

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-311

**AN ORDINANCE AMENDING PORTIONS OF CHAPTER 30, ARTICLE II
RELATING TO LABOR MANAGEMENT RELATIONS**

WHEREAS, the Council of the Incorporated County of Los Alamos (the "Council") adopted a Code Ordinance which governs the labor management relations between the Incorporated County of Los Alamos (the "County") and certain of its employees, and any labor organization representing or seeking to represent such employees; and

WHEREAS, as part of the comprehensive regulation of labor management relations, the aforementioned Code Ordinance created a Los Alamos Labor Management Relations Board (the "Board") which was consistent with the statutes, rules and regulations of the State of New Mexico; and

WHEREAS, in 2020, the New Mexico State Legislature passed, and the Governor signed, certain legislation which affects the substance of Article II, Chapter 30, including the creation and application of certain new provisions which are incumbent upon the County to adopt in order to keep and maintain its Board; and

WHEREAS, being the intention of the County to keep and maintain its Board, in November 2020, the Council adopted a new Article II of Chapter 30 of the Code as described herein to comport with State statutory mandates, and further authorize the continued existence and operation of its Board; and

WHEREAS, the State's Public Employee Labor Relations Board, required additional changes be made to Article II of Chapter 30 of the Code, pursuant to NMSA 1978 Section 10-7E-10(B).

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
INCORPORATED COUNTY OF LOS ALAMOS:**

Section 1. Section 30-38 of the Los Alamos County Code of Ordinances is amended to read as follows:

SEC. 30-38. BOARD – POWERS AND DUTIES.

A. The Labor Management Relations 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.

B. The Labor Management Relations 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.

C. The Labor Management Relations 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 Labor Management Relations 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 Labor Management Relations Board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The Labor Management Relations Board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions. 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 Council may hire personnel or contract with third parties as the Council deems necessary to assist the Labor Management Relations 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 Labor Management Relations Board.

F. The Labor Management Relations Board has the power to enforce provisions of the Labor Management Relations Ordinance 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 Labor Management Relations Board.

G. No rule or regulation promulgated by the Labor Management Relations 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 2. Section 30-39 of the Los Alamos County Code of Ordinances is amended to read as follows:

SEC. 30-39. HEARING PROCEDURES.

- A. The Labor Management Relations 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 Ordinance and rules adopted pursuant to the Ordinance.
- B. The Labor Management Relations Board shall adopt rules setting forth procedures to be followed during hearings of the Board. Such rules shall meet minimal due process requirements of the state and federal constitutions.
- C. The Labor Management Relations Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by Labor Management Relations 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 Labor Management Relations Board for its decision.
- D. A rule proposed to be adopted by the Labor Management Relations Board that affects a person or governmental entity outside of the Labor Management Relations Board shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the Labor Management Relations 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 the County of Los Alamos. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the County 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 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.
- G. Each party to a prohibited labor practice shall bear the cost of producing its own

witnesses and paying its representative for hearings under this article.

Section 3. Section 30-42 of the Los Alamos County Code of Ordinances is amended to read as follows:

SEC. 30-42. 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 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 or regard to membership in the labor organization. A claim by an employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six (6) months of the date on which the employee knew, or reasonably should have known, of the violation.

B. This section does not prevent an 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. 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.

C. The employer 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 (30) days from the date of hire for a period of at least thirty (30) minutes but not more than one hundred twenty (120) minutes, during new employee orientation or, if the 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. The employer shall permit an exclusive representative to use the 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 the employer's operations.

F. If the employer has the information in its records, the employer 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. The employer shall provide the information described in Subsection F of this section to the exclusive representative within ten (10) days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty (120) 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 employer shall not disclose the information described in Subsection F of this section, or 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 the 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.
- 4) all such electronic mail communications or similar communication systems used by the exclusive representative are public records and subject to the Inspection of Public Records Act or other applicable laws.

I. Nothing in this section prevents nor requires the employer 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 employees.

Section 4. Section 30-44 of the Los Alamos County Code of Ordinances is amended to read as follows:

SEC. 30-44. SCOPE OF BARGAINING.

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act, the employer and exclusive representatives:

- 1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and
- 2) shall enter into written collective bargaining agreements covering employment relations.

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 Public Employees Retirement Act, Employer, in a written collective bargaining agreement, may agree to assume any portion of an employee's contribution

obligation to retirement programs provided pursuant to the Public Employees 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 the employer 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 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 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. The employer shall honor payroll deductions until the authorization is revoked in writing by the employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. 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 (10) days per year for each employee. The employer 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 (10) days of receipt of notice from an employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the employer of an employee's revocation of that authorization. An employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the employer by the labor organization. No authorized payroll deduction of dues held by the employer or a labor organization on January 1, 2021 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the employee. During the time that a Labor Management Relations Board certification is in effect for a particular appropriate bargaining unit, the employer shall not deduct dues for any other labor organization.

F. The employer 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 employees, and current or former 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 the employer 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 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 New Mexico Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the New Mexico Uniform Arbitration Act. An arbitration decision shall not require the re-appropriation of funds. 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 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 the exclusive representative of the appropriate bargaining unit are present.

J. 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, dates, and initialed by each team spokesperson.

5) Agreement on contract negotiations is accomplished when the union president and the county manager sign the agreement. Provisions in multiyear 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.

Section 5. Section 30-41 of the Los Alamos County Code of Ordinances is amended to read as follows:

SEC. 30-47. 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) Interfere with, 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; or
- 7) Picket homes or private businesses of employees, appointed individuals, or elected officials of County.
- 8) During the negotiation and the impasse procedure the employees, the exclusive representative or any of its employees are prohibited from communicating or negotiating issues which are the subject of negotiations with anyone other than the appointed county 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 6. Effective Date. This Ordinance shall be effective thirty (30) days after publication of notice of its adoption.

Section 7. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 2nd day of March, 2021.

INCORPORATED COUNTY OF LOS ALAMOS

**Randall T. Ryti,
Council Chair**

ATTEST:

**Naomi D. Maestas,
Los Alamos County Clerk**