, shall notify the petitioner or intervenor and give such party a reasonable amount of time in which to file an additional showing. If the party fails to file a sufficient showing within that time, the Board shall dismiss the petition or deny intervenor status.

2.16 Eligibility to Vote

A. Employees in the bargaining unit shall be eligible to vote in the election if they were employed during the last completed payroll period preceding the date of the consent election agreement or the direction of election issued by the Board, and are still employed in the unit on the date of the election.

B. Employees in the bargaining unit who are eligible to vote but who will be absent on the day of voting because of hospitalization, temporary assignment away from normal post of

duty, leave of absence, vacation at a location more than 50 miles distant from the polling place, or other legitimate cause, as solely determined by the Board, may request an absentee ballot, at least ten (10) days before the election. To be counted, an absentee ballot must be received by the Board at least one day before the ballots are counted. The absentee ballot may be challenged as provided in Rule 2.22 below.

C. The employer shall submit to the Board and to all other parties a list of all employees eligible to vote in the election not later than ten (10) days before the commencement of the election balloting. Employees whose names do not appear on the list but who believe they are eligible to vote may cast ballots through the challenged ballot procedure set forth in Rule 2.22 below.

2.17 Pre-Election Conference

At a reasonable time at least fifteen (15) days before the election, the Board, or its agent, 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, if this has not been addressed in the consent election agreement. The Board, or its agent, shall notify all parties of the time and place of the pre-election conference, at least five (5) days in advance of the conference. The conference may proceed in the absence of any party. The Board, or its agent, will attempt to achieve agreement of all parties on the elections details, but in the absence of agreement, shall determine the details. In deciding the polling location(s), the use of manual or mail ballots, and the hours of voting, the primary criterion shall be to maximize the opportunity for participation in the election by employees in the bargaining unit. There shall be a strong preference for on-site balloting.

2.18 Notice of Election

A. The Board shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Rule 2.17 above, no later than ten (10) days before the election. The notice of election shall also describe the bargaining unit whose members are eligible to vote and shall describe the challenged ballot procedure. The notice shall include a sample ballot.

B. The Board shall provide a sufficient number of copies of the notice of election to the employer to post a notice of election in all lounges or common areas frequented by unit employees and in all places where notices to employees are commonly posted. The employer shall post the notices in all such areas at least ten (10) days before the election and shall take reasonable measures to assure that they are not removed, covered, altered, or defaced.

2.19 Ballots and Voting

A. All voting shall be by secret ballot approved by the Board. Position on the ballot shall be determined randomly. All representation elections shall include the option of “no representation,” except in a run-off election where the choice of “no representation” was not one of the two choices that received the highest votes.

B. All elections shall be conducted by the Board, or its agent.

C. Any voter who arrives at a polling area before the polls close will be permitted to vote.

D. The employer shall allow its 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 an obligation to change employee work schedules to accommodate voting hours.

E. A valid election requires that at least forty percent (40%) of the eligible employees in an appropriate bargaining unit cast a vote.

2.20 Electioneering

No electioneering shall be permitted within 50 feet of any room in which balloting is taking place.

2.21 Observers

Each party shall be entitled to an equal number of observers to observe and assist in each polling area, and to witness the counting of ballots. The Board has complete discretion to determine the number of observers. Observers shall not be supervisory or managerial employees of the bargaining unit employees or labor organization officers. However, representatives of the parties in addition to the observers may observe the counting of ballots.

2.22 Challenged Ballots.

A. Any party to an election, through its observer, or the Board, or its agent, 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 Board, or its agent, shall challenge any voter whose name does not appear on the list of employees eligible to vote.

B. The Board shall furnish "challenge envelopes". On the outside of each challenge envelope, the Board, or its agent, 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 Board, or its agent, 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 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 Board, or its agent, 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 fifteen (15) days of the election.

F. Following resolution of determinative challenged ballots, the Board, or its agent, shall count the ballots of voters found to be eligible, adding the results to the results of the earlier count, and issuing a revised tally of ballots.

2.23 Tally of Ballots

Immediately following the counting of ballots, the Board, or its agent, 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 of 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 (40%) of the employees in the unit voted, or

that the choice of "no representation" received fifty percent (50%) or more of the valid votes cast, then the tally shall reflect that no collective bargaining representative was selected.

2.24 Run-off Elections

In an election where there are three (3) or more choices on the ballot, if no ballot choice receives a majority of the valid votes cast, and at least forty percent (40%) of eligible voters voted, the Board shall set a run-off election in which voters will be permitted to cast ballots for the two choices that received the highest number of votes. A new tally shall be issued and served following the counting of the votes of a run-off election. A run-off election must be conducted within the fifteen (15) day period following completion of the initial election. A majority of valid votes cast means fifty percent (50%) plus one or more of the valid votes cast.

2.25 Certification

If no objections are filed pursuant to Rule 2.26 below, then within ten (10) days following service of the final tally, the Board 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.

2.26 Objections

Within five (5) days following the service of a tally of ballots, a party may file objections to conduct affecting the results of the election. The Board shall schedule a hearing on the objections within thirty (30) days of the filing of such objections. The hearing shall follow the same procedures set forth in Rule 2.12, Rule 2.13 and 2.14 above. If the 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 Board in its 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.

2.27 Amendment of Certification

A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. The Board shall dismiss such a petition within thirty (30) days of its filing if the Board determines that it raises a question concerning representation. If the Board finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the Board shall issue an amendment within thirty (30) days of filing of the petition for amendment of certification.

2.28 Unit Clarification

A. 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 the unit, either the exclusive representative or the employer may file with the Board a petition for unit clarification.

B. Upon the filing of a petition for unit clarification, the Board shall set the matter for a hearing within thirty (30) days of the filing of the petition. In the hearing, the Board shall

determine whether a question concerning representation exists and, if so, shall dismiss the petition.

C. If the Board determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the Board shall issue a report within thirty (30) days of the hearing clarifying the unit.

2.29 Accretion

A. The exclusive representative of an existing collective bargaining unit, or the employer, may petition the Board to include in the unit employees who do not belong, at the time the petition is filed, to any existing bargaining unit, who share a clear and identifiable community of interest with the employees in the existing unit, and whose inclusion in the existing unit will not render that unit inappropriate. No group of employees may be accreted to an existing unit if the Board determines that such group constitutes a separate appropriate bargaining unit

B. If the number of employees in the group sought to be accreted is less than ten percent (10%) of the number of employees in the existing unit, and the unit clarification petition is accompanied by a showing of interest demonstrating that at least thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit, the Board may presume that their inclusion does not raise a question concerning representation requiring an election.

C. If the number of employees in the group sought to be accreted is greater than ten percent (10%) of the number of employees in the existing unit, the Board may presume that their inclusion raises a question concerning representation and the petitioner may proceed by filing a petition for an election under these rules. Such a petition, in an accretion situation, must be accompanied by a showing of interest demonstrating that at least thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

2.30 Voluntary Recognition

A. A labor organization representing majority support of employees in an appropriate collective bargaining unit and the employer, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which the employer 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 by the Board, or its agent, in accordance with the procedures of Rule 2.4 above. The Board shall not certify an exclusive representative if the employer objects to the certification without an election.

B. Prior to Board approval of any voluntary recognition, the Board shall post notice of filing of petition and give notice to any individuals or labor organizations that register with the Board to be informed of such petitions.

C. If an intervenor does not file a petition for intervention within ten (10) days, then the Board shall consider the petition for approval of the voluntary recognition if accompanied by the 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 within the ten (10) day time period, then the Board may not approve a voluntary recognition and shall proceed in the manner set forth for representation proceedings.

2.31 Petition Withdrawal

The petitioner in a representation proceeding may request permission of the Board to withdraw the petition at any time prior to an initial election. The Board may grant such a withdrawal request only after soliciting the positions of all parties and, in its discretion, may decline to approve the withdrawal request.

2.32 Severance Petition

A severance petition is a representation petition filed by a labor organization that seeks to sever or slice a group of employees who comprise one of the occupational groups listed in Section 10 of the UNM Resolution, from an existing unit for the purpose of forming a separate appropriate bargaining unit. A severance petition must be accompanied by a thirty percent (30%) showing of interest of the employees in the petitioned-for appropriate bargaining unit. For a severance petition filed during the existence of a collective bargaining agreement, the petition must be filed no earlier than 90 days and no later than 60 days before the expiration of the collective bargaining agreement, or at anytime after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

III. PROHIBITED PRACTICES PROCEEDINGS

3.1 Commencement of Case

A. A prohibited practices case shall be initiated by filing with the Board a complaint setting forth, at a minimum, the name, address and phone number of the respondent, specific section of the UNM Resolution claimed to have been violated, the name, address and phone number of the complainant, a concise description of the facts constituting the asserted violation, and a declaration that the information provided is true and correct to the knowledge of the complaining party. The complaint shall be signed and dated, filed with the Board and served upon the respondent.

B. When an individual employee files a prohibited practices charge alleging a violation of Section 16.A.6, 16.A.8, 17.A.4 and/or 17.A.5 of the UNM Resolution, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.

3.2 Limitations Period

Any complaint filed more than six (6) months following the conduct claimed to violate the Resolution, or more than six (6) months after the complainant either discovered, or reasonably should have discovered the conduct, shall be dismissed.

3.3 Filing of Answer

A. Within fifteen (15) days after service of a complaint, the respondent shall file with the Board and serve upon the complainant its answer admitting, denying or explaining each allegation of the complaint. For purposes of this rule, the term "allegation" shall mean any statement of fact or assertion of law contained in a complaint. No particular form is required either to state allegations or to answer them.

B. If a respondent, in its answer, admits or fails to deny an allegation of the complaint, the Board may find the allegation to be true.

3.4 Default Determination

If a respondent fails to file a timely answer, the Board shall serve on the parties a determination of violation by default, based upon the allegations of the complaint and any evidence submitted in support of the complaint or a motion.

3.5 Screening/Investigation

A. Upon receipt of a complaint, the Board, or its agent, shall screen the charge for facial adequacy. If the charge is facially deficient, the Board, or its agent, shall advise the complainant of the deficiency and give the complainant an opportunity to amend the charge within five (5) days. Absent an amendment curing a facially deficient charge, the Board shall dismiss the charge, stating the reasons in writing and serving the dismissal on the parties. A charge that is facially untimely pursuant to Rule 3.2 above shall be dismissed.

B. After screening a charge, the Board, or its agent, shall investigate the allegations. At the Board's request, the complainant shall immediately present all evidence available to the complainant in support of the charge, including documents and the testimony of witnesses.

C. If a complainant fails to timely produce evidence in support of its charge pursuant to the Board's request, or fails to produce evidence that in the Board's opinion is sufficient to support the allegations of the charge, the Board shall request the complainant withdraw the charge within five (5) days and, absent such withdrawal, shall dismiss the charge stating the reasons in writing and serving the dismissal on all parties.

3.6 Notice of Hearing

If the Board or its agent, following investigation and the filing of an answer, believes that there is sufficient evidence that the respondent has committed a prohibited practice, it shall set a hearing, and serve notice of the hearing on all parties. The Board shall set the hearing or dismiss the complaint within thirty (30) days of filing of the complaint. A hearing shall be scheduled within forty-five (45) days of filing of the complaint.

3.7 Pre-Hearing Settlement Efforts

A. The complaint may be settled by the parties at any time prior to hearing, and submitted to the Board for its approval before the settlement becomes final.

B. The complainant may withdraw the complaint at any time prior to hearing without approval by the Board. After commencement of the hearing, the complaint shall not be withdrawn or settled without the approval of the Board.

3.8 Prohibited Practices Hearings

A. The Board 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 Rule 1.18, above.

B. The Board may examine witnesses, call witnesses, or call for the introduction of documents.

3.9 Briefs

The filing of post-hearing briefs shall be permitted on the same basis as provided for briefs in representation cases.

3.10 Board Reports

The Board shall issue its report within the same time limits and following the same requirements for reports in representation cases.

3.11 Relief from Prohibited Practices Default Determination

A party may move to set aside a default determination entered against it within thirty (30) days after the service thereof. Said motion shall be served upon all other parties and shall set out in detail the reasons in support thereof. Upon finding good cause for the motion and within thirty (30) days of the filing of such motion, the Board shall order such further proceeding as it deems appropriate. The failure to act within thirty (30) days after the filing of such motion shall constitute a denial of the motion.

3.12 Administrative Agency Deferral

Where the Board becomes aware that a complainant has initiated another administrative or legal proceeding based on essentially the same facts and raising essentially the same issues as those raised in the complaint, the Board may take any of the following actions, at the Board's discretion:

A. The Board may hold the proceedings under the UNM Resolution in abeyance pending the outcome of the other proceeding.

B. The Board may go forward with its own proceeding. In so doing, the Board may request that the other proceedings be held in abeyance pending outcome of the Board proceeding.

C. In the event that the resolution of the proceedings in such other forum is contrary to the UNM Resolution, or all issues raised before the Board are not resolved, the Board may proceed under the provisions of Part III of these Rules.

3.13 Arbitration Deferral

A. If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and any objections to timeliness or other procedural impediments to the processing of a grievance are waived, in writing, by the party positioned to assert the objection by way of defense and, the Board determines that the resolution of the contractual dispute likely will resolve the issue(s) raised in the prohibited practices charge, then the Board may, on the motion of any party, defer further processing of the complaint until the grievance procedure is exhausted and an arbitrator's award issued.

B. Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the Board, and shall advise the Board in writing that it wishes either to proceed

with the prohibited practice charge 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 Board that it wishes to proceed with the prohibited practices complaint, or if the Board on its own motion so determines, then the Board shall review the arbitrator's award. If in the opinion of the Board, 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 UNM Resolution and the collective bargaining agreement then in effect, and sufficient to remedy any violation found, then the Board shall dismiss the complaint. If the Board 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 UNM Resolution, or that the remedy is inadequate, then the Board shall take such other action as it deems appropriate in accordance with the UNM Resolution. The Board may accept the arbitrator's factual findings while substituting its own legal conclusions and/or remedial requirements.

D. In the event that no arbitrator's award has issued within one year following deferral under this Rule, then the Board may, after notice, dismiss the complaint.

E. Pursuant to Section 8.D of the UNM Resolution, the Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose.

The effective date of the University of New Mexico Labor Management Relations Board Rules and Regulations is *November 2, 2006*.

/s/ Peter C. Mallery

Chairperson

/s/ Carol Oppenheimer

Board Member

/s/ Stephany S. Wilson

Board Member