City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 **Ordinance** 2564 **Council District:** ___

For Meeting of February 16, 2010
(Adoption Date)

AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE, SECTIONS 15-1 THROUGH 15-19, *LABOR-MANAGEMENT RELATIONS*, TO BRING THE CODE INTO COMPLIANCE WITH THE STATE OF NEW MEXICO PUBLIC EMPLOYEE RELATIONS BOARD.

PURPOSE(S) OF ACTION: This amended ordinance is presented due to a ruling by the State of New Mexico's Public Employee Labor Relations Board that certain of the City's current Labor-Management Relations ordinances are illegal. The amendments use the Public Employee Labor Relations Board's model ordinance with minor modifications. The Public Employee Labor Relations Board has approved the amendments.

Name of Drafter: Jared Abrams		**Department:** Legal		**Phone:** 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department			Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The State of New Mexico's Public Employee Labor Relations Board has ruled that certain portions of the current Labor-Management Relations ordinance are illegal. To bring the City's code into compliance, staff submitted to the Board a proposed amended ordinance. The amended ordinance is the Board's model ordinance with minor modifications. The Board has approved the proposed amended ordinance.

SUPPORT INFORMATION:

Fund Name / Account Number	**Amount of Expenditure**	**Budget Amount**
N/A	N/A	N/A

1. Ordinance with Exhibit "A" attached.
2. Ordinance in legislative format, Exhibit "B" attached.
3. Ordinance with Letter from PELRB which approves amendments, Attachment "1".

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. **Adopt the ordinance.** Adoption means that the City's Labor-Management Relations ordinance will comply with the Public Employee Labor Relations Board's ruling.

2. **Do not adopt the ordinance.** This means that the City's Labor-Management Relations ordinance will not comply with the Public Employee Labor Relations Board ruling, which may result in the Public Employee Labor Relations Board suing the City to enforce its ruling.

3. Modify the ordinance and direct staff to present a modified ordinance to the Public Employee Labor Relations Board for approval.

COUNCIL BILL NO. 10-035
ORDINANCE NO. 2564

AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE, SECTIONS 15-1 THROUGH 15-19, *LABOR-MANAGEMENT RELATIONS*, TO BRING THE CODE INTO COMPLIANCE WITH THE STATE OF NEW MEXICO PUBLIC EMPLOYEE RELATIONS BOARD.

The City Council is informed that:

WHEREAS, the State of New Mexico's Public Employee Labor Relations Board has ruled that certain of the City's Labor-Management Relations ordinances are illegal; and

WHEREAS, the amended ordinance constitutes the Public Employee Labor Relations Board model ordinance with minor modifications; and

WHEREAS, the amended ordinance has been approved by the Public Employee Labor Relations Board.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT Las Cruces Municipal Code 1997, Sections 15-1 through 15-21 amended is hereby enacted to read as shown on **Exhibit "A"**, attached hereto and made a part hereof.

(II)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this ordinance.

DONE AND APPROVED on this _____ day of _____, 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

ARTICLE XV.

LABOR-MANAGEMENT RELATIONS

Sec. 15-1. Short title.

Section 15-1 and its subsections shall be referred to as **Labor Management Relations** and may sometimes be referred to as "this Article."

Sec. 15-2. Purpose.

The purpose of the Labor Management Relations Ordinance is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens.

Sec. 15-3. Conflicts.

In the event of conflict with other City of Las Cruces Ordinances, the provisions of the City of Las Cruces Labor Management Relations Ordinance shall supersede other previously enacted ordinances.

City of Las Cruces sanctioned rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

Sec. 15-4. Definitions.

For the purposes of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Appropriate bargaining unit means a group of employees designated by the Board for the purpose of collective bargaining.

Board means the City of Las Cruces Labor Management Relations Board.

Certification means the designation by the board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

Collective bargaining means the act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours, and other terms and conditions of employment.

Confidential employee means a person who devotes a majority of his/her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines, and effectuates management policies.

Emergency means a one-time crisis that was unforeseen and unavoidable.

Employee means a regular, non-probationary employee of the City of Las Cruces.

Employer means the City of Las Cruces.

Exclusive representative means a labor organization that, as a result of certification by the Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining.

Fair share means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including, but not limited to, all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract, and representing all such employees in grievances and disciplinary actions.

Governing body means the City of Las Cruces City Council.

Impasse means failure of the employer and an exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

Labor organization means any employee organization one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

Lockout means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

Management employee means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering, or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision making programs on an occasional basis.

Mediation means assistance by an impartial third party to resolve an impasse in contract negotiation between the employer and an exclusive representative through interpretation, suggestion, and advice.

Professional employee means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

Supervisor means an employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to hire, promote, or discipline other employees or to recommend such actions effectively. This definition does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who occasionally participate in peer review or evaluation of employees.

Sec. 15-5. Rights of employees.

Employees, other than management, supervisory, confidential, and probationary employees, may form, join, or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint, or coercion. Employees also have the right to refuse to form, join, or assist any labor organization.

Sec. 15-6. Management rights.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer's rights shall include, but are not limited to, the following:

(a) To direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;

(b) To determine qualifications for employment and the nature and content of personnel examinations;

(c) To take actions as may be necessary to carry out the mission of the employer in emergencies; and

(d) The employer retains all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

Sec. 15-7. Labor management relations board-created; terms.

(a) The "Labor-Management Relations Board" is hereby created. The Board shall be composed of three members appointed by the Mayor and approved by the City Council. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the City Administrator, and one member shall be appointed on the recommendation of the first two appointees.

(1) Board members shall serve for a period of one (1) year with terms commencing in the month of September, except in the initial appointment, which will be a shorter term effective, the same day as this Ordinance. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

(2) During the term of appointment, no Board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees or a public employer.

(3) Each Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Sec. 15-8. Board - Powers and duties.

(a) The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the Labor Management Relations Ordinance, including the establishment of procedures for:

(1) the designation of appropriate bargaining units;

(2) the selection, certification, and decertification of exclusive representatives; and

(3) the filing, hearing, and determination of complaints of prohibited practices. This does not apply to negotiation impasse or grievances subject to the required negotiated grievance process.

(b) The Board shall:

(1) hold hearings and make inquiries necessary to carry out its functions and duties;

(2) request from employers and labor organizations the information and data necessary to carry out the functions and responsibilities of the Board.

(c) The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents relevant to the matter in question. The Board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The Board may administer oaths and affirmations, examine witnesses, and receive evidence. Subject to the approval of funds, the Board may contract with a third party to assist it in carrying out its functions.

(d) The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on interpretation and applications of the Ordinance are final and binding on the parties subject to the appeal process provided in Section 20. The Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose by the parties as required by law.

(e) The Board has the power to enforce provisions of the City of Las Cruces Labor-Management Relations Ordinance and the Board's Labor-Management Relations Rules and Regulations through the imposition of appropriate administrative remedies.

(f) The Board shall have no power to promulgate policy other than for its own operation.

(g) No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Ordinance to pay money to any labor organization that is certified as an exclusive representative. This issue of fair share shall be a permissive as opposed to a mandatory subject of bargaining between the employer and the exclusive representative.

Sec. 15-9. Hearing procedures.

(a) The Board may hold hearings for the purposes of:

(1) information gathering and inquiry;

(2) adopting rules and regulations; and

(3) adjudicating disputes and enforcing the provisions of the Labor Management Relations Ordinance, and rules and regulations adopted pursuant to the Ordinance.

(b) The Board shall adopt regulations setting forth procedures to be followed during hearings of the Board. Such regulations shall meet minimal due process requirements of the state and federal constitution.

(c) Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.

(d) All adopted rules and regulations shall be filed in accordance with applicable laws.

(e) A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.

(f) Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under this Ordinance.

(g) No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended, or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views, and the method in which copies of the proposed regulation, proposed amendment, or repeal of an existing regulation may be obtained. All meetings shall be held at a City facility. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the City of Las Cruces, and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

Sec. 15-10. Appropriate bargaining units.

(a) The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-professional, professional, corrections, firefighters, and police officers. Department, craft, or trade

designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the Ordinance.

(b) If the labor organization and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the Board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the Board.

(c) The Board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial, or confidential employees.

Sec. 15-11. Elections.

(a) Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the signatures of at least thirty percent (30%) of the employees in an appropriate bargaining unit, the Board shall post a notice to affected employees regarding the filed petition and proceed with the process for conducting a secret ballot representation election.

(b) Once a labor organization has filed a petition with the Board requesting a representation election, other labor organizations may seek to be placed on the ballot. Any labor organization may file a competing petition containing the signatures of not less than thirty percent (30%) of the employees in the appropriate bargaining unit no later than ten (10) calendar days after the Board has posted a written notice that a petition for a representation election has been filed by a labor organization.

(c) All representation elections shall include the option for "no representation", except in a run-off election where the choice of “no representation” was not one of the two choices that received the highest votes.

(d) In the event of an election with two or more labor organizations on the ballot and none of the choices on the ballot received a majority of the votes cast, then a run-off election shall be held within fifteen (15) calendar days. The choices on the run-off election shall consist of the two (2) choices, which received the greatest number of votes in the original election.

(e) A valid election requires that at least forty percent (40%) of the eligible employees in an appropriate bargaining unit cast a vote. In an election with only one labor organization, and the majority of the votes cast are in favor of representation the Board shall certify that labor organization as the exclusive representative for all the employees in the bargaining unit.

(f) No election shall be conducted if an election has been conducted in the twelve (12) month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in Section 13.B. of this ordinance, or after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

(g) Election disputes shall be resolved by the Board.

(h) As an alternative to the provisions of Subsection A of this section, the employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local board shall not certify an appropriate bargaining unit if the employer objects to the certification without an election.

Sec. 15-12. Exclusive representation.

A labor organization that has been certified by the Board as the exclusive representative for employees in an appropriate bargaining unit shall represent all employees in the bargaining unit. The exclusive representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees in the bargaining unit without discrimination or regard to membership or non-membership in the labor organization. The existence of an exclusive bargaining representative shall not prevent employees from taking their grievances through the grievance process or filing prohibited practices with the Board. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of a memorandum of understanding between the employer and the exclusive representative applicable to the day-to-day administration of the collective bargaining agreement. The exclusive representative shall be afforded the opportunity to be present at such hearings and make its views known.

Sec. 15-13. Decertification of exclusive representative.

(a) Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent (30%) of the employees in the appropriate bargaining unit make a written request to the Board for a decertification election. A decertification election shall be valid only if at least forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

(b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement, provided however, that a request for a decertification election 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 (3) years.

(c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%) of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

(d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

Sec. 15-14. Scope of bargaining.

(a) Except for retirement programs provided under the Public Employment Retirement Act, the parties shall bargain in good faith on all wages, hours, and other terms and conditions of employment and other issues agreed to by the parties. The parties shall enter into a written agreement covering employment relations regarding the issues agreed to in collective bargaining.

(b) Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.

(c) The obligation to bargain collectively imposed by the Labor Management Relations Ordinance shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with state statutes or federal statutes. In the event of conflict between the provision of any federal or state statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

(d) Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties, or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

(e) Fair share is a permissive subject of bargaining.

(f) Any agreement or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision. An arbitrator's decision shall not require the re-appropriation of funds.

(g) The parties have a requirement that a grievance procedure culminating with final and binding arbitration be negotiated. This applies only to grievances and the interpretation and application of the agreement between the parties and does not apply to negotiation impasses. The parties shall share the cost of any proceedings conducted pursuant to this subsection equally. Each party is responsible for paying any cost related to its witnesses and representation.

Sec. 15-15. Negotiations and impasse resolution.

(a) The following meetings shall be closed:

(1) meetings for the discussion of collective bargaining strategy between the governing body and the employer's negotiating team preliminary to negotiations sessions;

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

(b) The following negotiation procedures shall apply to the employer and exclusive representatives:

(1) The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.

(2) All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.

(3) Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.

(4) Tentative agreements reached during negotiations will be reduced to writing, dated, and initialed by each team spokesperson. Such tentative agreements

are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.

(5) Agreement on contract negotiations is accomplished when the Union President and the City Administrator sign the agreement. Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

(c) The following impasse procedure shall be followed by the employer and exclusive representative:

(1) if an impasse occurs, either party shall request mediation assistance. If the parties cannot agree on a mediator, either party may request the assistance of the federal mediation and conciliation service;

(2) if the impasse continues after thirty (30) calendar days, either party may request an unrestricted list of seven (7) arbitrators from the federal mediation and conciliation service. The parties shall choose one arbitrator by alternately striking names from such list. Which party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues no later than thirty (30) calendar days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's costs incurred pursuant to this subsection equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

(3) The parties may enter into a written agreement setting forth an alternative impasse resolution procedure.

(4) 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 employer to increase any employees' levels, steps, or grades of compensation contained in the existing contract.

Sec. 15-16. Employers – prohibited practices.

(a) A public employer or his representative shall not:

(1) discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

(2) interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Ordinance;

(3) dominate or interfere in the formation, existence, or administration of any labor organization;

(4) discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in a labor organization;

(5) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, grievance, or complaint or given any information or testimony under the provisions of the Labor Management Relations Ordinance or because an employee is forming, joining, or choosing to be represented by a labor organization;

(6) refuse to bargain collectively in good faith with the exclusive representative;

(7) refuse or fail to comply with any provisions of the Labor Management Relations Ordinance, Board regulations, or the Public Employee Bargaining Act; or

(8) refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

(b) During the negotiation and the impasse procedure, City Councilors and management employees are prohibited from negotiating issues which are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-17. Employees – labor organizations; prohibited practices.

(a) An employee, a labor organization, or its representative shall not:

(1) discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin;

(2) solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;

(3) restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;

(4) refuse to bargain collectively in good faith with the employer;

(5) refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

(6) refuse or fail to comply with any provision of the Labor Management Relations Ordinance;

(7) picket homes or private businesses of employees, appointed individuals, or elected officials of the City of Las Cruces;

(8) restrain or coerce the employer in the selection of its agent for bargaining.

(b) During the negotiation and the impasse procedure the employees, the exclusive representative or any of its employees are prohibited from negotiating issues which are the subject of negotiations with anyone other than the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-18. Strikes and lockouts prohibited.

(a) No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate, or engage in an employee lockout.

(b) The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

(c) The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of

employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

Sec. 15-19. Agreements valid; enforcement.

All collective bargaining agreements and other agreements between the employer and exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this Labor Management Relations Ordinance.

Sec. 15-20. Judicial enforcement; standard of review.

(a) The Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:

(1) arbitrary, capricious, or an abuse of discretion;

(2) not supported by substantial evidence on the record considered as a whole; or

(3) otherwise not in accordance with law.

(b) Any person or party, including any labor organization, affected by a final regulation, order, or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order, or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

(1) arbitrary, capricious, or an abuse of discretion;

(2) not supported by substantial evidence on the record taken as a whole; or

(3) otherwise not in accordance with law.

Sec. 15-21. Severability.

If any part or application of the City of Las Cruces Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

ARTICLE XV.

LABOR-MANAGEMENT RELATIONS

Sec. 15-1. Short title.

~~This chapter may be cited as the "City of Las Cruces Labor Management Relations Ordinance."~~

Section 15-1 and its subsections shall be referred to as **Labor Management Relations** and may sometimes be referred to as "this Article."

Sec. 15-2. Purpose.

The ~~city council declares that it is the public policy of the city, and~~ purpose of ~~this article:~~

~~(a) To allow the city~~ the Labor Management Relations Ordinance is to guarantee employees the right to organize and bargain collectively with ~~the city government;~~

~~(b) To~~ their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between ~~all parties; and~~

~~(c) To protect the public interest by assuring, at all times,~~ the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted ~~operations and functions of the city government.~~ services to the citizens.

Sec. 15-3. Conflicts.

In the event of conflict with other City of Las Cruces Ordinances, the provisions of the City of Las Cruces Labor Management Relations Ordinance shall supersede other previously enacted ordinances.

City of Las Cruces sanctioned rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

Sec. 15-4. Definitions.

~~The~~ For the purposes of this Article, the following ~~words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where~~ definitions shall apply unless the context clearly indicates or requires a different meaning:

Appropriate bargaining unit means a group of employees designated by the ~~board~~ Board for the purpose of collective bargaining. ~~Appropriate units shall be formed by occupational group, such as blue collar (unskilled, semiskilled and skilled), white collar (clerical, secretarial, administrative, technical and paraprofessional), professional, fire and police.~~

Board means the ~~city's labor management relations board~~ City of Las Cruces Labor Management Relations Board.

Certification means the designation by the ~~board~~ Board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

Collective bargaining means the act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment.

Confidential employee means a person who ~~assists and acts~~ devotes a majority of his/her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines, and effectuates management ~~employee~~ policies.

Emergency means a one-time crisis that was unforeseen and unavoidable.

Employee means a regular, non-probationary employee of the ~~city~~ City of Las Cruces.

Employer means the ~~city manager, the city, or other designated in writing by the city manager, which will exclude any elected official.~~ the City of Las Cruces.

Exclusive representative means a labor organization that, as a result of certification by the ~~board, is the sole representative of~~ Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining.

Fair share means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including, but not limited to, all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract, and representing all such employees in grievances and disciplinary actions.

Governing body means the City of Las Cruces City Council.

Impasse means failure of the employer and an exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

Labor organization means any employee organization, one of whose purposes ~~includes~~ is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

Lockout means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

Management employee means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering, or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-_making programs on an occasional basis.

Mediation means assistance by an impartial third party to resolve an impasse in contract negotiation between ~~an~~ the employer and an exclusive representative ~~regarding employment relations~~ through interpretation, suggestion, and advice.

Professional employee means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful and proper performance of the duties of employment for the purposes of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of ~~public~~ employment. ~~The definition of strike includes but is not limited to such actions as the blue flu, sick-outs, slowdowns, traffic ticket-writing campaigns, mass resignations and sympathy strikes.~~

Supervisor means an employee who devotes a ~~substantial~~ majority amount of work time ~~in~~ to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to ~~effectively recommend the hiring, retaining, promoting, disciplining, or evaluating of other employees. Not included in this~~ hire, promote, or discipline other employees or to recommend such actions effectively. This definition ~~are employees~~ does not include individuals who perform merely routine, incidental, or clerical duties or ~~employees~~ who occasionally assume supervisory or directory roles or ~~employees~~ whose duties are substantially similar ~~as~~ to those of their subordinates ~~or~~ and does not include lead employees or employees who occasionally participate in ~~occasional~~ peer review or ~~occasional employee~~ evaluation ~~programs~~ of employees.

Sec. 15-45. Rights of employees.

Employees, other than management, ~~employees, supervisors and~~ supervisory, confidential, and probationary employees, may form, join or assist any labor organization for the purpose of collective bargaining through representatives chosen by employees ~~through~~

~~representation elections~~ without interference, restraint, or coercion. ~~Such employees~~ Employees also have the right to refuse to form, join or assist any labor organization.

Sec. 15-~~5~~6. Management rights.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provisions~~, under this chapter~~, the ~~employer retains the right, but not limited to the following~~ employer's rights~~, to~~:

~~(1) Direct and supervise all operations, functions and the work of the employees.~~

~~(2) Determine the place to report for work; determine methods, processes and manner of performing work.~~

~~(3) Authorize all personnel transactions such as to hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate employees.~~

~~(4) Determine what and by whom services will be rendered to the citizens.~~

~~(5) Determine staffing requirements; create, abolish and reallocate positions; or eliminate or reorganize work units.~~

~~(6) Establish and revise schedules of work.~~

~~(7) Establish, revise and implement standards for hiring and promoting employees.~~

~~(8) Assign shifts, workdays, hours of work and work locations.~~

~~(9) Designate, assign or reassign all work duties.~~

~~(10) Determine the need for additional positions and the qualifications of new employees, and determine the qualifications for and qualifications of employees considered for transfer or promotion.~~

~~(11) Evaluate and judge the skill, ability and efficiency and general work performance of employees.~~

~~(12) Take actions, as necessary, to carry out the mission of the employer in emergencies.~~

~~(13) Retain all rights concerning management and operations of the activities of the city not specifically prohibited by a collective bargaining agreement or this chapter. Such rights~~ shall include, but are not limited to ~~personnel matters and staffing of functions, compensation, benefits and terms and conditions of employment.~~, the following:

~~(14) Determine the allocation of available funds to activities of the organization, including establishing funding for personnel costs, operating expenses and capital outlay.~~

~~(15) Direct~~

(a) To direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees~~.~~;

~~(16) Determine qualifications for employment and the nature and content of personnel examinations.~~

(b) To determine qualifications for employment and the nature and content of personnel examinations~~.~~;

(c) ~~(17) Take~~ To take actions as may be necessary to carry out the mission of the public employer in emergencies~~.~~; and

~~(18) Retain~~

(d) The employer retains all rights not specifically limited by a collective bargaining agreement~~.~~ or by the Public Employee Bargaining Act.

Sec. 15-67. Labor-management relations board – ~~Created~~created; terms.

~~(a) The labor-management relations board is created.~~

(a) The "Labor-Management Relations Board" is hereby created. The ~~board~~Board shall ~~consist~~be composed of three members appointed by the ~~mayor and the city council. Bargaining units shall submit a list of up to three recommended individuals and the city manager shall submit a list of up to three recommended individuals to serve on the labor-management relations board. However, nothing contained herein shall mandate the mayor and city council to select from the nominations submitted by the bargaining units and the city manager. Appointees to the board must have substantial experience in labor-management issues~~ Mayor and approved by the City Council. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the City Administrator, and one member shall be appointed on the recommendation of the first two appointees.

~~(b)~~

(1) Board members shall serve for a period of one (1) year with terms commencing ~~upon~~in the month of September, except in the initial appointment ~~by the mayor and the city council and expiring one year after appointment.~~, which will be a shorter term effective, the same day as this Ordinance. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A ~~board~~Board member may serve an unlimited number of terms.

~~(c)~~

(2) During the term ~~for which he/she is appointed,~~ of appointment, no ~~board~~Board member shall hold or seek any other political office or public employment or be an employee of a union ~~or an organization representing public employees~~, an ~~individual~~

~~representing the employer in collective bargaining or any employee of the city~~ organization representing public employees or a public employer.

~~(d)~~

(3) Each ~~local board~~ Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act. ~~The city council may, by resolution, fix additional compensation.~~

~~(e) The cost of any hearing, excluding any fixed additional compensation established by subsection (d) of this section, will be borne equally by the parties to the hearing or the board may, at its option, assess all costs of both parties to one party if the board determines that a party has asserted a frivolous complaint or claim or has pursued a grossly unreasonable position during any proceeding or hearing.~~

Sec. 15-~~7. Same—Powers~~8. Board - powers and duties.

(a) The ~~labor management relations board~~Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in ~~this chapter~~the Labor Management Relations Ordinance, including the establishment of procedures for:

~~(1) The~~

(1) the designation of appropriate bargaining units;

~~(2) The~~

(2) the selection, certification and decertification of exclusive representatives; and

~~(3) The~~

(3) the filing ~~of~~, hearing ~~on~~, and determination of complaints of prohibited practices This does not apply to negoation impasse or grievances subject to the required negotiated grievance process.

(b) The ~~board~~ Board shall:

~~(1) Hold~~

(1) hold hearings and make inquiries necessary to carry out its functions and duties;

~~(2) Request~~

(2) request from employers and labor organizations the information and ~~date~~data necessary to carry out the ~~board's~~ functions and responsibilities of the Board.~~;~~

~~(3) Hire such personnel or contract with such third parties as the appropriate governing body deems necessary to assist the local board with carrying out its functions, subject to expenditure levels approved by the city council on an annual basis; and~~

~~(4) Prepare and submit an annual budget to the city council.~~

(c) The ~~board~~Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents ~~relating~~ relevant to ~~any~~ the matter in question. The board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses and receive evidence. Subject to the approval of funds, the Board may contract with a third party to assist it in carrying out its functions.

(d) The ~~board~~Board shall decide all issues by majority vote and shall issue its ~~decision~~ decisions in the form of written orders and opinions. ~~The prohibited practices decisions of the board on interpretation and application of this chapter to collective bargaining agreements where a dispute arises between the employer and the exclusive representative~~applications of the Ordinance are final and binding on the parties~~,~~ subject to the appeal ~~provisions in section 15-19.~~ process provided in Section 20. The Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose by the parties as required by law.

(e) The ~~board~~Board has the power to enforce provisions of ~~this chapter and prohibited practices disputes arising between~~ the ~~employer and exclusive representatives concerning labor management agreements~~ City of Las Cruces Labor-Management Relations Ordinance and the Board's Labor-Management Relations Rules and Regulations through the imposition of appropriate administrative ~~orders. Any such order directed toward the city shall be forwarded to the city manager for appropriate action~~remedies.

(f) The Board shall have no power to promulgate policy other than for its own operation.

(g) No rule or regulation promulgated by the ~~board~~Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by ~~this chapter~~the Labor Management Relations Ordinance to pay money to any labor organization that is certified as an exclusive representative. This issue of fair share shall be ~~left~~a permissive as opposed to ~~voluntary~~a mandatory subject of bargaining ~~by~~between the ~~parties~~ employer and the exclusive representative.

Sec. 15-8~~9~~. Hearing procedures.

(a) The ~~labor-management relations board~~Board may hold hearings for the purposes of:

(1) Information gathering and inquiry;

(2) Adopting rules and regulations; and

(3) Adjudicating disputes and enforcing ~~this chapter~~the provisions of the Labor Management Relations Ordinance, and rules and regulations adopted pursuant to ~~this chapter~~the Ordinance.

(b) The ~~board~~Board shall adopt regulations setting forth procedures to be followed during hearings of the ~~board~~Board. Such regulations shall meet minimal due process requirements of the state and federal constitution ~~and federal Constitution~~.

(c) Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the ~~board~~Board of a written notice together with a copy of the charges and relief requested.

(~~e~~d) All adopted rules and regulations shall be filed in accordance with ~~the city clerk, with copies sent to the city manager, city attorney and any certified organization~~applicable laws.

(~~f~~e) A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the ~~board~~Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the ~~petitioner~~party filing the appeal.

(f) Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under this Ordinance.

(~~e~~g) No regulations proposed to be adopted by the board that affect any person or governmental entity outside of the board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the board. The public hearing shall be held after ~~the board has given~~ notice of the subject matter of the regulation,~~;~~ the action proposed to be taken,~~;~~ the time and place of the hearing,; the manner in which interested persons may present their views,~~;~~ and the method in ~~by~~ which copies of the proposed regulation, proposed amendment or repeal~~ed~~ of an existing regulation may be obtained. All meetings shall be held at a City facility. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the ~~county~~ City of Las Cruces, and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who ~~may~~ have made a written requests for advance notice of hearings. ~~All meetings of the board shall be held in the city.~~

Sec. 15-9~~1~~0. Appropriate bargaining units.

(a) The ~~labor-management relations board~~Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units ~~for collective.~~ Appropriate bargaining units shall be established on the basis of occupational groups~~, a~~ or clear and identifiable community of interest in employment terms ~~and,~~employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, ~~white collar~~secretarial clerical, technical, para-professional, professional, ~~paraprofessional, police and fire. Bargaining units shall not be~~

~~determined by~~ corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the ~~board~~Board, may further consolidate occupational groups. ~~Essential~~ The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining ~~within the city~~, and the assurance to ~~public~~ employees of ~~the fullest freedom in exercising the~~ their rights guaranteed by ~~this chapter~~the Ordinance.

(b) ~~Within 30 days of a disagreement arising between~~ If the ~~employer and a~~ labor organization ~~concerning the composition of an~~ and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the ~~board~~Board shall hold a hearing concerning the composition of the bargaining unit ~~before designating an~~. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the Board.

(c) The ~~board~~Board shall not include in any appropriate bargaining unit ~~supervisors, management employees~~, probationary, supervisory, managerial, or confidential employees.

Sec. 15-~~10~~11. Elections.

(a) Whenever, in accordance with regulations prescribed by the ~~labor-management relations board, a labor organization files~~ Board, a petition is filed by a labor organization containing the ~~valid~~ signatures of at least ~~30~~thirty percent (30%) of the employees in an appropriate bargaining unit, the ~~board~~Board shall ~~conduct~~post a notice to affected employees regarding the filed petition and proceed with the process for conducting a secret ballot representation election.

(b) Once a labor organization has filed a ~~valid~~ petition with the ~~board calling for~~ Board requesting a representation election, other labor organizations may seek to be placed on the ballot. ~~Such other~~ Any labor organization ~~shall~~ may file a ~~petition containing the valid signatures of not less than ten percent of the employees in the appropriate bargaining unit. The petition shall be filed no later than ten days after the board and the employer post a written notice that the~~ competing petition containing the signatures of not less than thirty percent (30 percent of the employees%) of the employees in the appropriate bargaining unit no later than ten (10) calendar days after the Board has posted a written notice that a petition for a representation election has been filed by a labor organization.

(c) ~~Every initial election ballot~~ All representation elections shall include the option for "no representation", except in a run-off election where the choice of "no representation" was not one of the two choices that received the highest votes.

(d) In the event of an election with two or more labor organizations on the ballot, ~~if neither~~ and none of the choices ~~receives~~on the ballot received a majority of the votes cast, then a runoff election shall be held within ~~30~~fifteen (15) calendar days. The choices on the run-off election ~~ballot~~ shall consist of the two ~~employee organizations~~ (2) choices, which received the greatest number of votes in the original election ~~as well as the choice of no representation~~.

(e) ~~If a majority of the votes cast is in favor of representation by a labor organization and at least 60 percent of the members in the bargaining unit have cast a vote, the board~~ A valid election requires that at least forty percent (40%) of the eligible employees in an appropriate bargaining unit cast a vote. In an election with only one labor organization, and the majority of the votes cast are in favor of representation the Board shall certify that labor organization as the exclusive representative for all ~~employees in that appropriate bargaining unit. No labor organization shall be certified as an exclusive representative unless at least 60 percent of~~ the ~~members of~~ employees in the bargaining unit ~~vote in the election~~.

(f) No election shall be conducted if an election ~~or runoff election~~ has been conducted in the twelve (12) month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided ~~in subsection 15-12(e)~~Section 13.B. of this ordinance, or after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

(g) Election disputes shall be resolved by the ~~board~~Board.

~~**Sec. 15-11. Exclusive representation.**~~

~~(a) A labor organization that has been certified by the labor management relations board as representing the employees in the appropriate bargaining unit shall be the exclusive bargaining representative of all employees in the appropriate bargaining unit.~~

(h) As an alternative to the provisions of Subsection A of this section, the employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local board shall not certify an appropriate bargaining unit if the employer objects to the certification without an election.

Sec. 15-12. Exclusive representation.

~~(a)~~ A labor organization that has been certified by the Board as the exclusive representative for employees in an appropriate bargaining unit shall represent all employees in the bargaining unit. The exclusive representative shall act for all employees in the ~~appropriate~~ bargaining unit and negotiate a collective bargaining agreement covering all employees in the ~~appropriate~~ bargaining unit. The exclusive representative shall represent the interests of all employees in the ~~appropriate~~ bargaining unit without discrimination or regard to membership or non-membership in the labor organization.

~~(b)~~ The existence of an exclusive bargaining representative shall not prevent employees ~~in or out of a bargaining unit~~ from taking their grievances ~~to their supervisors or~~ through the ~~personnel department~~grievance process or filing prohibited practices with the ~~board based upon discrimination by the exclusive representative or by the employer~~Board. Any settlement of a grievance or relief given on a prohibited practice brought by ~~a public employee~~

~~individually~~ an individual shall not be inconsistent with or in violation of ~~resolution made~~the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of a memorandum of understanding between the employer and the exclusive representative applicable to the day-to-day administration of the collective bargaining agreement ~~then in effect between the employer and the exclusive representative~~. The exclusive representative shall be afforded the opportunity to be present at such hearings and make its views known.

Sec. 15-~~12~~13. Decertification of exclusive representative.

(a) Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if ~~30~~thirty percent (30%) of the employees in the appropriate bargaining unit ~~submit a petition in writing to the labor-management relations board~~ make a written request to the Board for a decertification election. ~~Decertification elections shall be held in a manner prescribed by rules of the board~~A decertification election shall be valid only if at least forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

(b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the ~~board~~ Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement~~;~~, provided, however, that a request for ~~an~~ a decertification election 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 (3) years.

(c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least ~~30 percent~~thirty percent (30%) of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

(d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the ~~board~~Board shall not accept a request for a decertification election earlier than ~~12~~twelve months subsequent to a labor organization's certification as the exclusive representative.

Sec. 15-~~13~~14. Scope of bargaining.

(a) Except for retirement programs provided under the Public ~~Employee~~Employment Retirement Act, ~~employers and exclusive representatives~~ the parties shall bargain in good faith on all wages, hours, and other terms and conditions of employment ~~However, neither the employer nor the exclusive representative shall be required to agree to a proposal or to make a concession. All collective bargaining agreements between the parties shall be reduced to writing~~ and other issues agreed to be the parties. The parties shall enter into a written agreement covering employment relations regarding the issues agreed to in collective bargaining.

(b) Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.

(c) The obligation to bargain collectively imposed by ~~this chapter~~the Labor Management Relations Ordinance shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with ~~the provisions of any other~~ state statute~~, state constitutional provision, city Charter sections~~ or federal ~~law~~statutes. In the event of conflict between the provision of any federal or state statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

(d) Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. ~~The duty of the public employer to honor payroll deductions shall continue until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative.~~ During the time that a ~~board~~Board certification is in effect for a particular ~~appropriate bargaining unit~~exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

~~(d)~~(e) Fair share is a permissive subject of bargaining.

(f) Any agreement ~~provision~~ or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds~~.~~ to fund the agreed upon provision. An arbitrator's decision shall not require the re-appropriation of funds.

~~(e) A grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters shall be a mandatory subject to bargaining if either party chooses to negotiate the issue. Further, it shall be a mandatory subject of negotiation whether such grievance procedures shall be a binding determination, constituting an arbitration award within the meaning of the Uniform Arbitration Act.~~

~~(f)~~

(g) The parties have a requirement that a grievance procedure culminating with final and binding arbitration be negotiated. This applies only to grievances and the interpretation and application of the agreement between the parties and does not apply to negotiation impasses. The parties shall share the cost of any proceedings conducted pursuant to this subsection equally. Each party is responsible for paying any cost related to its witnesses and representation.

Sec. 15.15. Negotiations and impasse resolution.

(a) The following meetings shall be closed:

(1) ~~Meetings~~meetings for the discussion of ~~bargaining strategy preliminary to~~ collective bargaining strategy between the governing body and the employer's negotiating team preliminary to negotiations ~~between the employer and the exclusive representative of the employees of the employer;~~

~~(2) Collective bargaining~~ sessions; ~~and~~

~~(3) Consultations~~

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

~~**Sec. 15-14. Negotiations and impasse resolutions.**~~

~~(a) Under this chapter, the~~

(b) The following negotiation procedures shall apply to the employer and exclusive representatives:

~~(1) Negotiations shall be initiated~~

(1) The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. ~~Such~~ Subsequent requests for negotiations shall be ~~post~~post marked no earlier than 120 days nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.

~~(2) Negotiating teams will consist of a maximum of five persons.~~

~~(3)~~ (2) All negotiations will be conducted in closed sessions. ~~Negotiations will begin with the party that requested the negotiations presenting the complete proposal and changes section by section, unless such procedure is modified by an agreement of both~~ Negotiations will be held at a facility and at a time mutually agreed upon by the parties.

~~(4) Following the complete presentation of both proposals, the parties will identify the economic and noneconomic issues. Unless otherwise agreed to by the parties, all noneconomic issues must be resolved prior to negotiating economic issues.~~

~~(5)~~

(3) Recesses and study sessions may be called by either team. Prior to ~~these recesses or study~~ the conclusion of any negotiating sessions, the reconvening time will be agreed upon. ~~A caucus~~ Caucuses may be taken as needed.

~~(6) Employees who are members of an exclusive representative's negotiating team will be released from their normal duties without pay, unless otherwise negotiated, to participate in negotiations after notifying their supervisor.~~

~~(7)~~

(4) Tentative agreements reached during negotiations will be reduced to writing, dated and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either ~~team's~~party's understanding of the language as it ~~relates~~related to another part of the agreement.

~~(8)~~

(5) Agreement on ~~a negotiated~~ contract negotiations is accomplished when the ~~union president and the mayor, having been authorized by the city council,~~ Union President and the City Administrator sign the agreement. Provisions in multi-year agreements providing for economic increases ~~in~~for subsequent years shall be contingent upon the ~~city council~~ governing body appropriating the funds necessary to fund the increase for the subsequent year~~s. If the city council does not~~). Should the governing body not appropriate sufficient funds to fund the agreed-upon increase ~~for subsequent years~~, either party may reopen negotiations.

~~(b)~~

(c) The following impasse procedure shall be followed by the employer and exclusive representatives:

~~(1) If an impasse occurs and~~

(1) If an impasse occurs, either party shall request mediation assistance. If the parties cannot agree ~~to~~on a mediator, either party may request ~~that~~ the ~~board appoint a mediator from~~ assistance of the federal mediation and conciliation service~~.~~;

~~(2) If the impasse continues after a 60-day mediation period, either party may request from the board that a factfinder be assigned to the negotiations.~~

~~(3) The factfinder shall conduct hearings and submit written findings and recommendations to the parties and the board. The factfinder shall select either the exclusive representative's total and complete last best offer or he/she may select the employer's total and complete last best offer. The factfinder may not create his/her own settlement. If the parties have not reached agreement within 15 days after receipt of the factfinder's report, the board shall publish the factfinder's recommendation.~~

~~(4) If no agreement has been reached within 30 days of the issuance of the factfinder's recommendation, the recommendation of the factfinder will be forwarded to the city council, and the city council may accept or modify the factfinder's recommendation as it sees fit. The decision of the city council shall be final and binding on both parties and shall be incorporated into a contract along with those items that had been tentatively agreed to by the parties.~~

(2) if the impasse continues after thirty (30) calendar days, either party may request an unrestricted list of seven (7) arbitrators from the federal mediation and conciliation service. The parties shall choose one arbitrator by alternately striking names from such list. Which party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues no later than thirty (30) calendar days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's costs incurred pursuant to this subsection equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

~~(5)~~

(3) The parties may enter into a written agreement ~~with an exclusive representative~~ setting forth an alternative impasse resolution procedure.

~~(6) The cost of any impasse proceeding that requires a third party shall be borne equally by the parties to the impasse.~~

(4) 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 employer to increase any employees' levels, steps, or grades of compensation contained in the existing contract.

Sec. 15-~~15. Prohibited practices of employers~~15. Employers – prohibited practices.

~~(a) Under this chapter, no~~

(a) A public employer or his/her representative shall not:

~~(1)~~ (1) ~~Discriminate~~discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

~~(2) Interfere~~

(2) interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under ~~this chapter~~the Labor Management Relations Ordinance;

~~(3) Dominate~~

(3) dominate or interfere in the formation, existence or administration of any labor organization;

~~(4) Discriminate~~

(4) discriminate in regard to hiring, tenure or any term or condition of employment in order to encourage or discourage membership in a labor organization;

~~(5) Discharge~~

(5) discharge or otherwise discriminate against ~~any~~ an employee because ~~he/she~~the employee has signed or filed an affidavit, petition, grievance or complaint or given any information or testimony under ~~this chapter~~the provisions of the Labor Management Relations Ordinance or because an employee is forming, joining or choosing to be represented by a labor organization;

~~(6) Refuse~~

(6) refuse to bargain collectively in good faith with the exclusive representative;

~~(7) Refuse or fail to comply with any section of this chapter or board regulation; or~~

~~(8) Refuse~~

(7) refuse or fail to comply with any provisions of the Labor Management Relations Ordinance, Board regulations, or the Public Employee Bargaining Act; or

(8) refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

~~(b) It shall be a prohibited practice for any elected or appointed official of the city government or any employee organization, group of city employees or individual city employee to interfere with the normal process of negotiations between the duly authorized negotiating teams of the city government and of the employee organization. Additionally, no elected official shall direct or attempt to direct negotiations.~~

(b) During the negotiation and the impasse procedure, City Councilors and management employees are prohibited from negotiating issues which are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-~~16. Prohibited practices of employees, labor organization.~~ 17. Employees – labor organizations; prohibited practices.

~~Under this chapter, an~~

(a) An employee, a labor organization, or its representative shall not:

~~(1) Discriminate~~

(1) discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin~~.~~;

~~(2) Solicit~~

(2) solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;

~~(3) Interfere with,~~

(3) restrain or coerce any employee in the exercise of any right guaranteed by ~~this chapter.~~the provisions of the Labor Management Relations Ordinance;

~~(4) Interfere with, restrain or coerce any elected official, employee or representative of the employer in the conduct of his duties; provided, however, that expressing an opinion regarding an elected official's or representative of the employer's position on a labor-management relations issue and political activity based on that opinion shall not be considered a prohibited practice.~~

~~(5) Refuse~~

(4) refuse to bargain collectively in good faith with the employer~~.~~;

~~(6) Refuse~~

(5) refuse or fail to comply with any collective bargaining ~~or other~~ agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

~~(7) Refuse~~

(6) refuse or fail to comply with any ~~section~~provision of ~~this chapter.~~the Labor Management Relations Ordinance;

~~(8) Picket homes or private businesses or cause another to~~

(7) picket homes or private businesses of ~~the~~ employees, appointed individuals, or elected officials~~, employees or board members.~~ of the City of Las Cruces;

~~(9) Interfere with~~

(8) restrain or coerce the employer in the selection of its agent for bargaining~~; provided, however, that expressing an opinion as to the employer's agent for bargaining shall not be considered a prohibited practice~~.

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~~(10) Interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative; provided, however, that expressing an opinion regarding a labor-management relations issue and political activity based on that opinion shall not be considered a prohibited practice.~~

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~~(11) During the representation election period or during the negotiation process, including the impasse procedure, discuss any issue with elected officials including the representation election or any matter which is the subject of negotiations.~~

(b) During the negotiation and the impasse procedure, City Councilors and management employees are prohibited from negotiating issues which are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

Sec. 15-~~17~~18. Strikes and lockouts prohibited.

(a) ~~Under this chapter, no~~ No employee or labor organization shall engage in a strike. No ~~employee or~~ labor organization shall cause, instigate, encourage or support a strike. ~~No~~ The employer shall not cause, instigate, or engage in any employee lockout.

(b) ~~When the employer submits a formal complaint alleging a strike has occurred, the labor-management relations board shall meet in emergency session, within 24 hours of the filing of the charge by the~~ The employer~~, and determine whether a strike has indeed occurred. If an emergency session is called during the absence of a board member, the mayor and city council shall appoint an interim member in the same manner as the initial appointment.~~

~~(c) The city~~ may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

~~(d) Any labor organization that causes, instigates, encourages or supports a public employee strike, walkout or slowdown may be decertified as the exclusive representative for that appropriate bargaining unit by the board and shall be barred from serving as the exclusive representative of any bargaining unit of public employees for a period of not more than one year.~~

(c) The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

Sec. 15-~~18~~19. Agreements valid; enforcement.

All collective bargaining agreements and other agreements between ~~employers~~ the employer and exclusive ~~bargaining representatives~~representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this ~~chapter~~Labor Management Relations Ordinance.

Sec. 15-~~19~~20. Judicial enforcement; standard of review.

~~(a) A decision of the labor-management relations board may be appealed as allowed by law.~~

(a) ~~(b)~~ The ~~board~~Board may request the ~~district court~~District Court to enforce any order issued pursuant to ~~this chapter,~~ the Labor Management Relations Ordinance, including ~~an order~~those for the appropriate temporary relief and restraining orders. The ~~court~~Court shall consider the request for enforcement on the record made before the ~~board. It~~ Board. The Court shall uphold the action of the ~~board~~Board and take appropriate action to enforce it unless the ~~court~~Court concludes that the order is:

~~(1) Arbitrary~~

(1) arbitrary, capricious, or an abuse of discretion;

~~(2) Not~~

(2) not supported by substantial evidence on the record considered as a whole; or

~~(3) Otherwise~~

(3) otherwise not in accordance with law.

~~(c) Any~~

(b) Any person or party, including any labor organization affected by a final regulation, order or decision of the board, may appeal to the district court for further relief. All such appeals shall be based upon the record made by the board. All such appeals to the district court shall be taken within 30 days of the date of the final regulation, order or decision of the board. Actions taken by the board shall be affirmed unless the court concludes that the action is:

~~(1) Arbitrary~~

(1) arbitrary, capricious, or an abuse of discretion;

~~(2) Not~~

(2) not supported by substantial evidence on the record considered as a whole; or

~~(3) Otherwise~~

(3) otherwise not in accordance with law.

~~(d) The decisions of the board are considered final and binding on the parties, unless the decision is appealed.~~

Sec. 15-21. Severability.

If any part or application of the City of Las Cruces Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BILL RICHARDSON
GOVERNOR

JUAN B. MONTOYA
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PELRB BOARD

December 16, 2009

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Jared Abrams, City Attorney
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004-9002

RE: City of Las Cruces request for approval of Local Board **PELRB Case # 206-09**

Dear Messieurs Leskey and Abrams:

As you know the Public Employee Labor Relations Board has approved the proposed City of Las Cruces Labor Management Relations ordinance. Once the City Council enacts the proposed ordinance please send me a copy. I will then issue the State's approval. Thank you.

Sincerely yours,

Juan B. Montoya

Juan B. Montoya

DEC 18 2009

CITY ATTORNEY

ATTACHMENT 1