

**DOÑA ANA COUNTY
LABOR/MANAGEMENT RELATIONS BOARD**

RULES AND REGULATIONS

I. GENERAL PROVISIONS

1.1 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. When the last day of the period falls on a Saturday, Sunday, or legal holiday, then the last day for taking action shall be the following business day. A party seeking an extension of time in which to file any required or permitted document may file with the Board a written request for an extension. Such a request shall be filed at least three (3) working 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 may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

1.2 Filing with the Board. To file a document with the Board, the document may be sent by United States Mail, facsimile or hand-delivered to the Dona Ana County Clerk during regular business hours at 845 N. Motel Blvd., Las Cruces, New Mexico 88007, at which time the County Clerk or representative of the Clerk will date and time stamp document. A receipt will be given to the individual that hand-delivered the document, or sent it by United States Mail, return receipt requested. A document will be deemed filed when it is received by the County Clerk and date and time stamped. Documents sent to the Board care of the County Clerk via facsimile ("fax") transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent. Service of process for the initial commencement of a case, charge or action may be made upon the responding party by personal delivery or by depositing in United States Mail, return receipt requested. Prohibited practice charges shall be filed with the Board within ninety (90) calendar days of the commission or omission of the action that generated the charges. The ninety (90) calendar days shall be extended to the next working day should the 90th calendar day fall on a weekend or holiday. Charges filed beyond the time limit are not timely and will not be heard by the Board.

1.3 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 representative must comply with the time filing requirements outlined in Paragraph 1.2 Filing with the Board. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

1.4 Ex Parte Communications. Except as otherwise provided in this rule no party shall attempt to influence a hearing officer assigned to a case, or a Board member, concerning any issue in the case. The Board is a neutral body and shall not act as an agent or advocate of any party who has an issue before the Board. 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 in 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 or a representation, prohibited practices, or impasse resolution proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rule-making proceeding of the Board, or to communicate with a mediator, arbitrator, or Board member at the mediator, arbitrator, or Board member's request.

1.5 Disqualification. No Board agent (hearing officer) 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.

1.6 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.

1.7 Records of Proceedings. All meetings of the Board (whether general, special, or emergency) and all rule making, unit determination, and prohibited practice hearings before the Board or hearing officer of the Board shall be audio-recorded, or, upon order of the Board may be transcribed, except that Board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the Board. The County Clerk shall keep the audio tapes of rule making, unit determination, and prohibited practices hearings as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials. The Board's recording or transcript shall be the only official record of a hearing and shall be maintained for three (3) years after the hearing is concluded.

1.8 The Board authorizes its Staff Liason appointed by the County on its behalf to schedule hearings, and meeting meetings, draft agenda, publish notices, issue subpoenas and otherwise to perform clerical matters on behalf of the Board.

1.9 Notice of Hearing.

(a) Upon setting a hearing in a representation or prohibited practices matter the Board shall cause 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 certified mail, return receipt requested, at least fifteen (15) working days prior to the commencement of the hearing.

(b) Upon setting a rule making hearing, the Board shall cause a notice of hearing to be issued setting forth the nature of the rule making 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 rule making hearings shall be sent to all parties that request notice of such hearings and shall be published in a newspaper of general circulation in the Doña Ana County at least fifteen (15) working 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) working days before the commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Only in extraordinary circumstances, as determined by the Board, may the Board grant a request for postponement made less than five (5) working days prior to a scheduled hearing. Upon good cause shown, the Board shall grant a postponement to a date no more than thirty (30) working days later than the previously set hearing date. Only in extraordinary circumstances, as

determined by the Board, may the Board grant a further postponement, or a postponement to a date more than thirty (30) working days after the previously set date.

1.10 Evidence Admissible.

(a) The Board shall be the final authority concerning admission of evidence. The technical rules of evidence shall not apply but evidence of a type commonly relied upon by reasonable, prudent persons in the conduct of their serious affairs shall be admissible at hearings.

(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 and approved by the Board.

(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.

(e) The Board may consult with Board Counsel on selected issues concerning admission of evidence.

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

1.12 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 and be submitted to the Board no later than five (5) working days before the hearing. The request shall 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 shall immediately issue a subpoena to the requesting party.

(b) The Board issue subpoenas on its 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, but no later than during the hearing. If filed before the hearing, the motion to quash shall be filed with the hearing officer or body.

(d) Applicable witness and travel fees shall be the responsibility of the subpoenaing party.

1.13 Exchange of Documents and Lists of Witnesses. No later than five (5) working 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 1.12 (Subpoenas) or as a specific order of the Board upon good cause shown. Late submission of the above will not be accepted by the Board.

1.14 Ownership and Confidentiality of Showing of Interest. Evidence of a showing of interest 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; and shall be kept confidential by the Board; and shall be returned to the party that submitted the same within twenty (20) working days after the close of the case.

1.15 Burden of Proof.

(a) Representation Hearings: Except in unit clarification proceedings, no party shall have the burden of proof in a representation proceeding. 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. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

(b) Prohibited Practice Hearings: 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.

1.16 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 five (5) working 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) working days after service of the motion.

1.17 Service. Service of papers upon parties, who have filed a signed notice of appearance with the Board, may be made by personal delivery, by depositing in United States Mail (First Class), by facsimile transmission or by email and, by the next scheduled work day after sending a fax, or email either personally delivering the document or depositing it in first class mail, in which case the date of the "fax" or email transmission shall be the date of service. Each document served shall be accompanied by a signed certification stating the name and address of each person served and the date and method of service. The certification may be placed in the document served.

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

1.19 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 the Case Number at the top of each page.

1.20 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 forty-five (45) working days.

1.21 Publication of Board Decisions. At the times and in the manner prescribed by the Board, the Board shall make copies of Board decisions available to the public.

1.22 Time Limits for Board Actions. Whenever these rules set forth a period of time within which the Board must take action the Board may for good cause extend for a reasonable time not to exceed twenty (20) working days for each extension the date by which such action must be taken.

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, job classifications, and estimated numbers 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; and a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge. 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) working days of the filing of a petition, the Chairman shall cause notice of the filing of the petition to be posted in a manner conspicuous to the affected employees.

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 two-hundred and seventy (270) calendar days 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) working days of the filing of a representation petition, the Board shall, by letter, request the public employer involved and any incumbent labor organization, delineate 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) working days of the filing of a representation petition, the Board shall request from the public employer a current list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate. The public employer shall be instructed to file such list within ten (10) working 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 shall investigate the petition. The Doña Ana County Human Resources staff shall provide assistance to the Board in this process. The cards shall remain confidential. The investigation shall include the following steps and shall be completed within twenty (20) working days of the filing of the petition.

(a) The Board shall check the showing of interest (if applicable) against the list of eligible employees in the proposed unit filed by the public employer to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth in these rules, they shall be presumed valid unless the 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 2.13, and shall explain in writing the basis of the dismissal.

(b) The Board 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 Notice of filing of Petition. Unless the Board has determined that there is need for a representation hearing pursuant to Rule 2.11, then within ten (10) working days of receipt of a eligible employee list from the employer, 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 2.8, 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) working days.

2.8 Intervention.

(a) At any time within ten (10) working 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.

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

2.10 Notice of Hearing. In the absence of a consent election agreement, the Board shall issue a notice of hearing within thirty (30) working days of the posting of the notice of filing of petition. A hearing concerning unit composition, where the parties are in dispute on that issue, shall be set

for a date not later than thirty (30) working days following the Board's notice of hearing or the Board's receipt of notice of the dispute, whichever is sooner.

2.11 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's 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 2.16.

(c) The Board may examine witnesses, call witnesses, and call for the introduction of documents.

2.12 Briefs. Post-hearing briefs may be required at the discretion of the Board or upon the request of either party to a proceeding.

2.13 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) working 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 Board's reasoning.

2.14 Opportunity to Present Further Showing of Interest.

A. When the Board finds that the petitioner or an intervener has submitted an insufficient showing of interest in the unit petitioned for, the Board shall notify the petitioner or intervener, and that party shall have the opportunity to submit an additional showing of interest within ten (10) working days. The Board 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 that the showing of interest filed by the petitioner or an intervener is insufficient in the unit found appropriate, the Board shall notify the petitioner or intervener 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.

2.15 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 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 Election Supervisor. Such a request must be received by the Board at least ten (10) working days before the election, in which case the Board, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the Election Supervisor by mail. To be counted, an absentee ballot must be received by the Election Supervisor by 5:00 p.m. local time on the day of the election. The Election Supervisor shall establish procedures to permit an absentee ballot to be challenged.

(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) working 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 2.21 below.

2.16 Pre-Election Conference. At a reasonable time at least fifteen (15) working 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 shall notify all parties of the time of place of the pre-election conference, at least ten (10) working days in advance of the conference. The conference may proceed in the absence of any party. The Board or it's 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 or both, and the hours of voting, the primary criterion shall be an attempt 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.

2.17 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 2.16 above, no later than ten (10) working 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 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 ten (10) working days before the election and shall take reasonable measures to assure that they are not removed, covered, altered, or defaced.

2.18 Ballots and Voting.

(a) All voting shall be by secret ballot approved by the Board. 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 Board or its agent.

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

(d) Employees in the voting unit shall be allowed sufficient time to cast their ballots. This rule does not impose on the employers an obligation to change the work schedule of employees to accommodate voting hours.

2.19 Electioneering. No electioneering shall be permitted within 100 feet of any building in which balloting is taking place.

2.20 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. Representatives of the parties in addition to the observers may observe the counting of the ballots. Observers shall not be supervisors or managers of the bargaining unit employees, labor organization employees, or labor organization officers.

2.21 Challenged Ballots.

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

(b) The Board or election supervisor shall furnish "challenge envelopes". On the outside of each challenge envelope, the Board or election supervisor 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 election supervisor 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 election supervisor 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) working days of the election. Any party may request Board review of the Election Supervisor's report.

(f) Following resolution of determinative challenged ballots, the Board or election supervisor 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.

2.22 Tally of Ballots. Immediately following the counting of ballots, the Board or 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 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 50% +1 or more of the valid votes cast, then the tally shall reflect that no collective bargaining representative was selected.

2.23 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) working day policy period following completion of the initial election.

2.24 Certification. If no objections are filed pursuant to Rule 2.25, below, then within ten (10) working 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.

2.25 Objections. Within five (5) working 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 twenty (20) working days of the filing of such objections. The hearing shall follow the same procedures set forth in Rule 2.10, Rule 2.11, 2.12, and 2.13 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. The Board may order a new election to be held. 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 re-run election.

2.26 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 twenty (20) working 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 twenty (20) working days of filing of the amendment of certification.

2.27 Majority Status Showing. Pursuant to Section 10-7E-24 NMSA, of the Public Employee Bargaining Act, an incumbent labor organization must demonstrate that it holds majority support (50% +1) of the bargaining unit prior to entering into collective bargaining with the employer. The public employer shall decide whether majority support will be demonstrated by a card count or a secret ballot election upon the filing of a Petition for Recognition and Demonstration of Majority Support by the incumbent labor organization. If the employer chooses

a secret ballot election, the election shall be conducted in accordance with Section 11 of the Doña Ana County Ordinance, however, a majority (50% +1) of the appropriate bargaining unit must vote in favor of continuing representation by the incumbent labor organization for representation rights. Failure to obtain majority status shall constitute decertification of the incumbent labor organization.

2.28 Unit Clarification.

(a) Either the exclusive representative or the employer may file with the Board a petition for unit clarification 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, or a merger or realignment has occurred of previously existing bargaining units represented by the same labor organization.

(b) Upon the filing of a petition for unit clarification, the Board shall set the matter for a hearing within twenty (20) working 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 twenty (20) working days of the hearing clarifying the unit.

2.29 Accretion.

(a) If the exclusive representative of an existing collective bargaining unit and the employer are unable to reach agreement on an accretion, either party 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 (10%) 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 must be accompanied by a showing of interest demonstrating that no less than 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.

(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 shall 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 no less than 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. Alternatively, the employer may voluntarily recognize the employees in the group sought to be accreted as part of the existing unit. In such case, the petition must be accompanied by a showing of interest demonstrating that no less than a majority 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.

2.30 Voluntary Recognition.

(a) A labor organization representing majority support of employees in an appropriate collective bargaining unit and the County, 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.

(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) working 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 stipulation between the parties in regard to voluntary recognition as final and binding. 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 units 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) working days time period, then the Board may not approve a voluntary recognition and shall proceed in the manner set forth for representation proceedings.

2.31 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 Doña Ana County Ordinance, from an existing unit made up of two (2) or more occupational groups for the purpose of forming a consolidated appropriate bargaining unit. In no case shall it be appropriate to sever a portion of an occupational

group for consolidation into another 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 ninety (90) calendar days and no later than sixty (60) calendar 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.

2.32 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.

III. PROHIBITED PRACTICES PROCEEDINGS

3.1 Commencement of Case. 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 ordinance 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.

3.2 Limitations Period. Any complaint filed more than ninety (90) calendar days following the conduct claimed to violate the ordinance, or more than ninety (90) calendar days after the complainant either discovered, or reasonably should have discovered the conduct, shall be dismissed.

3.3 Filing of Answer. Within twenty (20) working 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.

3.4 Default Determination. If a respondent fails to file a timely answer, or a complainant fails to respond to a request by the Board or fails to file a response to a motion, 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.

3.5 Notice of Hearing. The Board shall set a hearing and serve a notice of hearing upon all parties within twenty (20) working days of the filing of the complaint. The hearing shall be scheduled within forty (40) working calendar days of the filing of the complaint. The complaint may be settled by the parties at any time prior to the hearing.

3.6 Prohibited Practices Hearings. The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. The Board's hearings and decisions shall be on the record. The Board shall have the authority to administer oaths, subpoena witnesses and compel the production of documents as it deems necessary to the conduct of its proceedings and its subpoenas shall be enforceable in District Court.

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

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

3.9 Relief from Prohibited Practices Determination. A party may move to set aside a default determination entered against it within twenty (20) working 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 twenty (20) working days of the filing of such motion, the Board shall order such further proceeding as it deems appropriate. The failure to act within twenty (20) working days after the filing of such motion shall constitute a denial of the motion.

On November 18, 2004, the Dona Ana County Labor Management Relations Board approved the Dona Ana County Labor Management Relations Board Rules and Regulations. The Board by vote at its meeting(s) on October 24, 2007 and April 5, 2010 updated these rules and regulations which superseded the previous rules and regulations. The Board at its meeting on June 18, 2012 voted and hereby updates these rules and regulations and they shall supercede the previous rules and regulations. The effective date of the updated Dona Ana County Labor Management Relations Board Rules and Regulations is June 18, 2012.

**DOÑA ANA COUNTY
LABOR/MANAGEMENT RELATIONS BOARD**

PASSED, ADOPTED, AND APPROVED this 18th day of June 2012, by the
Labor/Management Relations Board.


Richard Purcella, Chairman

Absent
Anthony F. Avallone, Vice-Chairman


Ferrin Rubio, Member

Attest:


Lynn Ellins, Dona Ana County Clerk