

RELATING TO COLLECTIVE BARGAINING FOR NMSU, PROVIDING RIGHTS, RESPONSIBILITIES, AND CONDITIONS OF CONTINUED EXISTENCE AND TRANSFER OF AUTHORITY UPON TERMINATION OF LOCAL BOARD.

SECTION 1. SHORT TITLE. This Resolution, updating and revising its March 14, 2005 resolution relating to collective bargaining, may be cited as the “New Mexico State University Labor Management Relations Resolution”.

SECTION 2. PURPOSE. The purpose of the Labor Management Relations Resolution 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.

SECTION 3. CONFLICTS. In the event of conflict with other New Mexico State University resolutions, the provisions of the New Mexico State University Labor Management Relations Resolution shall supersede other previously enacted resolutions. New Mexico State University 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.

SECTION 4. DEFINITIONS. As used in the Labor Management Relations Resolution:

- A. **Appropriate Bargaining Unit:** A group of employees designated by the New Mexico State University Labor Management Relations Board (LMR Board) for the purpose of collective bargaining.
- B. **Appropriate Governing Body:** The policymaking body or individual representing a public employer;
- C. **Authorization Card:** A signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;
- D. **[LMR] Board:** The local Labor Management Relations Board of New Mexico State University;

- E. **Certification:** The designation by the LMR Board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;
- F. **Collective Bargaining:** The act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;
- G. **Confidential Employee:** A person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;
- H. **Emergency:** A one-time crisis that was unforeseen and unavoidable;
- I. **Exclusive Representative:** A labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;
- J. **Impasse:** Failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;
- K. **Labor Organization:** An employee organization, formed primarily for the purpose of representing public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations;
- L. **Lockout:** 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;
- M. **Management Employee:** 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 or whose fiscal responsibilities are routine, incidental or clerical;
- N. **Mediation:** Assistance by an impartial third party to resolve an impasse between a public employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;
- O. **Professional Employee:** 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;

P. **Public Employee:** A regular probationary or non-probationary employee of New Mexico State University; and includes those employees whose work is funded in whole or in part by grants or other third-party sources;

Q. **Public Employer:** New Mexico State University;

R. **Strike:** A public employee's refusal, in concerted action with other public employees, to report for duty or the willful absence 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 conditions, compensation, rights, privileges or obligations of public employment; and

S. **Supervisor:** An employee who devotes a majority 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, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the individual's subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

SECTION 5. RIGHTS OF EMPLOYEES.

A. Employees, other than management, supervisory and confidential 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.

B. Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section 18 of this resolution.

SECTION 6. RIGHTS OF EMPLOYER. Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer may:

A. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate

- public employees;
- B. Determine qualifications for employment and the nature and content of personnel examinations;
 - C. Take actions as may be necessary to carry out the mission of the employer in emergencies, and;
 - D. Retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

SECTION 7. LABOR MANAGEMENT RELATIONS BOARD – CONDITIONS OF CONTINUED EXISTENCE AND TRANSFER OF AUTHORITY UPON TERMINATION.

- A. The LMR Board created by resolution of the NMSU Board of Regents, most recently amended March 14, 2005, shall continue to exist except as provided in NMSA 1978 Section 10-7E-10(B) through 10-7E-10(J) (2020).
- B. The LMR Board shall be composed of three members appointed by the NMSU Board of Regents. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the chancellor or designee, representing New Mexico State University, and one member shall be appointed on the recommendation of the first two appointees.
- C. LMR Board members shall serve for a period of one (1) year with terms. 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 LMR Board member may serve an unlimited number of terms.
- D. During the term of appointment, no LMR 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.
- E. Each LMR Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

SECTION 8. LMR BOARD – POWERS AND DUTIES.

- A. The LMR Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in this Labor Management Relations Resolution, 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.
- B. The LMR Board shall:
- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
 - (2) conduct studies on problems pertaining to employee-employer relations; and
 - (3) request information and data from public employers and labor organizations necessary to carry out its functions and responsibilities; and
 - (4) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the LMR Board in carrying out its functions and may delegate any or all of its authority to those third parties, subject to final review of the LMR Board.
- C. The LMR Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The LMR Board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The LMR Board may administer oaths and affirmations, examine witnesses and receive evidence.
- D. The LMR Board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions.
- E. The LMR Board has the power to enforce provisions of the Public Employee Bargaining Act and this resolution through the imposition of appropriate administrative remedies, actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the LMR Board.
- F. No rule or regulation promulgated by the LMR Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Resolution to pay money to any labor organization that is certified as an exclusive representative.

SECTION 9. HEARING PROCEDURES.

- A. The LMR Board may hold hearings for the purposes of:
- (1) Information gathering and inquiry;
 - (2) Adopting rules and;
 - (3) Adjudicating disputes and enforcing the provisions of the Labor Management Relations Resolution and rules adopted pursuant to the Resolution.
- B. The LMR Board shall adopt rules setting forth procedures to be followed during hearings of the LMR Board. Such rules shall meet minimal due process requirements of the state and federal constitutions.
- C. The LMR Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the LMR Board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the LMR Board for its decision.
- D. A rule proposed to be adopted by the LMR Board that affects a person or governmental entity outside of the LMR and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the LMR Board. The public hearing shall be held after notice of the subject matter of the rule, 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 by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings shall be held in Doña Ana County. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the geographic area in which the schools are located 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.
- E. All adopted rules shall be filed in accordance with applicable state statutes.
- F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the LMR Board or other lawful authority.

SECTION 10. APPROPRIATE BARGAINING UNITS.

- A. The LMR 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 a 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, paraprofessional, 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 LMR 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 Resolution.
- B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the LMR 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 LMR Board.
- C. The LMR Board shall not include in any appropriate bargaining unit, supervisory, managerial, or confidential employees.
- D. Jobs included within a bargaining unit pursuant to a New Mexico State University Labor Management Relations Resolution in effect on January 1, 2020 shall remain in that bargaining unit after enactment of this Resolution unless otherwise removed by the LMR Board in accordance with its rules governing unit clarification.

SECTION 11. ELECTIONS.

- A. Whenever, in accordance with rules prescribed by the LMR Board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the LMR Board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the

appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the LMR Board shall require the New Mexico State University to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

- B. Once a labor organization has filed a valid petition calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the LMR Board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.
- C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the LMR Board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the LMR Board; the LMR Board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.
- D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The LMR Board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the LMR Board shall certify the labor

organization as the exclusive representative of all public employees in the appropriate bargaining unit.

- E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 13 herein.

SECTION 12. EXCLUSIVE REPRESENTATION.

- A. A labor organization that has been certified by the LMR Board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.
- B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.
- C. New Mexico State University shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:
 - (1) for purposes of newly hired employees in the bargaining unit, reasonable access includes:
 - (a) the right to meet with new employees, without loss of employee compensation or leave benefits; and
 - (b) the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during

- new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and;
- (2) for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:
- (a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and
 - (b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.
- D. New Mexico State University shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.
- E. The meetings described in this section shall not interfere with New Mexico State University operations.
- F. If New Mexico State University has the information in its records, the New Mexico State University shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:
- (1) the employee's name and date of hire;
 - (2) contact information, including:
 - (a) cellular, home and work telephone numbers;
 - (b) a means of electronic communication, including work and personal electronic mail addresses; and
 - (c) home address or personal mailing address; and
 - (3) employment information, including the employee's job title, salary and work site location.
- G. New Mexico State University shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired

employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the public employer shall not disclose the information described in Subsection F of this section, or public employees' dates of birth or social security numbers to a third party.

- H. An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:
 - (1) collective bargaining, including the administration of collective bargaining agreements;
 - (2) the investigation of grievances or other disputes relating to employment relations; and
 - (3) matters involving the governance or business of the labor organization.
- I. Nothing in this section prevents New Mexico State University from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor organization to communicate with public employees.

SECTION 13. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.

- A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the LMR Board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the LMR Board. An election shall only be valid if forty percent 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 LMR Board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an 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 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 of the public

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 LMR Board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

SECTION 14. SCOPE OF BARGAINING.

- A. Except for retirement programs provided under the Educational Retirement Act, the parties shall:
- (1) bargain in good faith on all wages, hours, and other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and
 - (2) enter into a written agreement covering employment relations regarding the issues agreed to in collective bargaining;
- B. Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.
- C. In regard to the Educational Retirement Act, New Mexico State University in a written collective bargaining agreement may agree to assume any portion of a public employee's contribution obligation to retirement programs provided pursuant to the Educational Retirement Act. Such agreements are subject to the limitations set forth in this section.
- D. The obligation to bargain collectively shall not be construed as authorizing New Mexico State University and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

- E. 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. New Mexico State University shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. New Mexico State University and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by New Mexico State University or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.
- F. New Mexico State University and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:
- (1) applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and
 - (2) shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.

- G. An impasse resolution or an agreement provision by New Mexico State University and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a New Mexico State University and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the re-appropriation of funds.
- H. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.
- I. The following meetings shall be closed:
 - (1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between New Mexico State University and the exclusive representative of the public employees of New Mexico State University;
 - (2) collective bargaining sessions; and
 - (3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

SECTION 15. IMPASSE RESOLUTION.

- A. The following impasse procedures shall be followed by New Mexico State University and exclusive representatives:
 - (1) if an impasse occurs, either party may request from the LMR Board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the LMR Board to assist negotiations unless the parties agree to another mediator; and
 - (2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written

decision resolving unresolved issues pursuant to Section 14 of this Ordinance and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

- C. New Mexico State University may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.
- D. 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 New Mexico State University to increase any employees' levels, steps or grades of compensation contained in the existing contract.

SECTION 16. EMPLOYERS – PROHIBITED PRACTICES.

New Mexico State University or its representative shall not:

- A. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;
- B. Interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Resolution or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:
 - (1) addressing a grievance or negotiating or administering a collective bargaining agreement;
 - (2) allowing a labor organization or its representatives access to New Mexico State University facilities or properties;
 - (3) performing an activity required by federal or state law or by a collective bargaining agreement;
 - (4) negotiating, entering into or carrying out an agreement with a labor organization;

- (5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or
- (6) representing New Mexico State University in a proceeding before the LMR Board or in a judicial review of that proceeding;
- C. Dominate or interfere in the formation, existence or administration of a labor organization;
- D. Discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;
- E. Discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of this Resolution or because a public employee is forming, joining or choosing to be represented by a labor organization;
- F. Refuse to bargain collectively in good faith with the exclusive representative;
- G. Refuse or fail to comply with a provision of this Resolution or LMR Board rule; or
- H. Refuse or fail to comply with a collective bargaining agreement.
- I. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed 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.

SECTION 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 Resolution;
 - (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 Resolution;
- (7) Picket homes or private businesses of employees, appointed individuals, or elected officials of New Mexico State University;
- (8) Restrain or coerce the employer in the selection of its agent for bargaining.
- (9) Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to the public employer, other than through the appointed 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.

SECTION 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 LMR 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.

SECTION 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 Resolution.

SECTION 20. JUDICIAL ENFORCEMENT – STANDARD OF REVIEW.

- A. The LMR Board may request the Third Judicial District Court to enforce any order issued pursuant to the Labor Management Relations Resolution, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the LMR Board. The Court shall uphold the action of the LMR 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 LMR Board, may appeal to the Third Judicial District Court for further relief. All such appeals shall be based upon the record made at the LMR Board hearing. All such appeals to the Third Judicial District Court shall be filed within thirty (30) calendar days of the date of the final regulation, order, or decision of the LMR Board. Action taken by the LMR 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.

SECTION 21. SEVERABILITY.

If any part or application of the New Mexico State University Labor Management Relations Resolution is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 22. EFFECTIVE DATE.

The effective date of the New Mexico State University Labor Management Relations Resolution is December 3, 2020.

NOW, THEREFORE, BE IT RESOLVED in official session that the Regents of New Mexico State University, serving collectively as its Board of Regents, approve, sign and adopt the university's Labor Management Relations Resolution as updated above, **this 2nd day of December, 2020.**

Dina Chacón-Reitzel, Chair
NMSU Board of Regents