

# Chapter I: GENERAL PROVISIONS GOVERNING ALL CASES

## Section 1 – Definitions.

A. *Statutory definition:* The terms defined in Section 10-7E-4 NMSA 1978, shall have the meanings set forth therein.

B. *Additional definitions:* The following terms shall have the meanings set forth below.

(1) “Act” means the New Mexico Public Employee Bargaining Act, Sections 10-7E-1 through 10-7E-26 NMSA 1978 including any amendments to that statute.

(2) “Amendment of certification” means a procedure whereby an incumbent labor organization certified by the local board to represent a unit of employees or APS may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization.

(3) “APS” means the Board of Education for the Albuquerque Public Schools.

(4) “The board” means the Albuquerque Public Schools Labor Management Relations Board established pursuant to Section 10-7E-10 NMSA 1978 and Board of Education Resolution Relating to Collective Bargaining for the Albuquerque Public Schools, Providing Rights, Responsibilities, and Conditions of Continued Existence and Transfer of Authority upon Termination of Local Board.

(5) “Certification of incumbent bargaining status” shall mean a procedure whereby a labor organization recognized by APS as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978. or after a local board certifying the representative ceases to exist by operation of Section 10-7E-10 NMSA 1978 (2020).

(6) “Challenged ballot” means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the board.

(7) “Complainant” means an individual, labor organization, or APS representative that has filed a prohibited practices complaint.

(8) "Delivering a copy" as it pertains to service or filing of pleadings or other documents means: (1) handing it to the board, to its agent(s), to opposing counsel or unrepresented parties; (2) sending a copy by facsimile or electronic submission in accordance with Chapter I, Section 4 or Chapter I, Section 17 of these rules; (3) leaving it at the board's, opposing attorney's or party's office with a clerk or other person in charge thereof; or (4) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the unrepresented person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(9) “Document” means any writing, photograph, film, blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(10) “Electronic submission” means the filing of a pleading or other document with the board using the electronic system established by the Board, service by the parties, or email communications.

(11) “On a form prescribed by the Board” as used in these rules pertaining to the filing of documents with the board, shall include the electronic data submitted by use of any interactive form posted for that purpose on the board’s website.

(12) “Probationary employee” shall mean a probationary employee as defined by an applicable collective bargaining agreement.

(13) “Prohibited practice” means a violation of Section 10-7E-19, 10-7E- 20 NMSA 1978 or Subsection A of Section 10-7E-21 NMSA 1978.

(14) “Representation case” or “representation proceeding” means any matter in which a petition has been filed with the board or a board designee requesting a certification or decertification election, or an amendment of certification, or unit clarification.

(15) “Respondent” means a party against whom a prohibited practices complaint has been filed.

(16) “Rules” means the rules and regulations of the board (these rules), including any amendments to them.

(17) “Unit accretion” means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion will not render the existing unit inappropriate.

(18) “Unit clarification” means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope or description of an existing bargaining unit; a change in union affiliation; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to be an appropriate bargaining unit and no question concerning, representation arises.

(19) “Unit inclusions or exclusions” means the status of an individual, occupational group, or group of APS employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to APS employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

**Section 2 – 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 date 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. Saturday’s, Sundays and state recognized legal holidays observed in New Mexico shall not be counted when

computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday observed in New Mexico, then the last day for taking the action shall be the following business day.

**Section 3 – Extension of Time:** A party seeking an extension of time in which to file with the board, a designee or a hearing examiner any required or permitted document may file with board or the hearing examiner, an appropriate written request for an extension. Such a request shall be filed at least three days prior to the due date and shall state the position of all other parties, or that the filing party was unable to reach another party. The board or the hearing examiner may grant an extension for good cause shown and, in granting an extension, may shorten the time requested.

**Section 4 – Filing with the Board:** To file a document with the board, a board designee or a hearing examiner, the document may be either hand-delivered to the board’s office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by sending a copy by facsimile or electronic submission. The APS Director of Labor Relations will be responsible for recording the filing of documents to be filed with the board, a board designee or a hearing examiner.

A. **Time of filing:** A document will be deemed filed when it is received at the board’s office. For hand delivered or mailed documents the date and time stamp affixed by the receiving board agent will be determinative. For faxed or electronically transmitted documents the time and date affixed on the cover page or the document itself by the board’s facsimile machine or receiving computer will be determinative.

B. **Additional time after service by mail:** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

C. **Signatures:** Parties or their representatives filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document. All electronically filed documents shall be deemed to contain the filer’s signature. The signature in the electronic document may represent the original signature in the following ways:

- (1) by scanning or other electronic reproduction of the signature; or
- (2) by typing in the signature line the notation “/s/” followed by the name of the person who signed the original document.

D. **Demand for original:** A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile or electronic submission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

**Section 5 – Representation of a Party:** A party may, be self-represented 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 official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

**Section 6 – Ex Parte Communications:** Except as otherwise provided in this rule, no party to a proceeding pending before the board or any of its agents shall communicate, or attempt to communicate, with a hearing examiner assigned to the case or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with a mediator, or board member at the mediator's or board member's request.

**Section 7 – Disqualification:** No board agent, member nor hearing examiner 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 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.

**Section 8 – Motion to Disqualify:**

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

**Section 9 – Records of Proceedings:** All meetings of the board (whether general, special or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the board or a hearing examiner 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. Following the board's approval of the minutes of a meeting of the board, the minutes shall become the sole official record of the meeting, and the audio recording of the meeting may be erased. The APS Director of Labor Relations shall keep the audio recordings of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year 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. 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.

**Section 10 – Notice of Hearing:**

A. After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the board's designee shall hold a status and scheduling conference with

the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

B. Upon setting a rulemaking hearing, the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules. Notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in Albuquerque, New Mexico at least 30 days prior to commencement of the hearing.

C. Upon setting a hearing or conference before the board or designee in any proceeding, the board shall cause notice of hearing to be issued to all parties of record setting forth the time and place of the hearing or conference. A party to a representation, prohibited practices or impasse resolution case in which a hearing or conference is scheduled may request postponement of the hearing or conference by filing a written request with the board serving the request upon all other parties, at least five days before commencement of the hearing or conference. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the board shall grant a postponement to a date no more than 20 days after the previously set date. Only in extraordinary circumstances may the board grant a further postponement, or a postponement to a date more than 20 days after the previously set date, or a postponement with less than five days' notice.

**Section 11 – Evidence Admissible:** The technical rules of evidence shall not apply, but, in ruling of the admissibility of evidence, the hearing examiner or board may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

A. Irrelevant, immaterial, unreliable, unduly repetitious or cumulative evidence, and evidence protected by the rules of privilege (such as attorney-client, physician-patient or special privilege) should be excluded upon timely objection.

B. The hearing examiner or board may receive any evidence not objected to, or may, upon the hearing examiner's or board's own initiative, exclude such evidence if it is irrelevant, immaterial, unreliable, unduly repetitious, cumulative or privileged.

C. Evidence may be tentatively received by the hearing examiner or board, reserving a ruling on its admissibility until the issuance of a report or decision.

**Section 12 – Misconduct:** As part of the board's power to hold hearings and enforce the Act by the imposition of appropriate administrative remedies pursuant to Section 9 of the Act, the hearing examiner or body conducting a hearing or official performing duties under the Act may exclude or expel from any hearing or proceeding, any person, whether or not a party, who engages in violent, threatening, disruptive, abusive or unduly disrespectful behavior. An exercise of the board's power to control its proceedings under this rule may include prohibiting a representative from appearing before the board or one of its hearing examiners for a period of time designated by the board, reprimanding, suspending, or recommending referral for other disciplinary action. In the event of such exclusion or expulsion the hearing examiner, body 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. An exercise of this power by an agent of the board is subject to review by the board.

### **Section 13 – Subpoenas:**

A. Any party to a proceeding in which a notice of hearing has issued may file a written request with the board or board's designee 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. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; 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 or hearing examiner 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. Otherwise, the board or designee shall immediately issue a subpoena to the requesting party.

B. A hearing examiner, the board, or the board's designee may issue subpoenas on the initiative of the hearing examiner or board, 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 according to the scheduling order, or as permitted by the board or the hearing examiner.

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

**Section 14 – Exchange of Documents and Witness Lists:** Pursuant to the scheduling order, 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 other than as provided in this rule and Section 12 of this Chapter (subpoenas), except by a specific order of the board upon good cause shown. The hearing examiner or board may permit the admission in evidence of witness testimony or of documents not timely supplied under this rule if, in the hearing examiner's or board's judgment, there was sufficient reason for the failure to timely supply the names or documents.

**Section 15 – 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 or the board's designee, shall be kept confidential by the board and board's designee; and shall be returned to the party that submitted the same upon the close of the case.

### **Section 16 – Burden of Proof:**

A. Except in unit clarification proceedings, no party shall have the burden of proof in a representation proceeding. Rather, the board's designee in the investigatory phase or the hearing examiner 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. In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

**Section 17 – Motions and Responses to Motions:** 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 shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order or, if no deadline is set forth in the scheduling order or such has yet to be issued, within 10 days.

**Section 18 – Service:** Service of papers upon parties may be made by personal delivery by depositing in United States mail, first class postage prepaid, by facsimile (“fax”) submission or by electronic submission and, by the next scheduled work day after sending a “fax” or electronic submission, either personally delivering the document or depositing it in first class mail, in which case the date of “fax” or electronic submission 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 on the document served. The board may serve any document by electronic transmission to an attorney or party or its representative under this rule.

**Section 19 – Testimony of Board Agents:** Agents of the board (including a designee, hearing examiner, and board members), whether employees of the board or contractors, may not be compelled to testify in board proceedings.

**Section 20 – Form of Papers:** All papers required or permitted to be filed with the a hearing examiner, the board or a designee shall be on an official form prepared by the board, if available, or on eight and one-half by 11 white paper, double spaced. All papers shall show at or near the top of the first page the case name and, if available, the case number, and shall be signed.

**Section 21 – Appeal or Review by the Board:** Unless otherwise provided in these rules, appeal or request for review by the board shall be permitted only upon completion of proceedings before a hearing examiner or the board’s designee. Review by the board shall be based on the evidence presented or offered at the earlier stages of the proceeding, and shall not be de novo. An interlocutory appeal may be allowed with the permission of the board, a designee or the hearing examiner.

**Section 22 – Closing of Cases:** The board’s designee shall close a case following completion of all administrative and judicial proceedings related to the case. The designee may, after notice to the parties, summarily close any case in which the moving party has taken no action within the previous six months, unless the delay is caused by factors beyond the party’s control.

**Section 23 – Publication of Board Decisions:** At the times and in the manner prescribed by the board, the board’s designee shall reproduce multiple copies of board decisions, classify and index the decisions, and make tables and indexes of the decisions, as well as compilations of the decisions, available to the public.

**Section 24 – Time Limits for Board Actions:** Whenever these rules set forth a period of time within which the board, a designee, or a hearing officer must take any action, the board, designee or hearing examiner may, for good cause, extend for a reasonable time, not to exceed 20 workdays for each extension, the date by which such action must be taken, unless the date is controlled by statute.

**Section 25 – Meetings by Telephone:**

A. Pursuant to Subsection C of Section 10-15-1 NMSA, 1978, a member of the board may participate in a meeting of the board by means of a conference telephone or other similar

communications equipment in accordance with the provisions enumerated in Subsections B through E of this Section.

B. This rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.

C. Each member participating by conference telephone must be identified when speaking.

D. All participants must be able to hear each other at the same time.

E. Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

### **Section 26 – Chairperson Succession:**

A. From among the three members appointed to the public employee labor relations board pursuant to Section 7.B of APS Board of Education Resolution Relating to Collective Bargaining for the Albuquerque Public Schools, Providing Rights, Responsibilities, and Conditions of Continued Existence and Transfer of Authority upon Termination of Local Board, the board shall appoint a chair to serve as the primary point of contact for the board’s staff or designee(s), to conduct the regular and special meetings of the board in a manner consistent with parliamentary procedure. In like manner the board shall appoint a vice-chair to serve in the capacity of chair in its absence or inability to serve and to provide for automatic succession when the term of the chair is up.

B. The chair and the vice-chair shall serve in those capacities for a period of one year. Upon completion of the chair’s one-year term, the vice-chair shall automatically become the chair and assume the duties of that office. The past chair shall resume regular duties as a member of the board and the third board member, who has not served as vice-chair within the preceding year, shall assume that role.

C. Initial appointments under this rule shall be by seniority based on the board members’ appointment letters. In the event of a tie, the chair shall be determined from between the two most senior members either by acclamation or by a coin toss supervised by the board’s designee.

## **Chapter II - REPRESENTATIONS PROCEEDINGS**

**Section 1 – Commencement of Cases:** A representation case is commenced by filing a representation petition with the board on a form prescribed by the board. The form shall include, at a minimum, the following information: the petitioner’s name, address, phone number, state, affiliation, if any, and representative, if any;; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups, and estimated 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; a statement of what action the petition is requesting. In addition, a petition seeking a certification or decertification election, shall be supported by a thirty percent showing of interest in the existing or proposed bargaining unit. A petition shall contain a signed declaration by the person filing the petition that its contents are true and correct to the best of their 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. The board shall appoint a designee to oversee the representation proceedings as set forth in this chapter, and the designee shall have the authority to do so.

**Section 2 – Service of Petition:** Upon filing a petition, the petitioner shall serve it upon APS and any incumbent labor organization. Within 10 days of the filing of a petition, the board or designee shall cause notice of the filing of the petition to be sent to any other interested party.

**Section 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.

**Section 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 of the employees in the proposed unit stating, in the case of a petition for a 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 a decertification election, that each such employee wishes a decertification election. Each signature shall be separately dated. 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.

**Section 5 – Information Requested of Parties:**

A. Within 10 days of the filing of a representation petition, the board or designee, 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 APS, the board or designee within 10 days of the filing of a representation petition, shall also request a list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately preceding the filing of the petition. APS shall be instructed to file such a list within 10 days of such a request. The board or designee shall make the list available to the parties.

**Section 6 – Initial Investigation of Petition:** After a petition has been filed, the board's designee shall investigate the petition. The board may appoint a designee to investigate all petitions filed with the board or may appoint a designee to investigate a single petition. The investigation shall include the following steps and shall be completed within 30 days of the filing of the petition.

A. The board's designee shall check the showing of interest (if applicable) against the list of eligible employees, in the proposed unit filed by APS 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's designee 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 designee, the designee shall investigate the allegations as expeditiously as possible and shall keep the showing of interest

confidential during the investigation. The designee 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 designee's determination as to the sufficiency of a showing of interest is an administrative matter solely within the designee's authority and shall not be subject to questions or review.

B. The designee 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 designee 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 the designee shall explain their reasons in writing.

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

**Section 7 - Settlement/Stipulation of Unit Issues:** If the board's designee finds that there are significant issues affecting the proceeding that are or may be in dispute, the designee 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 designee.

**Section 8 – Notice of Filing of Petition:** Unless the board's designee has determined that there is need for a representation hearing pursuant to Section 12 of this Chapter, then within 30 days of receipt of a petition, the designee 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 9 of this Chapter, including the date by which an intervenor must file its petition and showing of interest. The board's designee shall issue sufficient copies of the notice to APS, and APS shall post such copies in places where notices to employees are normally posted. The notices shall remain posted continuously for at least five days.

**Section 9 – Intervention:**

A. At any time within 10 days after APS' posting of the notice of filing of petition, a labor organization other than the petitioner may file with the board or designee, 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 1 of this Chapter.

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 4 of this Chapter.

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.

**Section 10 – Consent Election:** Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the board’s designee is satisfied that the issues are so resolved, including unit scope, the designee shall draw up a consent election agreement to be signed by all parties and by the designee. 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 board’s designee shall proceed to an election on the basis of the agreement.

**Section 11 – Investigation, Report, Notice of Hearing:**

A. In the absence of a consent election agreement, the board’s designee 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 board’s designee is satisfied that the issues can best be resolved in a hearing, the designee 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 notice of hearing or the designee’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 15 of this Chapter. The issuance of a notice of hearing shall not be subject to board review.

**Section 12 – Representation Hearing:**

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

B. Except in cases where the board appoints the hearing examiner, the board’s designee 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 18 of this Chapter.

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

**Section 13 – 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 board or board’s designee and copies shall be served on all parties.

**Section 14 – Hearing Examiner Reports:** The hearing examiner shall issue a 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.

**Section 15 – Board Review of Hearing Examiner Reports and Designee 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 board designee's decision, any party may file a request for board review of the hearing examiner's or the designee's recommended disposition. The request for review shall state the specific portion of the hearing examiner's or designee'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 designee. 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 designee 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 designee's decision.

**Section 16 – Opportunity to Present Further Showing of Interest:**

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

**Section 17 – 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 or a board designee, 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 board or board's designee. Except for good cause shown, such a request must be received by the board or board's designee at least 10 days before the election, in which case the designee, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the designee by mail. To be counted, an absentee ballot must be received by the board or board's designee at least one day before the ballot count. The board's designee shall establish procedures to permit an absentee ballot to be challenged, as provided in Section 23 of this Chapter.

C. APS shall submit to the board's designee 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 23 of this Chapter.

**Section 18 – Pre-Election Conference:** At a reasonable time at least 15 days before the election, the board's designee 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 designee 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 board's designee 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 onsite 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 board's designee, in which case the requirement for a pre-election conference shall be waived.

**Section 19 – Notice of Election:**

A. The board's designee shall issue and serve on the parties a notice of election setting forth all of the details of the election, as described in Section 18 of this Chapter, 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 board's designee shall provide a sufficient number of copies of the notice of election to APS so that APS 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. APS 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.

**Section 20 – Ballots and Voting:**

A. All voting shall be by secret ballot prepared by the board's designee, 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's designee, whether electronically, by mail in ballots or onsite elections, subject to the provisions of Chapter I, Section 21 of these Rules regarding the designee's authority to delegate duties.

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

D. APS 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 APS an obligation to change the work schedules of employees to accommodate voting hours.

**Section 21 – Electioneering:** No electioneering shall be permitted within 50 feet of any room in which balloting is taking place.

**Section 22 – 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's designee 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.

**Section 23 – 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 board's designee shall challenge any voter whose name does not appear on the list of employees eligible to vote.

B. The board's designee shall furnish "challenge envelopes." On the outside of each challenge envelope, the designee 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 designee 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 board's designee 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 designee's report, following the procedures set forth in Section 15 of this Chapter.

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

**Section 24 – 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.

**Section 25 – 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 board’s designee 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.

**Section 26 – Certification:** If no objections are filed pursuant to Section 27 of this Chapter, then the board’s designee 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.

**Section 27 – Objections:** Within five days following the service of a tally of ballots, a party may file objections to conduct affecting the result of the election. The board’s designee shall, within 30 days of the filing of such objections, investigate the objections and issue a report thereon. Alternatively, the designee 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 12, Section 13 and Section 14 of this Chapter. A party adversely affected by the designee’s or hearing examiner’s report may file a request for review with the board under the same procedures set forth in Section 15 of this Chapter. If the board’s designee, 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 board’s designee in their 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.

**Section 28 – Amendment of Certification:** A petition for amendment of certification may be filed at any time by an exclusive representative or APS to reflect such a change as a change in the name of the exclusive representative, or a change in the affiliation of the labor organization. The board’s designee shall dismiss such a petition within 30 days of its filing if the board’s designee determines that it raises a question concerning representation and the petitioner may proceed otherwise under these rules. If the board’s designee finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the designee shall issue an amendment of certification within 30 days of the filing of the petition. The designee’s decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 15 of this Chapter.

**Section 29 – Certification of Incumbent Bargaining Representative Status:** A labor organization that was recognized by APS 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).

**Section 30 – Unit Clarification:**

A. Except as provided in Section 24(A) of the Act, 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 a merger or realignment of previously existing bargaining units represented by the same labor organization, either the exclusive representative or APS may file with the board or the board's designee a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and process only when it relates to APS employees.

B. Upon the filing of a petition for unit clarification, the board's designee shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty (30) days of the filing of the petition. In the designee's investigation or through the hearing, the designee 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 board's designee or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the designee 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 designee determines that a question concerning representation exists, the petition shall be dismissed.

D. A board designee or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 15 of this Chapter.

**Section 31 – 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.

**Section 32 – Voluntary Recognition:**

A. A labor organization representing the majority of employees in an appropriate collective bargaining unit and APS, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which APS 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 4 of this Chapter.

B. Prior to board approval of any voluntary recognition, the board's designee shall post notice of filing of petition in the manner provided for in Section 8 of this Chapter. The designee shall also 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 10 days then the board shall consider the petition for approval of the voluntary recognition if accompanied by consent of APS.

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 9 of this Chapter, within the 10 day time period, then the board may not approve a voluntary recognition, and the board's designee shall proceed in the manner set forth for representation petitions as provided in Section 3 to 7 and 10 to 27 of this Chapter.

**Section 33 – Petition Withdrawal:** The petitioner in a representation proceeding may request permission of the board's designee to withdraw the petition at any time prior to an initial election. The designee will have the discretion to grant or deny a withdrawal request only after soliciting the positions of all parties.

**Section 34 – 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.

**Section 35 – 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 board and APS 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

## Chapter III - Prohibited Practices Hearings

### Section 1 – Commencement of Case:

A. A prohibited practices case shall be initiated by filing with the board a complaint on a form furnished by the board. The form shall set forth, at a minimum, name, address and phone number, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative if known, the specific section of the act 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. The board shall appoint a designee to oversee the prohibited practices proceedings as set forth in this chapter, and the designee shall have the authority to do so.

B. When an individual employee files a prohibited practices complaint alleging a violation of Subsection F and H of Section 19, Subsection C or D of Section 20 of the act, an interpretation given to the collective bargaining agreement by APS and the exclusive representative shall be presumed correct.

**Section 2 – Limitations Period:** Any complaint filed more than six months following the conduct claimed to violate the act, or more than six months after the complainant either discovered or reasonably should have discovered each conduct, shall be dismissed.

### Section 3 – Filing of Answer:

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

B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the hearing examiner, board or the board’s designee may find the allegation to be true.

**Section 4 – Default Determination:** If a respondent fails to file a timely answer, the board’s designee 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.

### Section 5 – Screening/Investigation:

A. Upon receipt of a complaint, the board’s designee shall screen the complaint for facial adequacy. If the complaint is facially deficient, the designee shall advise the complainant of the deficiency and give the complainant an opportunity to amend the complaint within five days. Absent an amendment curing a facially deficient complaint, the board’s designee shall dismiss the complaint, stating the reasons in writing and serving the dismissal on the parties. A complaint that is facially untimely pursuant to Section 2 of this Chapter shall be dismissed.

B. After screening a complaint, the board’s designee shall investigate the allegations. The designee need not await the filing of an answer before commencing the investigation. At the

designee's request, the complainant shall immediately present to the designee all evidence available to the complainant in support of the complaint, including documents and the testimony of witnesses.

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

#### **Section 6 – Appeal to Board of Designee's Dismissal:**

A. The board designee's decision to dismiss a complaint shall be subject to board review by the complainant filing with the board and serving upon the other parties a notice of appeal within 10 days following service of the dismissal decision. In its appeal, the complainant shall state the particular findings or conclusions of the designee to which it takes exception and shall identify specific evidence that the complainant presented or offered to the designee which supports the complainant's position on appeal.

B. Within 10 days after service of a notice of appeal, any other party may file and serve a response to the appeal.

C. The board may consider the case on the papers filed with it or, in its discretion, may also hear oral argument. The board shall issue its decision affirming the designee's dismissal, ordering further investigation, or setting a hearing as soon as feasible following its consideration of the appeal but in any event no later than its next or the following regular meeting. The board may approve and incorporate in its decision all or any part of the designee's dismissal decision.

**Section 7 – Notice of Hearing:** If the board's designee, following investigation and the filing of an answer, believes that there is sufficient evidence that the respondent has committed a prohibited practice to warrant a hearing, the designee shall designate a separate hearing examiner, set a hearing, and serve a notice of the hearing upon all parties. The designee shall dismiss the complaint or set a hearing within 30 days of filing of the complaint. A hearing shall be scheduled within 45 days of the filing of the complaint.

#### **Section 8 – Pre-Hearing Settlement Efforts:**

A. Following service of a notice of hearing and before commencement of the hearing, the board's designee shall attempt to settle the complaint with the parties. If the parties achieve a settlement, they shall reduce it to writing and submit it to the board's designee for approval.

B. If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. However, the complaint may be settled by the parties at any time prior to hearing.

C. The board's designee or hearing examiner may submit a proposed settlement agreement to the board for its approval before the settlement becomes final.

D. The complainant may withdraw the complaint at any time prior to hearing, without approval by the designee or the board. After commencement of the hearing, the complaint shall not be withdrawn or settled without the approval of the hearing examiner. After a hearing examiner's report has been issued, a complaint may not be withdrawn without board approval.

**Section 9 – Prohibited Practices Hearings:**

A. In the absence of an approved settlement agreement, the hearing examiner shall conduct a formal hearing, assigning the burden of proof and the burden of going forward with the evidence to the complainant, as stated in 11.21.1.22 NMAC.

B. The hearing examiner may examine witnesses called by the parties, call additional witnesses, or call for the introduction of documents.

**Section 10 – Briefs:** The filing of post-hearing briefs shall be permitted on the same basis as provided by Chapter II, Section 13 of these Rules for briefs in representation cases.

**Section 11 – Hearing Examiner Reports:** The hearing examiner shall issue a “report and recommended decision” within the same time limits and following the same requirements provided in Chapter II, Section 14 of these Rules for hearing examiner reports in representation cases.

**Section 12 – Appeal to Board of Hearing Examiner’s Recommendation:**

A. Any party aggrieved by the hearing examiner’s recommendation may obtain board review by filing with the board and serving on the other parties a notice of appeal within 10 days following service of the hearing officer’s report. The notice of appeal shall specify which findings, conclusions, or recommendations to which exception is taken and shall identify the specific evidence presented or offered at the hearing that supports each exception.

B. Any other party may file a response to notice of appeal within 10 days of service of the notice of appeal.

C. The board may determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The board shall decide the appeal and issue its decision within 60 days of the notice of appeal. The board may issue a decision adopting, modifying, or reversing the hearing examiner’s recommendations or taking other appropriate action. The board may incorporate all or part of the hearing examiner’s report in its decision.

D. If notice of appeal is not filed within the time set out in Subsection A of this Section, the hearing examiner’s report and recommended decision shall be transmitted immediately to the board which may pro forma adopt the hearing examiner’s report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent.

**Section 13 - Relief from Prohibited Practices Determination:** A party may move to set aside a default determination entered against it within 30 days after the service thereof. Said motion shall be served upon all other parties and shall set out in detail the reasons in support thereof. Upon finding good cause for the motion and within 30 days of the filing of such motion, the board’s designee or board shall order such further proceeding as it deems appropriate. The failure to act within 30 days after the filing of such motion shall constitute a denial of the motion.

**Section 14 – Administrative Agency Deferral:** Where the board becomes aware that a complainant has initiated another administrative or legal proceeding based on essentially the same facts and raising essentially the same issues as those raised in the complaint, the board may take any of the following actions, at the board’s discretion:

A. The board may hold the proceedings under the act in abeyance pending the outcome of the other proceeding.

B. The board may go forward with its own processing. In so doing, the board may request that the other proceedings be held in abeyance pending outcome of the board proceeding. In the event that the resolution of the proceedings in such other forum is contrary to the act, or all issues raised before the board are not resolved, the board may proceed under the provisions of Chapter III of these Rules.

C. For purposes of this rule, “board” shall mean the board or the board’s designee.

**Section 15 – Arbitration Deferral:**

A. If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the board’s designee determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the board’s designee may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator’s award has been issued.

B. Upon its receipt of the arbitrator’s award, the complaining party shall file a copy of the award with the board or the board’s designee, and shall advise the board’s designee in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

C. If the complaining party advises the board or board’s designee that it wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, the board’s designee shall review the arbitrator’s award. If in the opinion of the board’s designee, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the act and sufficient to remedy any violation found, then the board’s designee shall dismiss the complaint. If the board’s designee finds that the prohibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the act, or that the remedy is inadequate, then the board’s designee shall take such other action deemed appropriate. Among such other actions, the board’s designee may accept the arbitrator’s factual findings while substituting legal conclusions and remedies pursuant to Subsection F of Section 10-7E-9 NMSA 1978 appropriate for the prohibited practice issues.

D. In the event that no arbitrator’s award has been issued within one year following deferral under this rule, then the board’s designee may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.

E. The decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in Section 6 of this Chapter. Interim decisions of the designee under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board.

## **Chapter IV - Impasse Resolution Proceedings**

**Section 1 – Impasse Resolution Controlled by Statute:** APS or any exclusive representative may seek assistance from the board in resolving an impasse by following the procedure dictated by NMSA 1978 § 10-7E-18(B). This shall be the exclusive procedure for resolving an impasse except as provided in Section 2 of this Chapter.

**Section 2 – Exception for Written Agreements:** APS and an exclusive representative may engage in an impasse resolution procedure other than that laid out in NMSA 1978 § 10-7E-18(B) so long as that alternative procedure is expressly included in a written agreement between APS and the exclusive representative as provided by NMSA 1978 § 10-7E-18(C).

**Section 3 – Continuation of Existing Agreements During Impasse:** Pursuant to NMSA 1978 § 10-7E-18(D) and in the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the APS to increase any employees' levels, steps or grades of compensation contained in the existing contract.