

LABOR-MANAGEMENT RELATIONS BOARD  
RULES AND REGULATIONS

**PROPOSED AMENDMENTS based on comments received during and prior to the Board’s Rulemaking Meeting convened on January 8, 2018.**

- **The Board’s draft Proposed Amendments to the Rules as stated herein supersede the Board’s prior proposed amendments, and may be referred to as the “January 8<sup>th</sup> Draft Amendments.”**
- **At the Rulemaking Meeting held on February 9, 2018, at 9:00 a.m., the Board began reviewing the January 8<sup>th</sup> Draft Amendments at “4.12, Deadlines and Scheduling Orders” and the discussion and commentary ended with Section 4.19.**
- **At the April 11, 2018 Rulemaking Meeting, interested parties should be prepared to 1) continue reviewing these January 8<sup>th</sup> Draft Amendments beginning at Section 4.19 and through the end of this document, and 2) present arguments and answer questions specifically in response to the proposed amendment to Section 4.19(c) regarding the burden of proof in “just cause” matters.**

**1 PURPOSE**

**1.1** Statement of Purpose. The purpose of these ~~rules~~ Rules and Regulations (hereinafter the Rules) promulgated by the Labor-Management Relations Board (hereinafter the Board) is to implement and clarify the City of Albuquerque Labor-Management Relations Ordinance (Sec. 3-2-1 et seq., ROA 1994) and to establish fair and expeditious procedures that further the purposes of that Ordinance, which are: (1) to guarantee public employees the right to organize and bargain collectively with the employers; (2) to promote harmonious and cooperative relationships between public employers and public employees; and (3) to protect the public interest by assuring, at all times, the orderly and uninterrupted operation and functions of the City government. These ~~rules~~ Rules should be interpreted consistently with the Labor-Management Relations Ordinance (hereinafter the Ordinance) as presently written or as later amended. In the event of any conflict or inconsistency, the language of the Ordinance shall control. These rules shall be construed and administered to favor that matters be heard on the merits and to secure the just, speedy and inexpensive determination of every action.

**1.2** Authority. These ~~rules~~ Rules are enacted by the Board pursuant to powers stated in Sections ~~3-2-10(A) -2~~ and 2-6-1-4(C)(l), ROA 1994. A current version of these ~~rules~~

Rules shall be maintained at the offices of the Clerk of the City of Albuquerque. The Board shall have plenary authority to issue scheduling and other orders in all pending matters sua sponte or in its discretion in response to a motion or other request for leave of the Board. The Board may impose fines and other sanctions which it deems appropriate for any failure to comply with these Rules and its orders. Any fines assessed by the Board shall be paid by the fined party to the other party, unless the Board concludes otherwise in its ruling.

- 1.3 Effective Date. These Rules shall be in effect on the date approved by majority of a quorum of the Board.
- 1.4 Title and Citation. Citation to the Rules shall be in the in the format of “LMRB Rules, Sec. 1.4,” for example, to cite this Section of the Rules.
- 1.5 Application of the Rules. The Rules last enacted by the Board shall supersede all previously enacted Rules and shall govern all actions a) filed on or after the date of enactment and b) pending on the date of enactment prospectively.
- 1.6 Computation of time and dates. All days referenced in these Rules are calendar days, i.e. include weekends and holidays. The Board may impose deadlines in its rulings and orders, and in the absence of a specific date, calendar days shall be considered to be the default calculation unless otherwise specified on the record. If a deadline date falls on a weekend or city holiday, the next work day will be the deadline.
- 1.7 Rules of Construction: The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. Sec. 3-2-10(A), ROA 1994. Where the Rules and the Ordinance are silent, the Rules of Civil Procedure for the District Courts of the State of New Mexico and the Local Rules of Second Judicial District Court and case law annotations may be instructive and considered by the Board.

## 2 NOTICE

- 2.1 General Notice/Meeting Requirements. At the first meeting, after these ~~rules~~ Rules and regulations are adopted, and each year thereafter, at the first meeting of the reconstituted Labor Management Relations Board (Board), the Board shall pass a resolution determining the schedule ~~and reasonable public notice~~ of Board meetings. Notice of all Board Meetings, including regular and rescheduled meetings, shall be at least seventy-two (72) hours in advance and posted on the City Clerk website. For the purposes of regular meetings, notice requirements are met if notice of the date, time, place and agenda, containing a list of

specific items of business to be discussed or transacted at the meeting, is posted in the lobby on the first floor of the Albuquerque/Bernalillo County government Center, Albuquerque, New Mexico and by informing the public how to obtain a copy of the agenda and on the City Clerk website. NMSA 1978, Sec. 10-15-1(F) and Sec. 2-6-1-4(B)(2), ROA 1994.

2.2 Rulemaking Meetings. Rulemaking procedures shall be followed pursuant to Sec. 2-6-1-4(C), ROA 1994. Notice of the Board's intention to consider the adoption or amendment of a rule or regulation shall be given by posting in the lobby of City Hall, posting notice electronically on the City Clerk's web site dedicated to the schedule of rule-making hearings and meetings of public boards, commissions and committees and by giving written notice to the Mayor and the Chief Administrative Officer. All such notices shall be given at least fourteen (14) days prior to the meeting at which the proposed rule or regulation will be considered. All such notices shall state the time and location of the meeting, contain a brief description of the proposed rule or regulation, and include the full text of the proposed rule or regulation on the City Clerk's website.

2.3 Open Meetings. All meetings of a quorum of the Board shall be open to the public. The Board may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1(H) of the State of New Mexico Open Meetings Act.

### **3 QUORUM**

3.1 All three members of the Board are required to be present to constitute a quorum.

### **4 HEARINGS**

4.1 Record of Proceedings. All meetings of the Board shall be audio-recorded. The Board shall keep audio tapes of rulemaking, unit determination, and prohibited practices hearings for period of at least three years following the close of the proceeding in which the hearing is held, or three years following the close of the last judicial or Board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. Minutes of Board meetings shall be permanent records and shall be maintained in the City Clerk's office. The Board shall keep written minutes including date, time, place, name of members present, the substance of proposal matters considered, and a record of any decisions and votes. Draft Minutes must be prepared within ten working

days after the meeting. NMSA 1978, Sec. 10-15-1(G). Official (Board-approved) Minutes shall be posted on the City Clerk website. Sec. 2-6-1-4(B)(3), ROA 1994.

- 4.2 Notice to Parties. The Board secretary shall provide to each party notice of the date time and place of all scheduled hearings.
- 4.3 Representation of a Party. A party may represent himself or be represented by counsel or other representative. Any representative of a party shall file with the Board a signed notice of appearance, stating the name of the party, the title and case number in which the representative is representing the party, and the name, address, and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement. All individuals who appear before the Board shall conduct themselves with civility and a respectful demeanor and comply with the Board's procedures and orders.
- 4.4 Ex Parte Communications. Parties shall not attempt to contact Board members in the absence of, or without the knowledge of, the opposing party.
- 4.5 Complaints. Prohibited practices, or any other complaint filed with the Board under the LMRO, must provide enough information that the Board and responding party can understand what the alleged violation is and how it happened. If applicable, the prohibited practice or complaint must include: (1) individuals or entities involved; (2) time and place of any incident; and (3) the actions or inactions the alleged violation is based on. A prohibited practice or other complaint pursuant to the Ordinance must state sufficient facts to ascertain the specific manner in which each alleged violation took place, and if applicable to including the individuals and entities involved, times and locations of incidents, and actions or inactions supporting the allegations in relation to the Ordinance or collective bargaining agreement. A complaint or allegation is insufficient which merely states or paraphrases a prohibited practice listed in the Ordinance or a type of cause of action. Multiple violations alleged in a single complaint shall should be enumerated numbered .
- 4.6 Answers. A responding party is required to file its answer to a prohibited practice complaint and serve the opposing party within five (5) working days pursuant to Sec. 3-2-9(D). The respondent must answer each of the enumerated allegations in a complaint, details of which may be included in an amended answer filed in detail no later than thirty (30) days after the complaint was filed.

- 4.7 Motion for More Definite Statement. If a complaint or other pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he or she the responding party may move for a more definite statement before interposing and filing his or her a responsive pleading. A complaint or allegation is insufficient which merely states or paraphrases a prohibited practice listed in the Ordinance or a type of cause of action. The Any party may file a motion which shall point out the defects complained of and the details desired to request a more definitive answer to a complaint. Amendments to pleadings are favored, and the right thereto should be liberally permitted in the furtherance of justice. If the motion is granted and the by order of the Board, the amended complaint shall be filed within thirty (30) days unless the Board concludes otherwise. In the event of failure to comply with the order of the Board is not obeyed within tenthirty (1030) days after notice of the order or within other such time as the Board may fix, the Board may strike the pleading to which the motion was directed or make such order as it deems just. (Adopted from the New Mexico Rules of Civil Procedure for the District Courts, Rule 12(E).)
- 4.8 Conference of the Parties and proposed stipulated Scheduling Orders. The parties shall meet within forty –five (45) days of the filing of the complaint to confer and prepare a statement of the issues, stipulated facts and disputed facts to be submitted to the Board and a proposed scheduling Order in the form attached as Appendix A to these Rules. If a settlement agreement is reached, the parties shall prepare and submit a proposed Order of Dismissal to the Board. If settlement negotiations are ongoing and the parties wish for a reprieve at any time, the parties shall submit a stipulated request to stay the proceedings. Any party may submit to the Board a request a request for a Pre-Hearing scheduling conference or a hearing on the merits.
- 4.9 Discovery. The parties shall have a right to discovery limited to ten (10) interrogatories, ten (10) requests for production, and ten (10) requests for admission. No additional discovery shall be allowed except by order of the Board. Upon written request by any party, the Board shall may order either party to produce for inspection and copying any relevant records, papers, documents or other tangible evidence in the possession of or available to that party. The parties shall have a right to discovery limited to depositions, ten (10) interrogatories, ten (10) requests for production, and ten (10) requests for admission. No additional discovery shall be allowed except by order

of the Board. A party responding Responses or objections to discovery shall be allowed served within thirty (30) days to object or respond to of receipt of any discovery requests. Disputes regarding discovery requests shall be decided by the Board. Failure to comply with discovery orders ~~shall~~ may result in sanctions proportional to the offense, including, but not limited to, limitation of defense and dismissal of action. Any fines imposed to the Board in relation to failure to comply with discovery orders shall be paid to the opposing party.

**4.10** Consolidation, and Joinder and Bifurcation. The Board may consolidate or join or bifurcate separate cases for any reason if it would expedite final resolution of the cases and would not adversely affect the interests of any of the parties.

**4.11** Motions and Pleadings Standards. All motions, including responses and replies, except motions made during a hearing, or as may be permitted by the Board, shall be in writing and shall state with particularity the grounds and the relief sought. Allegations in pleadings must include a statement of specific facts in support of the allegations. Allegations in pleadings must include a statement of specific facts in support of the allegations. A claim for relief that may include conclusory statements if supported by factual allegations, but must contain short statement of factual allegations supporting the complaint and if filed on behalf of an employee identify the affected employee.

**4.12**

**4.13** Deadlines and Scheduling Orders. The Board shall set deadlines for discovery and all dispositive and non-dispositive motions and responses in a scheduling order.

a) **Non-Dispositive Motions.** Any non-dispositive defense, objection, or request that can be determined prior to the hearing on the merits may be raised by filing a written motion at least fifteen calendar days prior to the hearing on the merits. Any response to such motion shall be filed within ten calendar days after the filing of the motion. The Board shall rule on all non-dispositive motions as soon as practicable

b) **Dispositive Motions.** Any motion that raises an issue that may be dispositive of the case shall be filed at least within sixty (60) days prior to the hearing on the merits of the filing of the answer to the complaint or within (30) days of receipt of discovery responses served or ordered, except that jurisdictional motions may be filed at any time.

c) **Motion Responses.** Any response to a dispositive motion shall be filed within fifteen (15) days of the dispositive motion. If a party fails to file a response within the prescribed time period the Board may rule with or without a hearing. The parties may

stipulate to extensions and file a Notice of extension of the deadlines to the Board. Reply briefs shall only be permitted upon an agreement between the parties or by leave from the Board.

4.14 Motion Page Limits. Motions shall not exceed fifteen (15) pages in length and responses (10) pages without consent of the opposing party or leave of the Board

4.15 Motions to Extend Deadlines Imposed under Rule or Order. The Board may grant an extension to a moving party upon a finding of good cause for an extension prior to the expiration of the deadline. When a deadline has expired, an extension may be granted only upon a Board finding of excusable neglect. The terms good cause and excusable neglect may be construed under state or federal case law

4.16 Attachments and Exhibit Page Limits. Any attachments or exhibits to a motion shall be limited to fifty (50) pages except by agreement of the parties or by leave from the Board.

4.17 Witnesses and Exhibits.

a) All witnesses must be identified in writing to the Board and the opposing party at least ~~five~~ fifteen (15) calendar days prior to the hearing. Witnesses not designated in accordance herewith shall not be permitted to testify except at the discretion of the Board for good cause shown.

b) City employees who would otherwise be on duty that are designated by either party shall be relieved from their normal duties for a period of time necessary to appear at scheduled hearings and testify ~~party shall appear at scheduled hearings and shall be relieved from their normal duties for a period of time necessary to testify.~~ The issuance of a subpoena for the appearance of city employees to testify during normal work hours is not required. If a City employee would not otherwise be on duty (e.g. would be on vacation or not work etc.), the party calling that witness is responsible for assuring the witness's appearance or obtaining an appropriate subpoena from the Board.

c) Each party is responsible for contacting its own witnesses in advance of any hearing and notifying them of the time they must appear to testify. The Board shall not grant a continuance request based on the absence of witnesses at any hearing, except at the discretion of the Board for good cause shown.

d) The parties shall identify any and all Exhibits they intend to offer at any merits hearing at least fifteen (15) calendar days prior to the hearing by submitting a list of exhibits to the Board and the opposing Party. Exhibits not identified in accordance herewith shall

be not permitted or allowed into evidence except at the discretion of the Board for good cause shown.

- e) The parties shall exchange exhibits at least ten (10) calendar days prior to any scheduled merits hearing.

#### **4.18 Subpoenas**

- a) Any party to a proceeding in which a notice of hearing has 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 and number of the case and be submitted to the Board no later than ten days before the hearing. The request shall identify the person(s) or documents sought and state the general relevance to an issue in the case of the testimony or documents sought. The Board may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears that the documents or testimony sought are not relevant to issues in the case.
- b) The Board may issue subpoenas on its own initiative, in which case a showing of relevance is not required, and a notice of hearing need not have been issued.
- c) Any applicable witness and travel fees and costs associated with service of process shall be the responsibility of the party requesting the subpoena. The Board may require these fees and costs be presented in advance of the issuance of any subpoena.

**4.19 Evidence Admissible.** In general, ~~Hearings~~ hearings shall operate in accordance with the ~~New Mexico case~~ common-law evidentiary standards applicable to administrative hearings. Hearings shall be conducted in an orderly and informal manner without strict adherence to the technical rules of evidence required in judicial proceedings, although the Board may take notice of and apply the New Mexico Rules of Evidence, Sections 11-101 to -1102 NMRA, as relevant and appropriate at its discretion. The Board may admit and give probative effect to any evidence, including affidavits, as the Board deems appropriate.

#### **4.20 Burden of Proof**

- a) No party shall have the burden of proof in a representation or fact-finding proceeding. The Board shall have the responsibility of developing a fully sufficient record for a determination to be made, and may request any party to present evidence or arguments in any order.



- b) In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.
- c) In any prohibited practices and just cause proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

#### 4.21 Decision

- a) Final Decision and Order. A final written decision by the Board shall be issued as soon as practicable. A copy of the Board's final decision shall be maintained at the offices of the Clerk of the City of Albuquerque. Copies shall also be sent via First Class mail to the parties...
- b) Reinstatement of Employment. In the event a Board decision orders an employee's reinstatement of employment, the employee shall be reinstated within ~~ten-thirty (1030)~~ calendar days of the date of the Board's decision. In the event the Board's order includes back pay, the employee shall provide the City with a sworn statement of gross earnings and unemployment compensation, and supporting documentation, received since the effective date of the dismissal. The City shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due. The City shall tender any back pay awarded to an employee within fourteen seven-(14) (7) calendar days of the date of receipt of the employee's sworn statement.
- c) Appeals. Any appeal of an adverse decision shall be in the ~~State-state~~ District Court within thirty (30) calendar days of the Board's decision and according to the New Mexico Rules of Civil Procedure. Ord. Sec. 3-2-10(D), ROA 1994.
- d) Reconsideration. A motion to reconsider must be filed within ten (10) days of the Board's written Final Decision and Order. A motion to reconsider does not toll the thirty (30) day appeal deadline and shall be deemed denied, unless the Board issues a subsequent written Decision and Order in response or an Order for briefing or a hearing on the matter within thirty (30) days of the Board's Final Decision and Order.

#### 4.22 Decorum.

- a) The Chair of the Board is responsible for the control and decorum of the hearing or proceeding. The Chair may limit any public comment to the Public Comments Section of the hearing or proceeding. The Chair may establish time limitations on speakers.
- b) The Board may exclude or expel from ~~the a~~ hearing or proceeding any person, whether or not a party, who engages in violent, threatening, disruptive, or unduly disrespectful

behavior. In the event of such exclusion or expulsion of a person for misconduct, the Board shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate.

- c) After notice and hearing, the Board may suspend from practice before the Board any person who engages in violent, threatening, disruptive, or unduly disrespectful behavior. Upon a majority vote of the Board, the suspension shall be ordered for a period of time determined by the Board.

4.23 Compensation of Board Members. The Board ~~may require~~shall be compensated for the costs of ~~hearings- hearing pursuant to provided for in Section~~ Sec. 3-2-14(E), ROA 1994. The City Clerk shall invoice the cost to the parties whenever the Board hears and decides any controversy between the parties. The Board may require costs to be paid in advance of any hearing.

4.24 Appointment of a Special Master: The Board may appoint a special master to advise and make recommendations on particular issues or to handle particular matters (e.g., dispositive motions) or to allow the parties to consent to a referral in order to expedite cases.

4.25 Voluntary Withdrawals of Complaints and Dismissals. A party may file a notice of voluntary withdrawal at any time. Dismissals may be filed by stipulation of the parties. The parties may file a notice of stay of proceedings for settlement negotiations and submit a stipulated dismissal pleading if a settlement agreement is reached. Voluntary withdrawals and dismissals shall be considered to be with prejudice by default.

5 **GENERAL RULES.** Any parliamentary procedural matter not covered by these ~~rules~~Rules shall be governed by Robert's Rules of Order (latest edition), or, if not covered by Robert's Rules of Order, by a decision of the Chair, subject to the right of appeal.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017 BY A VOTE OF:  
\_\_\_\_\_ FOR \_\_\_\_\_ AGAINST.

LABOR BOARD MEMBERS:

\_\_\_\_\_  
Theodore Baca

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Juan Montoya

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| Michael Wartell

Appendix A to the Labor-Management Relations Board Rules and Regulations

BEFORE THE CITY OF ALBUQUERQUE  
LABOR-MANAGEMENT RELATIONS BOARD

\_\_\_\_\_, Petitioner

\_\_\_\_\_, Defendant

SCHEDULING ORDER

Pursuant to the LMRB Rules, the court Board enters the following scheduling Order:

1. Motions to amend the pleadings or to join parties shall be filed by \_\_\_\_\_ (date).

2. Motions addressed to the pleadings shall be filed by \_\_\_\_\_ (date).

\*3. PlaintiffsPetitioner(s) shall file with the court a list of all lay witnesses who may be called to testify at trial by \_\_\_\_\_ (date).

\*4. Defendant(s) shall file with the court a list of all lay witnesses who may be called to testify at trial by \_\_\_\_\_ (date).

\*5. PlaintiffPetitioner(s) shall file with the court a list of all expert witnesses who may be called to testify at trial by \_\_\_\_\_ (date).

\*6. Defendant(s) shall file with the court a list of all expert witnesses who may be called to testify at trial by \_\_\_\_\_ (date).

7. Discovery shall be completed by \_\_\_\_\_ (date). Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably may comply with discovery requests prior to the deadline.

8. All other motions, except for motions in limine, shall be filed by \_\_\_\_\_  
(date).

\*9. All parties shall file with the courtBoard an exhibit list by \_\_\_\_\_ (date).  
The exhibit list shall state the reasonable place where such exhibits may be inspected and copied.

\*10. All parties shall file specific objections to other parties' proposed exhibits by  
\_\_\_\_\_ (date).

11. PlaintiffsPetitioner(s) shall submit their portions of a pretrial order to defendants by  
\_\_\_\_\_ (date).

Defendant(s) shall file the proposed final pretrial order with the court by \_\_\_\_\_  
(date).]

11. All parties shall file a final witness list by \_\_\_\_\_ (date). The final witness  
list shall list "will call" and "may call" witnesses and may include any witnesses listed on any  
party's earlier witness list but may not include additional witnesses except by leave of court or  
consent of all parties.]

11. [Proposed jury instructions shall be submitted to the court by \_\_\_\_\_  
(date).]

or

[Proposed findings of fact and conclusions of law shall be filed with the court by  
\_\_\_\_\_ (date).]

12. Motions in limine shall be filed by \_\_\_\_\_ (date).

13. Dates contained in paragraphs of this order marked with an asterisk (\*) may be modified by  
written agreement of all parties, without court approval. Only the courtBoard, for good cause,  
may change other dates.

14. This matter is set for [jury] [non-jury] trial merits hearing on \_\_\_\_\_ (date)  
[on a trailing docket].

IT IS SO ORDERED.

\_\_\_\_\_  
District Judge Board Chair

USE NOTE

1. Dates should be in consecutive order.

2. Dates should be calendar dates, not “ \_\_\_\_\_ days after entry of this order”, or “ \_\_\_\_\_ days before trial”.

3. Depending on the complexity of the case, the court may wish to use the paragraphs that are bracketed, which require submission of a pretrial report and final witness list.

4. This form may be adapted to local practice case needs. For example, the court may want to require settlement conferences or pretrial conferences, or may schedule docket calls, etc.

5. If a scheduling order is not appropriate, the court Board shall enter an order indicating that no scheduling order will be entered, indicating the reason, and shall set the case for trial merits hearing not later than eighteen (18) two (2) months after the filing of the complaint. Rule 1-016(B) NMRA.

[Modelled after the New Mexico Rules of Civil Procedure for the District Courts, Rule 1-016 NMRA, and Scheduling Order, 4-507 NMRA.]

History

[Approved, effective July 1, 2002.]