

CITY OF ALBUQUERQUE - ORDINANCES

CHAPTER 3 - CITY EMPLOYEES

ARTICLE 2: LABOR - MANAGEMENT RELATIONS

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§ 3-2-1 SHORT TITLE.

This article may be cited as the "City of Albuquerque Labor-Management Relations Ordinance."

('74 Code, § 2-2-1) (Ord. 153-1971; Am. Ord. 4-1977)

§ 3-2-2 PURPOSE.

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

- (A) To allow the city employees to organize and bargain collectively with the city government;
- (B) To promote harmonious and cooperative relationships between all parties; and
- (C) To protect the public interest by assuring, at all times, the orderly and uninterrupted operations and functions of the city government.

('74 Code, § 2-2-2) (Ord. 153-1971; Am. Ord. 121-1972; Am. Ord. 4-1977)

§ 3-2-3 DEFINITIONS.

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

BOARD. The City Labor-Management Relations Board.

CITY EMPLOYEE. Any permanent, non-probationary employee of the city except officials elected by popular vote or appointed to fill vacancies in elective offices; members of boards, commissions, and heads of agencies appointed by the Mayor; heads of agencies appointed by boards and commissions; supervisors; temporary or seasonal employees; employees paid wholly and directly from funds of the United States Government; and individuals privy to confidential matters of the city government affecting the employer-employee relationship.

CITY GOVERNMENT. The government of the city acting through and for its agencies, departments, divisions and branches and bureaus.

COLLECTIVE BARGAINING. A procedure whereby representatives of the city government and an employee organization meet, confer, consult, and negotiate with one another in a good-faith effort to reach agreement or otherwise resolve differences relating, or with respect, to wages, hours and other terms and conditions of employment.

EMPLOYEE ORGANIZATION. Any organization or labor union whose primary purpose is to represent city employees in collective bargaining, on matters pertaining to wages, hours, terms and conditions of employment, but it does not include any organization that:

- (1) Advocates the overthrow of the constitutional form of government in the United States by other than lawful means; or
- (2) Discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, age, or national origin; or
- (3) Has a primary purpose other than representing employees in collective bargaining with their employer, or other than as an association or organization formed for the advancement of, or in behalf of, a specific profession or vocation.

IMPASSE. The failure of the parties to agree with respect to any issue or issues which are subject to collective bargaining over which the parties have negotiated in good faith, and with respect to which neither party is willing to make further concessions.

PROFESSIONAL EMPLOYEE. Any city employee engaged in work that:

- (1) Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
- (2) Involves the consistent exercise of discretion and judgment in its performance;
- (3) Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period;
- (4) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of a specialized intellectual instruction and study in an institution of higher learning or hospital, as distinguished from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

STRIKE. The willful failure or refusal to report for duty, the willful absence from one's assigned position, the complete or partial cessation of work, by one or more employees, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by one or more city employees where a purpose of such action is to induce, influence or coerce a change in, or the enforcement of, any term or condition of employment or compensation, or any right, privilege or obligation of employment; or any term or provision of a collective bargaining agreement, or proposal advanced in the course of collective bargaining.

SUPERVISOR. Any individual having authority in the interest of the city employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action; if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. In the Police and Fire Departments, chiefs, deputy chiefs, and assistant chiefs are the only employees classified as supervisors.

('74 Code, § 2-2-3) (Ord. 153-1971; Am. Ord. 4-1977)

§ 3-2-4 RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY.

(A) City employees have the right to form, join and otherwise participate in the activities of an employee organization of their own choosing for the purpose of bargaining collectively with the city government, and for other lawful reasons. City employees also have the right to refuse to join and participate in the activities of employee organizations. An employee organization which has been certified by the Mayor as the exclusive bargain representative for an appropriate bargaining unit of the city employees may bargain collectively with the city government concerning hours, salary, wages, working conditions, and all terms and conditions of employment.

(B) Nothing contained in this article shall be construed to limit, impair, or affect the rights of any individual city employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of city employment or their betterment aside from the method described herein, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of his employment.

(C) No organization, its representative or other individual, shall be allowed to solicit membership for an employee organization or labor union during such employees' duty hours.

('74 Code, § 2-2-4) (Ord. 153-1971; Am. Ord. 4-1977)

§ 3-2-5 MANAGEMENT RIGHTS.

Subject to existing law, the Mayor and his administrative staff shall have the following rights:

- (A) To direct the work of its employees;
- (B) To hire, promote, evaluate, transfer and assign employees;
- (C) To demote, suspend, discharge or terminate employees for just cause;
- (D) To determine staffing requirements;
- (E) To maintain the efficiency of the city government and ensure the carrying out of normal management functions;
- (F) To take actions as may be necessary to carry out the mission of the city government in emergencies; and
- (G) To manage and to exercise judgment on all matters not specifically prohibited by this article or by a collective bargaining agreement in effect between the city employer and an employee organization.

('74 Code, § 2-2-5) (Ord. 153-1971; Am. Ord. 4-1977)

§ 3-2-6 DETERMINATION OF REPRESENTATION.

(A) Any employee organization may file a written request with the Mayor asserting that a majority of the members of a bargaining unit of the city desires to be represented by it for the purpose of collective bargaining and asking to be recognized as the exclusive bargaining representative. The request shall include a demonstration of support of at least 30% of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of the request shall be posted on the next working day following the filing of the request, by the City Human Resources Department in a place conspicuous to the city employees in the bargaining unit.

(B) Other employee organizations may file with the Mayor a written claim, within ten days after the posting of the notice of the request as specified in division (A) above, showing a demonstration of support of at least 10% of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of this claim shall also be posted on the next working day following the filing of the claim, by the City Human Resources Department in a place conspicuous to the city employees in the bargaining unit.

(C) If an employee organization wishes to solicit membership cards from city employees who are not in an existing bargaining unit, upon request, the Mayor shall provide a list of the requested employees to the employee organization. If the Mayor finds that the employee organization subsequently presents a valid demonstration of support from fifty percent of the employees, plus one additional employee, in the proposed unit, and that no other employee organization has filed a written claim under subsection (B) of this section, the Mayor shall certify the employee organization as the exclusive representative of the bargaining unit. If, within 10 working days of receiving the request for recognition and demonstration of support, the Mayor finds that it is unclear or the Mayor disputes that the employee organization has presented a valid demonstration of support from fifty percent plus one of the employees in an appropriate bargaining unit, or if the Mayor finds that a second employee organization has met the conditions of subsection (B) of this section, or if the Mayor finds that there is a dispute over the appropriate bargaining unit, or if the employee organization has filed a request for an election supported by 30% of the employees in the bargaining unit, the Mayor shall refer the matter to the Labor-Management Relations Board for resolution.

(D) Upon referral of a dispute over whether an employee organization represents a majority of the employees in an appropriate bargaining unit, or if, within 10 days of the filing of a request for recognition, the Mayor has made no decision regarding certification or referral to the Labor-Management Relations Board, the Board shall take one of the following actions:

(1) Review the employee organization's showing of interest and resolve any disputes over whether the employee organization has presented a valid demonstration of support from 50% of the employees, plus one additional employee, in an appropriately constituted bargaining unit. If the Board finds the employee organization's demonstration of support does not exceed 50% of the employees in an appropriate bargaining unit, the employee organization shall have five additional working days to submit supplemental demonstration of support. If the Board determines that a majority of city employees in an appropriately constituted bargaining unit support representation by the employee organization for the purpose of collective bargaining as provided for in this article, the Mayor shall certify that employee organization as the exclusive representative for the bargaining unit; or

(2) If the employee organization has demonstrated support from at least 30% of the employees in the bargaining unit, but less than a majority of the employees in the bargaining unit, the Board shall call and hold a representation election within 45 days from the date of the posting of the notice to determine whether an employee organization shall be the exclusive representative for the unit.

(3) Neither an election nor certification by a showing of interest shall occur if:

(a) There is currently in effect a lawful written agreement between the public employer and an exclusive bargaining representative for the bargaining unit involved; or

(b) Within the preceding 12 months there has been held a representation election or a decertification election for the bargaining unit; or

(c) In the opinion of the Board after holding such hearing as may be appropriate, the bargaining unit described in the request for representation is not an appropriate unit in accordance with this article, or that such appropriateness has not yet been determined by the Board. If the Board subsequently determines that the requested bargaining unit is appropriate, the Board shall then certify the employees organization's showing of support or call and hold a representation election as provided above.

(4) In the event an employee organization fails to be certified as the exclusive bargaining representative after a showing of interest and/or election, employees in that bargaining unit may be included in an alternate bargaining unit for the purposes of a new organizational effort by that employee organization. Each such alternate unit shall be in itself an appropriate bargaining unit. The Board shall combine the alternate units if the employee organization becomes the exclusive bargaining representative of more than one such alternate unit.

(E) The Board shall call and hold all elections within the time limits established by this article and according to the following:

(1) Included on the ballot in a representation election shall be any employee organization which has submitted evidence of support of at least 30% of the city employees in the bargaining unit, in accordance with division (A) above, any employee organization which has submitted evidence of support of at least 10% of the city employees in the bargaining unit in accordance with division (B) above, and a choice for no representation. The choices on a ballot in a decertification election shall be the incumbent exclusive bargaining representative and no representation;

(2) Voting shall be by secret ballot;

(3) All city employees in the bargaining unit involved shall have the right to vote;

(4) If the majority of the ballots cast are in favor of representation by an employee organization for the purpose of collective bargaining as provided by this article, the Mayor shall certify that employee organization as the exclusive bargaining representative for the bargaining unit. If a majority of the employees voting do not vote for representation by an employee organization the unit shall not be represented.

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

(1) In the event of an election involving more than one employee organization, wherein no choice on the ballot receives the vote of a majority of the city employees voting, then and in such event a runoff election shall be held within 30 days with a choice consisting of the employee organization receiving the greatest number of votes in the original election and the choice of no representation. The determination of representative status in such runoff election shall be governed by the provisions set forth in division (D) above.

(G) The exclusive bargaining representative shall represent all employees covered by the terms of the collective bargaining agreement.

(H) The decertification of any employee organization which has been recognized as the exclusive bargaining representative of employees in an appropriate bargaining unit may be affected by the filing of a written request for decertification supported by either a showing that 30% of the employees in the bargaining unit seek to have a decertification election, or a statement by the city government that it harbors a good-faith doubt that the exclusive bargaining representative has the support of the majority of the employees in the bargaining unit. If, in the opinion of the Board, the showing of interest in support of such a petition is sufficient, or in the case of a petition filed by the city government, there is objective evidence to support a good-faith doubt as to the majority status of the exclusive bargaining agent, the Board shall call and hold a decertification election within 45 days from the date of the receipt of the request. If a majority of the city employees in the bargaining unit vote in favor of decertification of an employee organization, the Mayor shall decertify that employee organization as the exclusive bargaining representative for the bargaining unit.

(I) No decertification election shall be held if within the preceding 12 months the Board has held a representation election or a decertification election for the bargaining unit.

(J) No petition for representation or decertification shall be entertained by the Board unless such petition and the requisite showing of support therefor shall have been filed with the Board during the 30-day period between the 120th day and the 90th day immediately preceding the expiration date of the contract.

(K) The existence of an exclusive bargaining representative shall not prevent city employees in or out of the bargaining unit from taking their grievances to their supervisor or the City Human Resources Department. Any action by the city government in connection with grievance handling shall not be inconsistent with this article or the terms and conditions of employment established by an exclusive bargaining representative and the city for the bargaining unit involved.

('74 Code, § 2-2-6) (Ord. 153-1971; Am. Ord. 69-1973; Am. Ord. 4-1977; Am. Ord. 4-2001)

§ 3-2-7 DUTY TO BARGAIN.

The city government and any employee organization recognized as the exclusive representative for a unit, through their designated agents, shall bargain concerning hours, salary, wages, working conditions and other terms and conditions of employment not in violation of law or local ordinance and not in conflict with the provisions of §§ 3-1-1 et seq., the Merit System; Personnel Regulations, establishing classified and unclassified service, methods of service rating of classified employees, methods of initial employment, promotion recognizing efficiency and ability as applicable standards, discharge of employees, and grievance and appeal procedures for classified employees; provided, however, that the provisions of a collective bargaining agreement which has been ratified and approved by the Mayor shall, where in conflict with any other provision of §§ 3-1-1 et seq. govern. This duty includes an obligation to confer in good faith with respect to terms and conditions of employment.

('74 Code, § 2-2-7) (Ord. 153-1971; Am. Ord. 218-1972; Am. Ord. 4-1977; Am. Ord. 54-1978)

§ 3-2-8 DETERMINATION OF BARGAINING UNITS.

(A) The appropriateness of the bargaining unit will be investigated and determined by the Board.

(B) Bargaining units shall be established by vocational groupings such as blue collar, maintenance, white collar or professional, with consideration being given as to

whether they have traditionally been in these groupings. Individual crafts will not be designated as bargaining units unless they have been traditionally dealt with as a separate group by the city.

(C) In determining the appropriateness of a bargaining unit, the Board will consider:

(1) Whether the city employees have the same conditions of employment which apply uniquely to them;

(2) Whether the city employees have a mutuality of interest;

(3) How the public interest might best be served in determination of the bargaining unit.

(D) A bargaining unit shall not include both professional and non-professional city employees nor shall it include supervisors, security personnel other than commissioned police officers, jailers and matrons, or those privy to confidential information including but not limited to employees of the Personnel Department, Data Processing Department, Mayor's Office, the City Attorney's Office, secretaries to Department Heads, employees involved in payroll work and any persons privy to confidential information concerning employee relations.

('74 Code, § 2-2-8) (Ord. 153-1971; Am. Ord. 69-1973; Am. Ord. 4-1977)

§ 3-2-9 PROHIBITED PRACTICES.

(A) The city government is prohibited from:

(1) Interfering with, restraining or coercing city employees in the exercise of their rights under this article;

(2) Interfering with the formation or administration of any employee organization, interfering with the selection of an agent or representative for bargaining or adjustment of grievances;

(3) Discrimination in regard to hiring or conditions of employment for the purpose of encouraging or discouraging membership in any employee organization;

(4) Refusing to negotiate in good faith with a certified exclusive bargaining representative of an employee organization;

(5) Discharging or discriminating against a city employee because he has filed charges or given testimony under the provisions of this article;

(6) Violating a written agreement in force which was negotiated under the provisions of this article.

(B) An employee organization, a group of city employees, or a city employee individually is prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of their designated duties or their rights under this article;

(2) Restraining, coercing, or interfering with the public employer in the selection of its agent for bargaining or for adjustment of grievances;

(3) Causing or attempting to cause a city supervisor to discriminate against a city employee because of membership or lack of membership in an employee organization;

(4) Refusing to negotiate and/or conduct business in good faith with the designated representative of the city government.

(5) Violating the provisions of any written agreement in force;

(6) Interfering with, restraining or coercing any official, administrative officer or representative of the city government in the conduct of his private business or personal affairs;

(7) Engaging in, inducing, or encouraging any city employee or group of employees to engage in a strike, a work stoppage, or work slowdown.

(C) It shall be a prohibited practice for any elected or appointed official of the city government or for any employee organization, group of city employees or individual city employee to attempt to influence negotiations or to interfere with the normal progress of negotiations between the duly authorized negotiating teams of the city government and of the employee organization.

(D) Any controversy concerning prohibited practices will be submitted to the Board within 30 days of the occurrence of the alleged prohibited practice. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon the accused party and the Board of a written notice together with a copy of the charges. The accused party shall have five work days within which to serve on the opposing party and the Board a written answer to such charges. Within five work days

after service of the answer, the Board or its designee shall schedule a hearing to be conducted as soon as possible, and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses and submit evidence.

('74 Code, § 2-2-9) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 4-2001)

§ 3-2-10 HEARINGS AND DECISIONS.

(A) The Board may promulgate rules of procedure for the conduct of the hearings and proceedings required by this article. The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. The Board's hearings and decisions shall be on the record. The Board shall have the authority to administer oaths, subpoena witnesses and compel the production of documents as it deems necessary to the conduct of its proceeding and its subpoenas shall be enforceable in the District Court.

(B) At the conclusion of each hearing, the Board shall announce on the record a decision and shall order such necessary relief as is consistent with the evidence, this article and applicable law. The Board shall memorialize in written form the decision and order announced on the record and shall state the Board's findings and conclusions.

(C) Whenever the Board receives a charge that alleges that a strike as defined by this article has occurred, the Board shall within 48 hours of notification of such prohibited practice charge give notice to all parties concerned, hear the matter in emergency session and announce its decision.

(D) An aggrieved party may appeal the decision of the Board within 30 days of the issuance of a written decision by following the Rules of Civil Procedure for the District Courts. The decision of the Board shall be affirmed unless the decision is found to be: arbitrary, capricious or an abuse of discretion; unsupported by evidence in the record taken as a whole; or, otherwise not in accordance with law.

(Ord. 4-2001)

§ 3-2-11 PENALTIES AND SANCTIONS.

(A) If the Board determines that a strike, as defined by this article, has occurred, the Mayor may terminate the collective bargaining agreement order decertification of the employee organization, and inform the employee organization that it no longer represents employees in the bargaining unit involved after the Mayor has met with representatives

of the effected employee organization. The Mayor shall also notify the employees in the subject bargaining unit of such action and advise them that they will not be privileged to bargain with the city government through a collective bargaining agent for at least 12 months. In such a case, the employee organization that represented the employees who went on strike shall be prohibited from participating in a representation election for city employees for a minimum of 12 months.

(B) If the Board determines that a party has committed a violation of § 3-2-9, the appropriate District Court may, if requested:

(1) Issue an order restraining and enjoining such violation.

(2) In the case of a strike as defined by this article, the District Court may impose on the employee organization a fine which will be set in accordance with the damages and/or loss of revenue involved.

('74 Code, § 2-2-10) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 4-2001)
§ 3-2-12 COLLECTIVE BARGAINING AGREEMENTS.

(A) All agreements reached between the city and an exclusive bargaining representative as a result of collective bargaining will be reduced to writing in the form of a contract between the parties.

(B) The cost of writing and reproducing copies of such agreements shall be shared according to the number of copies desired by each party to negotiations.

('74 Code, § 2-2-11) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 12-1977; Am. Ord. 4-2001)

§ 3-2-13 NEGOTIATING PROCEDURES.

(A) Negotiating Teams.

(1) Negotiating teams will consist of a maximum of four persons designated by the employee organization and a maximum of four persons designated by the Mayor.

(2) Each side may invite one observer to each session to present technical data. Such observers will be allowed to present facts.

(B) Contract Opening.

(1) (a) Upon written request by the employee organization to the Mayor or his designee, or by the Mayor or his designee to the employee organization, negotiating sessions will be scheduled to discuss items mutually agreed upon.

(b) Such request for negotiating sessions shall indicate the matter to be discussed and shall be answered within ten working days.

(2) Not less than 60 days prior to the contract ending date, either side may request the opening of negotiations as indicated above.

(3) (a) Prior to the start of negotiations, the Mayor and the employee organization will designate their chairmen and spokesmen from among the designated members of their negotiating team.

(b) While normally communications will be from spokesman to spokesman, other negotiating team members may enter into discussions on specific subjects.

(C) Procedure for Negotiations.

(1) Negotiations will be conducted as provided below and will take place at the facilities and at a time mutually agreed to by the negotiating teams.

(2) All negotiations will be held in closed sessions.

(3) Negotiations will start with the negotiating team of the party requesting negotiations delivering their proposed changes, one section or subsection at a time. Each section will be read out loud with the changes and the reasons therefore indicated in some detail. This procedure will lessen the chances of misunderstandings and increase the chances for acceptance. This procedure will continue to be followed until the entire employee organization proposal has been presented.

(4) Upon complete presentation of the proposal, the other negotiating team will present their counter proposal in the same manner.

(5) Thereafter, each side will take turns presenting counter proposals with supporting data until agreement is reached a section at a time. It may be necessary to leave one section and go on to another in order to get a new look at the one passed up.

(6) Negotiating sessions will proceed with deliberate speed, but recesses and study sessions may be called for by either side. Prior to recess, the reconvening time will be agreed upon.

(7) Members of the employee organization negotiating team will be released from their normal duties without pay to participate in negotiations.

(D) Tentative Agreement.

(1) Tentative agreements reached during negotiations will be reduced to writing and initialed by each team spokesman.

(2) Such tentative agreement is conditional and may be withdrawn should later discussion change either team's understanding of the section as it relates to another part of the agreement.

(E) Ratification. Complete agreement on any matter in negotiations will be reached when the employee organization membership and the Mayor have ratified the agreement.

('74 Code, § 2-2-12) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 12-1977; Am. Ord. 4-2001)

§ 3-2-14 IMPASSE PROCEDURES.

(A) Mediation.

(1) If the parties have not reached agreement and an impasse exists, either party or the Board may call for mediation. Upon the declaration of impasse, the parties involved shall mutually agree upon a mediator or request the Federal Mediation and Conciliation Service to appoint an impartial and disinterested person to act as mediator. If the services of the Federal Mediation and Conciliation Services are not available, the parties shall request the Board to appoint a neutral and disinterested person to act as mediator. Only items negotiated but not agreed upon shall be submitted to mediation. The mediator shall not have the power to compulsion and shall meet with the parties to aid in resolving their differences and effectuate a settlement of the impasse.

(2) The parties shall not issue public announcements concerning negotiations during pendency of these impasse procedures.

(B) Voluntary Binding Total Package Final Offer Arbitration.

(1) If an impasse persists 15 days after the mediator has first met with the parties in joint session, the city and employee organization shall have the power to voluntarily agree to binding arbitration as a method of resolving the impasse. The agreement for

arbitration shall be in writing and a copy shall be served upon the Board. The Board shall arrange for such arbitration consistent with the provisions of this article.

(2) Each party shall submit to the Board, within four days of the request for arbitration, its offer made to the other party resulting in the impasse, with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The parties may continue to negotiate during the arbitration proceedings until an agreement is reached or a decision rendered by the arbitrator.

(3) The submission of the impasse items to the arbitrator shall be limited to issues that had been considered by the mediator and upon which the parties have not reached agreement.

(4) The arbitrator shall be selected in the following manner:

(a) The negotiating teams of the city government and the employee organization may jointly agree on the selection of an arbitrator. The arbitrator shall not be an employee of the city or a union official.

(b) If agreement on the selection of the arbitrator cannot be reached, the negotiating teams shall jointly request a list of five names from the Federal Mediation and Conciliation Service from which the arbitrator shall be selected. The negotiating team that wins the flip of the coin shall have the right to strike the first name from the list submitted by the Federal Mediation and Conciliation Service. The negotiating teams shall continue to alternate striking names until one name remains. The remaining person shall be the arbitrator.

(5) The arbitrator shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(6) From the time of selection until such time as the arbitrator makes his or her final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the arbitrator with parties other than those who are direct parties to the dispute. The arbitrator may conduct formal or informal hearings to discuss the content of the final total package offer submitted by each party.

(7) The arbitrator shall consider in his or her deliberations the following standards:

(a) The lawful authority of the city government;

- (b) Stipulations of the parties;
 - (c) The interests and welfare of the public;
 - (d) The financial ability of the city government to meet costs;
 - (e) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other public sector employees performing similar services and with other employees generally in public employment in comparable communities;
 - (f) The relevant average consumer prices for goods and services, commonly known as the cost-of-living;
 - (g) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received;
 - (h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
 - (i) The effect of financing the resulting decision on the normal level of services offered by the city government;
 - (j) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
- (8) Within 15 days after the conclusion of the presentation of the parties and submission of briefs, the arbitrator shall select the complete final offer submitted by one of the parties and shall issue an award incorporating that final offer without modification. The arbitrator shall give written explanation for the selection of the final offer and inform the parties of the decision.
- (9) The final offer selected by the arbitrator and the items previously agreed upon by the city and the employee organization shall be deemed to represent the agreement between the parties.

(C) Costs. All costs for mediation and arbitration shall be borne equally by the city and the employee organization, except the cost of any representatives of each party shall be borne by that party.

(D) Review of Arbitration Decision.

(1) The decision and award of the arbitrator shall be reviewable in the appropriate District Court and subject to vacation, modification or remand of rehearing:

- (a) Where the award was procured by corruption, fraud or undue means;
- (b) Where the award was in excess of statutory authority or jurisdiction of the arbitrator;
- (c) Where the award was made in violation of applicable constitutional provisions;
- (d) Where the award was in violation of this article or affected by other error of law;
- (e) Where the arbitrator committed acts unlawfully prejudicial to the rights of any party;
- (f) Where the award exceeds the lawful authority of the city government as to funding, spending, or budgeting or would substantially impair or limit the performance of any statutory duty of the city government;
- (g) Where the award is unsupported by substantial evidence or is arbitrary and capricious or characterized by clearly unwarranted exercise of discretion.

(E) Resort to Procedure not a Condition Precedent to suit. The impasse procedures set forth herein are voluntary and shall not constitute a condition precedent to the bringing of any action for relief in an appropriate tribunal, nor shall the failure or refusal of the city government or any employee organization to participate in said voluntary impasse procedures constitute a defense in any such action or proceedings.

('74 Code, § 2-2-13) (Ord. 4-1977; Am. Ord. 4-2001)

§ 3-2-15 CITY LABOR-MANAGEMENT RELATIONS BOARD.

There shall be formed, to assist in the implementation and administration of the article, a city Labor-Management Relations Board of three members. In view of the legal work involved in the interpretation of this article, Board members shall normally be members of the legal profession or individuals who possess expertise in the field of employee relations or both. Board members shall serve for a period of two years commencing October 1, provided that, upon the initiation of any proceeding or hearing, the Board as then constituted may retain jurisdiction to finally decide the matter. The Board shall be selected as follows:

(A) Each city employee organization whose principal interest is to represent city employees in bargaining collectively with the city government concerning wages and conditions of employment, shall appoint one person to a committee that will be charged with selecting one person to the Board. This committee will meet once every two years in September and select the employees' member of the Board for the following years.

(B) The Mayor of the city shall during the same month appoint the second member of the Board.

(C) The third member and chairperson of the Board shall be appointed mutually by the members appointed by the Mayor and the employee organizations.

(D) In case the Board must meet in accordance with this article during the absence of a member of the Board, the President of the City Council shall appoint an interim Board member from the public at large with due regard to the representative character of the Board. In the event a Board member cannot complete the two year term, a new member shall be selected for the remainder of the term in accord with the selection process of this article.

(E) The members of the Board shall be compensated at the rate of \$100 each for each day of hearing or meeting. In any proceeding wherein the Board hears and decides a controversy between parties, the Board members' daily fee will be shared equally by the parties involved.

('74 Code, § 2-2-14) (Ord. 153-1971; Am. Ord. 218-1972; Am. Ord. 4-1977; Am. Ord. 4-2001)

§ 3-2-16 APPLICABILITY.

This article shall preempt all contrary local ordinances, or executive orders except those provisions of §§ 3-1-1 et seq., Merit System; Personnel Regulations, establishing:

- (A) Classified and unclassified service;
- (B) Methods of service rating of classified employees;
- (C) Methods of initial employment, promotion recognizing efficiency and ability as applicable standards, and discharge of employees; and
- (D) Grievance and appeal procedures for classified employees. Other provisions of §§ 3-1-1 et seq., where they do not conflict with this article or a collective bargaining agreement which has been ratified and approved by the Mayor, shall be administered in conjunction with this article. All provisions of §§ 3-1-1 et seq. shall continue in effect for all employees not represented by a bargaining agent.

('74 Code, § 2-2-15) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 54-1978; Am. Ord. 4-2001)

§ 3-2-17 GUIDELINES COMMITTEE.

(A) To facilitate communication and coordination between the Mayor and the City Council concerning collective bargaining strategy, there is created a Guidelines Committee composed of three City Councillors appointed by the Council President and three members of the Mayor's staff, one of whom shall be the Chief Administrative Officer. The Guidelines Committee shall, in accordance with the New Mexico Open Meetings Act, promulgate rules to effectuate the purposes of this section.

(B) The Guidelines Committee shall meet in closed session with appropriate staff in accordance with the New Mexico Open Meetings Act as necessary to discuss bargaining strategy preliminary to collective bargaining negotiations between the city and employee organizations.

(C) At the time negotiations are opened, the Guidelines Committee shall entertain a presentation from the employee organization involved in the subject collective bargaining negotiations summarizing its positions and proposals in the upcoming negotiations so the Guidelines Committee may be fully informed. The Guidelines Committee shall not otherwise meet to hear or entertain presentations by employee organizations of collective bargaining proposals, counter proposals, grievances or any other issue related to employee/labor relations except that the Mayor may ask the Guidelines Committee to convene upon the Board entering a finding that a strike has occurred.

(Ord. 4-2001)

§ 3-2-18 CONSISTENCY WITH CITY BUDGET ORDINANCE.

Any contract between the city and an employee organization, which contains provisions that result in expenditures greater than the amount, appropriated for wages and benefits in an adopted city budget for the initial fiscal year of the contract or which contains a multi-year commitment shall require the review and approval by the City Council. In order for any contract to be approved by the City Council, the City Council must approve the economic components of the contract through an executive communication and adopt a resolution providing an appropriation or deappropriation or both to cover the cost of the contract. All such contracts shall contain re-opening language for economic items.

(Ord. 20-2002)