

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 2 REPRESENTATION PROCEEDINGS

11.21.2.1 ISSUING AGENCY: Public Employee Labor Relations Board, 2929 Coors NW, Suite #303, Albuquerque, NM, 87120, (505) 831-5422.
[11.21.2.1 NMAC - N, 3/15/2004]

11.21.2.2 SCOPE: The scope of Part 2 of Chapter 21 applies to public employers, public employees and labor organizations as defined by the Public Employee Bargaining Act (Sections 10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.2.2 NMAC - N, 3/15/2004]

11.21.2.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 21 is the Public Employee Labor Relations Act, Sections 1 through 26 (10-7E-1 to 10-7E-26 NMSA 1978).
[11.21.2.3 NMAC - N, 3/15/2004]

11.21.2.4 DURATION: Permanent.
[11.21.2.4 NMAC - N, 3/15/2004]

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

11.21.2.6 OBJECTIVE: The objective of Part 2 of Chapter 21 is to establish a standard for uniform petition filings in an easily understood form in which all pertinent information is given to the public employee labor relations board to determine an appropriate bargaining unit.
[11.21.2.6 NMAC - N, 3/15/2004]

11.21.2.7 DEFINITIONS: [RESERVED]
[11.21.2.7 NMAC - N, 3/15/2004]

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. A petition for certification or decertification must be supported by at least a thirty percent showing of interest 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, 7/26/2022]

11.21.2.9 SERVICE OF PETITION: Upon filing a petition, the petitioner shall serve it upon the employer and any incumbent labor organization. Within 10 days of the filing of a petition, the director shall cause notice of the filing of the petition to be sent to any other interested party.
[11.21.2.9 NMAC - N, 3/15/2004]

11.21.2.10 FILING OF COLLECTIVE BARGAINING AGREEMENT: Along with a representation petition, the petitioner shall file with the director a copy of any collective bargaining agreement, then in effect or recently expired, covering any of the employees in the petitioned-for unit.
[11.21.2.10 NMAC - N, 3/15/2004]

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 certification, 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, 7/26/2022]

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 holding positions in the petitioned-for unit 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, 7/26/2022]

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 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 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 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 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.

[11.21.2.13 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/26/2022]

11.21.2.14 SETTLEMENT/STIPULATION OF UNIT ISSUES: If the director finds that there are significant issues affecting the proceeding that are or may be in dispute, the director shall confer with all parties to attempt to resolve the issues and to enter into a written stipulation stating the agreement. Any such stipulation shall be subject to approval of the board upon review, which may be requested by the board or sought by the director.
[11.21.2.14 NMAC - N, 3/15/2004]

11.21.2.15 NOTICE OF FILING OF PETITION: Unless the director has determined that there is need for a representation hearing pursuant to Section 19, then within 30 days of receipt of a petition, the director 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 Section 16, below, including the date by which an intervenor must file its petition and showing of interest. The director shall issue sufficient copies of the notice to each employer involved, and each such employer shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for at least five days.
[11.21.2.15 NMAC - N, 3/15/2004]

11.21.2.16 INTERVENTION:

A. At any time within 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 director 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 Section 8 above.

B. The intervenor's petition shall be accompanied by a showing of interest showing that at least thirty percent 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 Section 11, 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.

D. Upon application, an incumbent labor organization shall have automatic intervenor status if it is not the petitioner, pursuant to the provisions of Subsection B of Section 10-7E-24 NMSA 1978, of the Public Employee Bargaining Act.

[11.21.2.16 NMAC - N, 3/15/2004]

11.21.2.17 CONSENT ELECTION: Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the director is satisfied that the issues are so resolved, including unit scope, the director shall draw up a consent election agreement to be signed by all parties and by the director. Consent election agreements are subject to board review and may be set aside by the board on its own initiative. If a consent election agreement is not set aside at the board's next regular meeting or the following regular meeting, the director shall proceed to an election on the basis of the agreement.
[11.21.2.17 NMAC - N, 3/15/2004; A, 2/28/2005]

11.21.2.18 INVESTIGATION, REPORT, NOTICE OF HEARING:

A. In the absence of a consent election agreement, the director shall investigate the outstanding issues and shall issue and serve a report and direction of election, a report and dismissal of petition, or a notice of hearing within 45 days of the posting of the notice of filing of petition. If there is a dispute between the parties regarding unit composition, or the director is satisfied that the issues can best be resolved in a hearing, the director shall issue and serve a notice of hearing without first conducting a further investigation. A hearing concerning unit composition, where the parties are in dispute on that issue, shall be set for a date not later than 30 days following the director's notice of hearing or the director's receipt of notice of the dispute, whichever is sooner.

B. A report and direction of election or a report and dismissal of petition shall be subject to board review under the procedures set forth in Section 22 below. The issuance of a notice of hearing shall not be subject to board review.

[11.21.2.18 NMAC - N, 3/15/2004]

11.21.2.19 REPRESENTATION HEARING:

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

B. Except in cases where the board appoints the hearing examiner, the director shall appoint the hearing examiner, and may appoint himself or herself to serve as hearing examiner.

C. The hearing examiner 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 Section 25.

D. The hearing examiner may examine witnesses, call witnesses, and call for introduction of documents.

[11.21.2.19 NMAC - N, 3/15/2004]

11.21.2.20 BRIEFS: If any party requests permission to file a post-hearing brief, the hearing examiner shall permit all parties to file briefs and shall set a time, for the filing of briefs which normally shall be no longer than 10 days following the close of the hearing. Briefs shall be filed with the director and copies shall be served on all parties.

[11.21.2.20 NMAC - N, 3/15/2004]

11.21.2.21 HEARING EXAMINER REPORTS: The hearing examiner shall issue his or her 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 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 recommendations for the determination of issues, and shall adequately explain the hearing examiner's reasoning. The hearing examiner shall serve the report on all parties and the board.

[11.21.2.21 NMAC - N, 3/15/2004]

11.21.2.22 BOARD REVIEW OF HEARING EXAMINER REPORTS AND DIRECTOR DECISIONS:

A. Within 10 days after service of the hearing examiner's report, or, in a case where no hearing has been held, within 10 days after the issuance of a director's decision, any party may file a request for board review of the hearing examiner's or the director's recommended disposition. The request for review shall state the specific portion of the hearing examiner's or director's recommended disposition to which exception is taken and the factual and legal basis for such exception. The request may not rely on any evidence not presented to the hearing examiner or director. The request must be served on all other parties.

B. Within 10 days after service of a request for review, any other party may file and serve on all parties a response to the request for review.

C. Whether or not a party has filed a request for review, the board, within 60 days, shall review any recommended disposition regarding the scope of a bargaining unit made by the director or a hearing examiner. In addition, the board shall review any other issue properly raised by a party in a request for review. The board shall conduct its review on the basis of the existing record and may, in its discretion, hear oral argument.

D. Within 60 days following review, the board shall issue its decision ordering an election, dismissing the petition, setting a further hearing, or otherwise disposing of the case. The board may adopt or incorporate in and attach to its decision all or any portion of the hearing examiner's report or director's decision.

[11.21.2.22 NMAC - N, 3/15/2004]

11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:

A. When the director finds that the petitioner or an intervenor has submitted an insufficient showing of interest in the unit petitioned for, the director shall notify the petitioner or intervenor, and that party shall have the opportunity to submit an additional showing of interest. The director 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 director, hearing examiner or board determines that a unit other than the unit petitioned for is appropriate and it appears to the board or director that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate the director 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 director shall dismiss the petition or deny intervenor status.

[11.21.2.23 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.2.24 ELIGIBILITY TO VOTE:

A. Employees in the bargaining unit shall be eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement or the direction of election issued by the director or 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, may request an absentee ballot from the director. Except for good cause shown, such a request must be received by the director at least 10 days before the election, in which case the director, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the director by mail. To be counted, an absentee ballot must be received by the director at least one day before the ballot count. The director shall establish procedures to permit an absentee ballot to be challenged, as provided in Section 30, below.

C. The employer or employer's whose employees comprise the bargaining unit shall submit to the director and to all other parties a list of all employees eligible to vote in the election no later than 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 Section 30, below.

[11.21.2.24 NMAC - N, 3/15/2004; A, 2/28/2005]

11.21.2.25 PRE-ELECTION CONFERENCE: At a reasonable time at least 15 days before the election, the director shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual, electronic, or mail ballots the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The director shall notify all parties by mail (and email if available) of the time and place of the pre-election conference, at least five days in advance of the conference. The conference may proceed in the absence of any party.

A. The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) and the use of manual, mail or electronic participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.

B. The parties may stipulate to a consent election agreement without the necessity of a pre-election conference subject to approval of its terms by the director, in which case the requirement for a pre-election conference shall be waived.

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

11.21.2.26 NOTICE OF ELECTION:

A. The director shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Section 25 above, no later than 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 director shall provide a sufficient number of copies of the notice of election to each employer whose employees are eligible to vote so that the employer may 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 10 days before the election and shall take reasonable measure to assure that they are not removed, covered, altered or defaced.

[11.21.2.26 NMAC - N, 3/15/2004]

11.21.2.27 BALLOTS AND VOTING:

A. All voting shall be by secret ballot prepared by the director, position on the ballot shall be determined randomly. Ballots in an initial election shall include a choice of "no representation."

B. All elections shall be conducted by the director, whether electronically, by mail in ballots or on-site elections, subject to the provisions of 11.21.1.28 NMAC regarding the director's authority to delegate duties.

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

D. Public employers whose employees are eligible to vote in an election shall allow their 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 on public employers an obligation to change the work schedules of employees to accommodate voting hours.

[11.21.2.27 NMAC - N, 3/15/2004; A, 2/11/2020; A, 7/1/2020]

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

[11.21.2.28 NMAC - N, 3/15/2004]

11.21.2.29 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 director has complete discretion to determine the number of observers. Observers shall not be supervisory or managerial employees or labor organization employees. However, representatives of the parties in addition to the observers may observe the counting of ballots.

[11.21.2.29 NMAC - N, 3/15/2004]

11.21.2.30 CHALLENGED BALLOTS:

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

B. The director shall furnish “challenge envelopes.” On the outside of each challenge envelope, the director 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 director 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 other 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 director 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 15 days of the election. Any party may request board review of the director’s report, following the procedures set forth in Section 22 above.

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

[11.21.2.30 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.2.31 TALLY OF BALLOTS: Immediately following the counting of ballots, the election supervisor 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 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 of the employees in the unit voted, or that the choice of “no representation” received fifty percent or more of the valid votes cast, then the tally shall reflect that no collective bargaining representation was selected.

[11.21.2.31 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.2.32 RUN-OFF ELECTIONS: In an election where there are three or more choices on the ballot, if no ballot choice receives a majority of the valid votes cast, and at least forty percent of eligible voters voted, the director 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 15 day statutory period following completion of the initial election.

[11.21.2.32 NMAC - N, 3/15/2004]

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, 7/26/2022]

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, 7/26/2022]

11.21.2.35 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 director shall dismiss such a petition within 30 days of its filing if the director determines that it raises a question concerning representation and the petitioner may proceed otherwise under these rules. If the director finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within 30 days of the filing of the petition. The director's decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above.

[11.21.2.35 NMAC - N, 3/15/2004; A, 2/28/2005]

11.21.2.36 CERTIFICATION OF INCUMBENT BARGAINING REPRESENTATIVE STATUS: A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit. Such recognition shall not be affected by a local labor board ceasing to exist pursuant to Section 10-7E-10 NMSA 1978 (2020). Such labor organization may petition for declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978 (2003).

[11.21.2.36 NMAC - N, 3/15/2004; A, 7/1/2020]

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 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]

11.21.2.38 ACCRETION:

A. The exclusive representative of an existing collective bargaining unit, 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 community of interest with the employees in the existing unit, and whose inclusion in the existing unit would not render that unit inappropriate.

B. If the number of employees in the group sought to be accreted is less than ten percent of the number of employees in the existing unit, the board shall presume that their inclusion does not raise a question concerning representation requiring an election, and the petitioner may proceed by filing a unit clarification petition under these rules. Such a unit clarification petition to be processed, must be accompanied by a showing of interest demonstrating that no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit. No group of employees may be accreted to an existing unit without an election if the board determines that such group would constitute a separate appropriate bargaining unit.

C. If the number of employees in the group sought to be accreted is greater than ten percent of the number of employees in the existing unit, the board shall presume that their inclusion raises a question concerning representation, and the petitioner may proceed only 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 no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

[11.21.2.38 NMAC - N, 3/15/2004; A, 2/28/2005]

11.21.2.39 VOLUNTARY RECOGNITION:

A. A labor organization representing the majority of employees in an appropriate collective bargaining unit and a public 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 in accordance with the procedures of Section 11, above.

B. Prior to board approval of any voluntary recognition, the director shall post notice of filing of petition in the manner provided for in Section 15, above. The director shall also give notice to any individuals or labor organizations that register with the director to be informed of such petitions.

C. If an intervenor does not file a petition for intervention within 10 days then the board shall consider the petition for approval of the voluntary recognition if accompanied by 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 pursuant to Section 16 above, within the 10 day time period, then the board may not approve a voluntary recognition, and the director shall proceed in the manner set forth for representation petitions as provided in Section 10 to 14 and 17 to 34 above.

[11.21.2.39 NMAC - N, 3/15/2004; A, 2/28/2005; A, 2/11/2020]]

11.21.2.40 PETITION WITHDRAWAL: The petitioner in a representation proceeding may request permission of the director to withdraw the petition at any time prior to an initial election. The director has discretion to grant or deny a withdrawal request only after soliciting the positions of all parties.

[11.21.2.40 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.2.41 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 10-7E-13 NMSA from an existing unit for the purpose of forming a separate, appropriate unit. It must be accompanied by a thirty percent showing of interest among the employees in the petitioned-for unit. It may be filed no earlier than 90 days and no later than 60 days before the expiration date of a collective bargaining agreement or may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

[11.21.2.41 NMAC - N, 3/15/2004]

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, 7/26/2022]

History of 11.21.2 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 2, Representation Proceedings, filed 3/18/1993.

History of Repealed Material: 11 NMAC 21.2, Representation Proceedings (filed 6/24/1996), repealed as a result of the internal duration of rule, stated as 7/1/1999.

Other History:

PELRB 2, Representation Proceedings, filed 3/18/1993 was renumbered and replaced by 11 NMAC 21.2, Representation Proceedings, filed 6/24/1996.

11 NMAC 21.2, Representation Proceedings, filed 6/24/1996, was replaced by 11.21.2 NMAC, Representation Proceedings, effective 3/15/2004.