

ORDINANCE NO. 1993-12

RELATING TO COLLECTIVE BARGAINING FOR UNION COUNTY PROVIDING RIGHTS, RESPONSIBILITIES AND PROCEDURES IN THE EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEES AND EMPLOYERS AND THE CREATION OF THE UNION COUNTY LABOR RELATIONS BOARD.

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY, NEW MEXICO:

**SECTION 1. SHORT TITLE.--** Sections 1 through 22 of this Ordinance may be cited as the "Union County Labor Management Relations Ordinance."

**SECTION 2. PURPOSE OF THE ORDINANCE.--** The purpose of the Union County Labor Management Relations Ordinance is to guarantee employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between employers and employees, to protect the rights of the employer and to acknowledge the rights of the citizens to orderly and uninterrupted delivery of services.

**SECTION 3. CONFLICTS.--** In the event of conflict with other laws or ordinances, the provisions of this Labor Management Relations Ordinance shall supersede other previously enacted ordinances; provided that this ordinance shall not supersede any state or federal laws. Union County 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 Ordinance:

A. "appropriate bargaining unit" means a group of employees

designated by the board for the purpose of collective bargaining. Appropriate units shall be formed by occupational group, such as blue collar (unskilled, semi-skilled, and skilled), white collar (clerical, secretarial, administrative, technical and para-professional), professional, corrections, fire and police.

B. "board" means the Union County Labor Management Relations Board;

C. "certification" means the designated by the Board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit;

D. "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 conditions of employment;

E. "confidential employee" means a person who assists and acts in a confidential capacity with respect to a management employee;

F. "employee" means a regular, full-time, nonprobationary employee of Union County. This definition does not include entry probationary employees or casual employees such as temporary, seasonal or part-time employees.

G. "employer means the Union County Board of Commissioners;

H. "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;

I. "fact-finding" means the procedure following mediation whereby the parties involved in an impasse submit their differences to a third party for an advisory recommendation;

J. "governing body" is defined as Union County Board of County Commissioners

K. "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;

L. "labor organization" means any employee organization which represents employees in collective bargaining;

M. "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;

N. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of administering or effectuating management policies;

O. "mediation" means assistance by an impartial third party to resolve an impasse between an employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;

P. "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;

Q. "strike" means an employee's refusal, in concerted action with other employees, to report for duty or his 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 working conditions, compensation, rights, privileges or obligation of employment. The definition of strike includes, but is not limited to such actions as, the blue flu, sick outs, slow downs, traffic ticket writing campaigns, mass resignations and sympathy strikes.

R. "supervisor" means an employee who devotes a substantial amount of work time in supervisory duties, who customarily directs the work of two or more other employees and who has the authority in the interest of the employer to effectively recommend the retention, promoting or disciplining of other employees.

**SECTION 5. RIGHTS OF EMPLOYEES.--**

Employees other than management employees, supervisors and confidential 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 also have the right to refuse to form, join or assist any

labor organization. Employees may not be required to pay "fair-share" contributions.

**SECTION 6. MANAGEMENT RIGHTS.--** Unless limited by a collective bargaining agreement or statutory provisions, the exclusive prerogatives, functions and rights of the employer shall include, but are not limited to the following:

A. To direct and supervise all operations, functions and the work of the employees;

B. To determine the place to report to for work, to determine methods, processes and manner of performing work;

C. To hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate employees;

D. To determine what and by whom services will be rendered to the citizens;

E. To determine staffing requirements, create, abolish positions or to eliminate or reorganize work units;

F. To determine and revise schedules of work;

G. To establish, revise and implement standards for hiring and promoting employees;

H. To assign shifts, work days, hours of work and work locations.

I. To designate, assign and reassign all work duties;

J. To determine the need for and the qualifications of new employees, and to determine the qualifications for and qualifications of employees considered for transfer and promotion;

K. To take actions as necessary to carry out the mission of

the employer in emergencies; and

L. To retain all rights not specifically limited by a collective bargaining agreement or this Ordinance.

**SECTION 7. LABOR MANAGEMENT RELATIONS BOARD-CREATED-TERMS.**

A. The "labor-management relations board" is hereby created. The board shall consist of three members appointed by the Board of County Commissioners of Union County. The County Commission shall appoint one member recommended by certified organized labor representatives actively involved in representing employees, one member recommended by County management and one member jointly recommended by the two other appointees.

B. Board members shall serve for a period of one year with terms commencing April 1, 1993. 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.

C. During the term of appointment, no Board member shall hold or seek any political office, hold any public employment, be an employee of a union, an individual representing the employer in collective bargaining, or an employee of the County.

D. Each Board member shall be paid mileage and/or per diem in accordance with applicable Union County Ordinances.

E. The cost of any hearing will be borne equally by the parties to the hearing. Cost as used herein shall mean the total of all expenses paid to the Board.

**SECTION 8. BOARD-POWERS AND DUTIES.--**

A. The Board shall promulgate rules and regulations when necessary to accomplish and perform its functions and duties as established in this 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 of, hearing on and determination of complaints of prohibited practices.

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 Board's functions and responsibilities.

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 relating to any matter in question. The Board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the New Mexico district courts. The Board may administer oaths and affirmations, examine witnesses and receive evidence.

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 and collective bargaining agreements are final and binding on the parties subject to the appeal process provided in Section 20 of this ordinance.

E. The Board has the power to enforce provisions of this Labor-Management Relations Ordinance and labor-management agreements through the imposition of appropriate administrative orders.

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.

**SECTION 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 this Labor Management Relations Ordinance and rules and regulations adopted pursuant to that act.

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. Charges of prohibited labor practices that are filed within 60 days of the commission or omission of the act that generated the charges shall be heard by the Board. Such charges must identify the specific violation and relief requested. 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 first be presented to the Union County Board of County Commissioners and then be filed in accordance with applicable local ordinances.

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. Payment for the transcription shall be made by the party requesting the transcript.

F. Each party to a prohibited labor practice shall pay its witnesses for any lost wages for the time spent at hearings and such payments shall not be deemed "costs" under Section 7 E of 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 by which copies of the proposed subject matter may be obtained. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in Union County. All such hearing shall be held in Union County.

**SECTION 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 units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups, a clear and identifiable community of interest in employment terms and conditions and related personnel matters among the employees involved. Occupational groups shall be generally be identified as blue collar, white collar, police, fire and corrections. Bargaining units shall not be determined by craft or trade designations. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government and the protection of the rights of the employees under Section 5 of this ordinance.

B. The Board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The Board shall not include in any appropriate bargaining unit supervisors, managers or confidential employees.

**SECTION 11. ELECTIONS.--**

A. Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the valid signatures of at least thirty percent of the employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election.

B. Once a labor organization has filed a valid petition with the Board 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 valid signatures of not less than ten percent of the employees in the appropriate bargaining unit no later than ten days after the Board and the employer post a written notice that the petition containing the signatures of not less than thirty percent of the employees has been filed by a labor organization.

C. Every representation election shall include the option for "no representation" and every ballot shall provide that choice.

D. In the event of an election with two or more organizations on the ballot where none of the choices received a majority of the votes cast, then and in such an event a run-off election shall be held within 30 days. The choices on the run-off election shall consist of the two choices which received the greatest number of votes in the original election.

E. Where a majority of the votes cast are in favor of

representation by a labor organization and at least 60% of the members in the bargaining unit have cast a vote, the Board shall certify the 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% of the members of the bargaining unit vote in the election.

F. No election shall be conducted if an election or run-off election has been conducted in the 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 the Labor Management Relations Ordinance.

G. Election disputes shall be resolved by the Board.

H. The cost of elections shall be borne equally by the parties.

**SECTION 12. EXCLUSIVE REPRESENTATION.--**

A. A labor organization that has been certified by the Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate 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 of regard to 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 or prohibited practices to their supervisor and thereafter to proceed under existing personnel policy grievance procedures. Any adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the employer and the exclusive representative.

**SECTION 13. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--**

A. Any member of a bargaining unit or a labor organization may initiate decertification of an exclusive representative if thirty percent of the employees in the appropriate bargaining unit 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.

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 days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, that 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 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.

**SECTION 14. SCOPE OF BARGAINING.--**

A. Except for retirement programs provided under the Public Employees Retirement Act or other county retirement plans, employers and exclusive representatives shall bargain in good faith on wages, hours and other terms and conditions of employment. However, bargaining in good faith does not require either party to agree to a proposal or to make a concession. All collective bargaining agreements between the parties shall be reduced to writing.

B. The obligation to bargain collectively imposed by this 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 state or federal statutes. The employer and the exclusive representative may not negotiate agreements that would be in conflict with laws of the county, state or federal government.

C. Payroll deduction of the exclusive representative's membership dues is a negotiable item by either party. The amount of dues, if such provision is agreed to by the parties, 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 that time that a board certification is in effect for a particular appropriate bargaining unit, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

D. Any 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.

E. The parties have a requirement that grievance procedures culminating with binding arbitration be negotiated. This does not apply to the negotiation impasse procedures.

F. The following meetings shall be closed:

1. meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the employer and the exclusive representative of the employees of the employer;

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.

**SECTION 15. NEGOTIATIONS AND IMPASSE RESOLUTIONS.--**

A. The following negotiation procedures shall apply to the employer and the exclusive representatives:

1. Negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be

scheduled. Such request shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date. The parties may open negotiations at any time by mutual agreement.

2. Negotiating teams will consist of a maximum of five (5) persons designated by the exclusive representative and a maximum of five (5) persons designated by the Union County Board of Commissioners.

3. All negotiations will be conducted in closed sessions. Negotiations will be held at the facilities and at a time mutually agreed upon by the negotiating teams. Negotiations will begin with the party that requested the negotiations presenting their complete proposal and changes, section by section.

4. Following the complete presentation of both proposals the parties will identify the economic and non-economic issues. All non-economic issues must be resolved prior to negotiating economic issues.

5. Recesses and study sessions may be called by either team. Prior to these recesses or study sessions, the reconvening time will be agreed upon. A caucus may be taken as needed.

6. Employees who are members of the exclusive representatives negotiating team will be released from their normal duties without pay to participate in negotiations.

7. 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



understanding of the language as it related to another part of the agreement.

8. Agreement on contract negotiations is accomplished when the union president and the person with such authority delegated by the county commission sign the agreement. Provision in multi-year agreements providing for economic increases in subsequent years shall be contingent upon the governing body's appropriation of the funds necessary to fund the increase for subsequent years. Should the governing body not appropriate sufficient funds to fund the agreed upon increase for subsequent years, either party may reopen negotiations.

B. The following impasse procedure shall be followed by the employer and exclusive representatives:

1. If an impasse occurs, either party may request from the Board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator from the Federal Mediation and Conciliation Service shall be assigned by the Board to assist negotiations in the event no agreement upon a mediator can be made between the parties.

2. If the impasse continues after a thirty day mediation period, either party may request from the Board that a fact-finder be assigned to the negotiations. A fact-finder shall be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

3. The fact-finder shall conduct hearings and submit written findings and recommendations to the parties and the Board.

The fact-finder shall select either the exclusive representative's total and complete last best offer or the employer's total and complete last best offer. The fact-finder may not create a settlement package. If the parties have not reached agreement within fifteen days after receipt of the fact-finder's report, the Board shall publish the fact-finders recommendation.

4. If no agreement has been reached within thirty days of the issuance of the fact-finder's recommendation, the recommendation of the fact-finder will be forwarded to the governing body and the governing body may accept or modify the fact-finders recommendation as they see fit. The decision of the governing body is 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.

5. The cost of the mediator and/or the factfinder shall be borne equally by the parties to the impasse.

**Section 16. EMPLOYERS--PROHIBITED PRACTICES.--**

A. No employer or his representative shall:

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, tenure 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 he 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 provision of the Labor Management Relations Ordinance or Board regulation; or;

8. refuse or fail to comply with any collective bargaining agreement.

B. During the negotiating process, including the impasse procedure, elected Union County officials are prohibited from discussing any issue, which is a subject of negotiations, with employees of the bargaining unit involved in negotiations and employees of the exclusive representative.

**SECTION 17. EMPLOYEES-LABOR ORGANIZATIONS-PROHIBITED PRACTICES.--**

A. An employee, 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, sex or national origin;

2. solicit membership for an employee or labor organization during the employee's duty hours.

3. interfere with, restrain or coerce any employee in the exercise of any right guaranteed by 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;

5. refuse to bargain collectively in good faith with the employer;

6. refuse or fail to comply with any collective bargaining or other agreement with the employer;

7. refuse or fail to comply with any provision of the Labor Management Relations Ordinance; or

8. picket homes or private businesses of elected officials or employees;

9. interfere with or coerce the employer in the selection of its agent for bargaining;

10. interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative.

11. during the negotiating process, including the impasse procedure, discuss any issue with elected officials which is a subject of negotiations.

**SECTION 18. STRIKES AND LOCKOUTS PROHIBITED.--**

A. No employee or labor organization shall engage in a strike. No employee labor organization shall cause, instigate, encourage or support a strike. No employer shall cause, instigate or engage in any employee lockout.

B. In the case of an action by bargaining unit employees where the employer alleges 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 employer, and determine whether a strike has indeed occurred. In case the Board must meet in accordance with this emergency during the absence of a Board member, the Commissioners or their designee shall appoint an interim member with due regard to the representative character of the Board.

C. Any bargaining unit whose employees participate in, causes, instigates, encourages or supports a public employee strike, walkout or slow-down shall be automatically decertified. In such a case, the collective bargaining agreement shall be null and void, the exclusive representative for that appropriate bargaining unit may not collect dues, negotiate or represent employees in any fashion, and shall be barred from serving as the exclusive representative of any bargaining unit of Union County employees for a period of not less than three years.

**SECTION 19. AGREEMENTS VALID--ENFORCEMENT.--**

All collective bargaining agreements and other agreements between employers and exclusive representatives are valid and enforceable

according to their terms when entered into in accordance with the provisions of this Labor Management Relations Ordinance.

**SECTION 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 or local board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board or local board hearing. All such appeals to the District Court shall be taken within thirty days of the date of the final regulation, order or decision of the Board or local board. Actions taken by the Board or local 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 Labor Management Relations Ordinance 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 Union County Labor Management Relations Ordinance is March 31, 1993.

DONE this 1st day of March, 1993.

BOARD OF COMMISSIONERS  
COUNTY OF UNION

D. E. Carter  
D. E. CARTER, CHAIRMAN

Fred B. Miller  
FRED B. MILLER, MEMBER

Darrell Callis  
DARRELL CALLIS, MEMBER

Freida J. Birdwell  
FREIDA J. BIRDWELL  
COUNTY CLERK



REAL ESTATE RECORDS BOOK 1  
PAGE 548/570 UNION CO., N.M.,  
FILED FOR RECORD  
March 1, 1993 AT 10:53 A.M.  
FREIDA J. BIRDWELL, County Clerk  
[Signature]  
RECORDED  
[Signature] Deputy