This is an amendment to 11.21.2 NMAC, Section 37 effective 11/5/2024.

11.21.2.37 UNIT CLARIFICATION:

A. Except as provided in Subsection A of Section 24 of the Act, a unit clarification petition is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established classification; where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or where a merger or realignment of previously existing bargaining units represented by the same labor organization occurs. [~~either~~] Either the exclusive representative or the employer may file with the director a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and processed only when it relates to state employees.

B. Upon the filing of a petition for unit clarification, the director shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within 30 days of the filing of the petition. In the director's investigation or through the hearing, the director or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition. In such a case, the petitioner may proceed otherwise under these rules.

C. If the director or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the director or hearing examiner shall issue a report clarifying the unit within 30 days of the filing of the petition if no hearing is determined necessary, or within 30 days of the hearing if a hearing is determined necessary. If the director determines that a question concerning representation exists, the petition shall be dismissed.

D. A director or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 22, above.

[11.21.2.37 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020; A, 11/5/2024]

This is an amendment to 11.21.1 NMAC, Section 17 effective 11/5/2024.

11.21.1.17 EVIDENCE ADMISSIBLE: The technical rules of evidence shall not apply, but, in ruling [~~of~~] on 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.

A. [~~Irrelevant~~] Upon receiving a timely objection by a party or by any person who may be aggrieved by its admission, the hearing examiner may exclude irrelevant, immaterial, unreliable, unduly repetitious or cumulative evidence, and evidence that is confidential or evidence protected by the rules of privilege (such as attorney-client, physician-patient or special privilege) [~~shall be excluded upon timely objection~~] unless admissibility is otherwise authorized or required by law or court order.

B. 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~~].

C. 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.

D. Nothing in this rule requires the hearing examiner or board to provide notice of a tentative or final decision on admissibility of evidence to any person who is not a party to the pertinent proceedings.

[11.21.1.17 NMAC - N, 3/15/2004; A, 11/5/2024]