

CITY OF HOBBS

ORDINANCE NO. 1128

AN ORDINANCE AMENDING CHAPTER 2.60 OF THE HOBBS  
MUNICIPAL CODE RELATED TO LABOR MANAGEMENT RELATIONS

WHEREAS, during the 2020 Regular Legislative Session, the New Mexico Legislature passed, adopted, and approved House Bill 364 which amended the Public Employees Bargaining Act (NMSA 1978, § 10-7E-1, et seq.); and

WHEREAS, on March 5, 2020, Governor Michelle Lujan Grisham signed House Bill 364 into law; and

WHEREAS, part of House Bill 364 is now codified in NMSA 1978, § 10-7E-10(B) which requires that no later than December 31, 2020, each local labor board shall submit to the State Public Employees Labor Relations Board (PELRB) copies of a revised local ordinance, resolution or charter amendment authorizing continuation of the local board; and

WHEREAS, through negotiations and continued effort, the PELRB has approved a model ordinance to comply with the changes required by House Bill 364; and

NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Hobbs that the Hobbs Municipal Code Chapter 2.60 be repealed in its entirety and replaced as follows:

## Chapter 2.60 - LABOR MANAGEMENT RELATIONS

### 2.60.010 - Short title.

The ordinance codified in this chapter may be cited as the "City of Hobbs Labor Management Relations Ordinance."

(Ord. 927 (part), 2004)

### 2.60.020 - Purpose.

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

(Ord. 927 (part), 2004)

### 2.60.030 - Conflicts.

In the event of conflict with other City of Hobbs ordinances, the provisions of this chapter shall supersede other previously enacted ordinances. City of Hobbs 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.

(Ord. 927 (part), 2004)

### 2.60.040 - Definitions.

As used in this chapter:

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

"Appropriate governing body" means the policymaking body or individual representing a public employer;

"Authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;

"Board" means the City of Hobbs Labor Management Relations Board.

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

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

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

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

~~"Employee" means a regular non-probationary employee of the City of Hobbs.~~

~~"Employer" means the City of Hobbs.~~

"Exclusive representative" means a labor organization that, as a result of certification by the Board, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining.

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

~~"Governing body" means the City of Hobbs City Commission.~~

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

"Labor organization" means any employee organization, one (1) of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

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

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

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

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

"Public employee" means a regular non-probationary employee of the City of Hobbs; and includes those employees whose work is funded in whole or in part by grants or other third party sources.

"Public employer" means the City of Hobbs.

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

"Supervisor" means an employee who devotes a majority ~~amount~~ of work time to supervisory duties, who customarily and regularly directs the work of two ~~(2)~~ or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" - This definition does not include an individuals who performs

merely routine, incidental, or clerical duties or who occasionally assumes a supervisory or directory roles or whose duties are substantially similar to those of their individual's subordinates and does not include a lead employees or an employees who occasionally participates in peer review or occasional employee evaluation programs of employees.

(Ord. 927 (part), 2004)

2.60.050 - Rights of employees.

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

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

(Ord. 927 (part), 2004)

2.60.060 - ~~Management rights~~ Rights of Employer.

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

- A. ~~To d~~Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- B. ~~To d~~Determine qualifications for employment and the nature and content of personnel examinations;
- C. ~~To t~~Take actions as may be necessary to carry out the mission of the employer in emergencies; and
- D. ~~The employer r~~Retains all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

(Ord. 927 (part), 2004)

2.60.070 - Labor Management Relations Board ~~created~~ Terms- Conditions of Continued Existence and Transfer of Authority Upon Termination.

A. ~~The "Labor-Management Relations Board" is hereby created in 2004 pursuant to Ordinance number 927 shall continue to exist except as provided in NMSA 1978, Section 10-7E-10(B) through 10-7E-10(J)(2020).~~

B. The Board shall be composed of three (3) members appointed by the Mayor and approved by the City Commission. One (4) member shall be appointed on the recommendation of individuals representing labor, one (4) member shall be appointed on the recommendation of the City Manager, and one (4) member shall be appointed on the recommendation of the first two (2) appointees.

B.C. Board members shall serve for a period of one (1) year with terms ~~commencing in the month of September except in the initial appointment which will be a shorter term effective the same day as the ordinance codified in this chapter.~~ 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.

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

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

(Ord. 927 (part), 2004)

2.60.080 - Board—Powers and duties.

A. The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the ordinance codified in this chapter, including the establishment of procedures for:

1. The designation of appropriate bargaining units;
2. The selection, certification and decertification of exclusive representatives; and
3. The filing, hearing, and determination of complaints of prohibited practices. ~~This does not apply to negotiation impasse or grievances subject to the required negotiated grievance process.~~

B. The Board shall:

1. Hold hearings and make inquiries necessary to carry out its functions and duties;
2. Conduct studies on problems pertaining to employee-employer relations; and
23. Request information and data from public employers and labor organizations the information and data necessary to carry out the its functions and responsibilities of the Board.
4. Hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the 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 Board.

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

D. The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. ~~The decisions of the Board on interpretation and applications of the ordinance codified in this chapter are final and binding on the parties subject to the appeal process provided in Section 2.60.200. The Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose by the parties as required by law.~~

E. The Board has the power to enforce provisions of the Public Employee Bargaining Act and this ordinance City of Hobbs Labor Management Relations Ordinance and the Board's Labor Management Relations Rules and Regulations 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 Board.

~~F. The Board shall have no power to promulgate policy other than for its own operation.~~

~~GE.~~ No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the ordinance codified in this chapter to pay money

to any labor organization that is certified as an exclusive representative. This issue of fair share shall be a permissive as opposed to a mandatory subject of bargaining between the employer and the exclusive representative.

(Ord. 927 (part), 2004)

2.60.090 - Hearing procedures.

- A. The Board may hold hearings for the purposes of:
1. Information gathering and inquiry;
  2. Adopting rules and regulations; and
  3. Adjudicating disputes and enforcing the provisions of the ordinance codified in this chapter and rules and regulations adopted pursuant to the ordinance.
- B. The Board shall adopt ~~regulations~~ rules setting forth procedures to be followed during hearings of the Board. Such ~~regulations~~ rules shall meet minimal due process requirements of the State and Federal constitution.
- ~~C. The Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the 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 Board for its decision.~~
- ~~D. A rule proposed to be adopted by the Board that affects a person or governmental entity outside the Board and its staff shall not 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 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 Lea County. Notice shall be published once at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings.~~
- ~~C. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.~~
- ~~D.E. All adopted rules and regulations shall be filed in accordance with applicable laws~~ state statutes.
- ~~E.F. A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.~~
- ~~F. Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under the ordinance codified in this chapter.~~
- ~~G. No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method in which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained. All meetings shall be held at a City facility. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the City of Hobbs, 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.~~

(Ord. 927 (part), 2004)

2.60.100 - Appropriate bargaining units.

- A. The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-professional, professional, corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the ordinance codified in this chapter.
- B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the Board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the Board.
- C. The Board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial or confidential employees.
- D. Jobs included within a bargaining unit pursuant to a City of Hobbs labor management relations ordinance in effect on January 1, 2020 shall remain in that bargaining unit after enactment of this ordinance unless otherwise removed by the Board in accordance with its rules governing unit clarification.

(Ord. 927 (part), 2004)

2.60.110 - Elections.

- A. ~~Whenever, in accordance with regulations-rules prescribed by the Board, a petition is filed by a labor organization containing the signatures of at least thirty (30) percent of the public employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the Board shall require the City of Hobbs to provide the labor organization within ten business the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election. post a notice to affected employees regarding the filed petition and proceed with the process for conducting a secret ballot representation election.~~
- B. ~~Once a labor organization has filed a valid petition calling for a representation election with the Board requesting a representation election, other labor organizations may seek to be placed on the ballot. Any Such a labor organization may shall file a competing petition containing the signatures of not less than thirty (30) percent of the public employees in the appropriate bargaining unit no later than ten (10) calendar days after the Board and the public employer has posted a written notice that at the petition in Subsection A of this section for a representation election has been filed by a labor organization.~~
- C. ~~All representation elections shall include the option for "no representation," except in a run-off election where the choice of "no representation" was not one (1) of the two (2) choices that received the highest votes. As an alternative to the provisions of Subsection A of this section, a labor organization with a~~

reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the Board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the Board; the Board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

- D. ~~In the event of an election with two (2) or more labor organizations on the ballot and none of the choices on the ballot received a majority of the votes cast, then a run-off election shall be held within fifteen (15) calendar days. The choices on the run-off election shall consist of the two (2) choices, which received the greatest number of votes in the original election. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The Board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the Board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.~~
- E. ~~A valid election requires that at least forty (40) percent of the eligible employees in an appropriate bargaining unit cast a vote. In an election with only one (1) labor organization, and the majority of the votes cast are in favor of representation the Board shall certify that labor organization as the exclusive representative for all the employees in the bargaining unit.~~
- FE. ~~No~~ An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. No An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 2.60.130(B) of this chapter, or after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.
- G. ~~Election disputes shall be resolved by the Board.~~
- H. ~~As an alternative to the provisions of subsection A of this section, the employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local Board shall not certify an appropriate bargaining unit if the employer objects to the certification without an election.~~

(Ord. 927 (part), 2004)

#### 2.60.120 - Exclusive representation.

A. A labor organization that has been certified by the Board as the exclusive representative for representing the public employees in an appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. represent all employees in the bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership or non-membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and



~~make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative. The existence of an exclusive bargaining representative shall not prevent employees from taking their grievances through the grievance process or filing prohibited practices with the Board. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of a memorandum of understanding between the employer and the exclusive representative applicable to the day-to-day administration of the collective bargaining agreement. The exclusive representative shall be afforded the opportunity to be present at such hearings and make its views known.~~

C. The City of Hobbs shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

1. for purposes of newly hired employees in the bargaining unit, reasonable access includes:

a. the right to meet with new employees, without loss of employee compensation or leave benefits; and

b. the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and

2. for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:

a. the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

b. the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

D. The City of Hobbs shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

E. The meetings described in this section shall not interfere with the City of Hobbs operations.

F. If the City of Hobbs has the information in its records, the City of Hobbs shall provide to 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 City of Hobbs shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its

employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the public employer shall not disclose the information described in Subsection F of this section, or public employee's 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 system of a public employer to communicate with the employees of the bargaining unit regarding:

1. collective bargaining, including the administration of collective bargaining agreements;
2. the investigation of grievances or other disputes relating to employment relations; and
3. matters involving the governance or business of the labor organization.

I. Noting in this section prevents the City of Hobbs from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor organization to communicate with public employees.

(Ord. 927 (part), 2004)

#### 2.60.130 - Decertification of exclusive representative.

- A. Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty (30)-percent of the public employees in the appropriate bargaining unit make a written request to the Board for a decertification election. A ~~Decertification elections shall be held in a manner prescribed by rule of the Board. An election shall only be valid only if there are at least forty (40)-percent of the eligible employees in the bargaining unit vote in the election.~~
- B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than ninety (90)-days and no later than sixty (60)-days before the expiration of the collective bargaining agreement; provided, however, that a request for an ~~decertification election~~ may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three (3)-years.
- C. When, within the time period prescribed in subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty (30)-percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.
- D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve (12)-months subsequent to a labor organization's certification as the exclusive representative.

(Ord. 927 (part), 2004)

#### 2.60.140 - Scope of bargaining.

- A. Except for retirement programs provided under the Public Employment Retirement Act ~~public employers and exclusive representatives;~~ the parties
  1. shall bargain in good faith on all wages, hours and other terms and conditions of employment and other issues agreed to by the parties. ~~However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession;~~ and
  2. ~~The parties shall enter into a written collective bargaining agreement covering employment relations, regarding the issues agreed to in collective bargaining.~~

- ~~B. Bargaining in good faith shall not require either party to agree to a proposal or to make a concession. 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, the City of Hobbs in a written collective bargaining agreement may agree to assume any portion of a public employee's contribution obligation to retirement programs provided pursuant to the Public Employees Retirement Act. Such agreements are subject to the limitations set forth in this section.~~
- ~~CD. The obligation to bargain collectively imposed by the ordinance codified in this chapter shall not be construed as authorizing employers the City of Hobbs and exclusive representatives to enter into any agreement that is in conflict with the provisions of any other statute of this state; provided however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. State or Federal statutes. In the event of an actual conflict between the provisions of any other statute of this state Federal or State statutes and any agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state former shall prevail.~~
- ~~DE. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type, levied by the exclusive representative. The City of Hobbs shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The City of Hobbs and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by the City of Hobbs or a labor organization of July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a Board certification is in effect for a particular exclusive representative appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization, from members of the same bargaining unit.~~
- ~~F. The City of Hobbs and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:~~
- ~~1. applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and~~
  - ~~2. shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.~~
- ~~EG. Any agreement or An impasse resolution or an agreement by the City of Hobbs 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, to fund the agreed-upon provision. The arbitrator's decision shall not require the re-appropriation of funds.

~~FH. The parties have a requirement that~~An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The cost of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties, culminating with final and binding arbitration be negotiated. This applies only to grievances and the interpretation and application of the agreement between the parties and does not apply to negotiation impasses. The parties shall share the cost of any proceedings conducted pursuant to this subsection equally. Each party is responsible for paying any cost related to its witnesses and representation.

~~I. The following meetings shall be closed:~~

- ~~1. meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the City of Hobbs and the exclusive representative of the public employees of the City of Hobbs;~~
- ~~2. collective bargaining sessions; and~~
- ~~3. consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.~~

(Ord. 927 (part), 2004)

#### 2.60.150 - ~~Negotiations and~~Impasse resolution.

~~A. The following meetings shall be closed:~~

- ~~1. Meetings for the discussion of collective bargaining strategy between the governing body and the employer's negotiating team preliminary to negotiations sessions;~~
- ~~2. Collective bargaining sessions; and~~
- ~~3. Consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.~~

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

- ~~1. The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than one hundred twenty (120) days or later than sixty (60) days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.~~
- ~~2. All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.~~
- ~~3. Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.~~
- ~~4. Tentative agreements reached during negotiations will be reduced to writing, dated, and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.~~
- ~~5. Agreement on contract negotiations is accomplished when the Union President and the City Manager sign the agreement. Provisions in multi-year agreements providing for economic~~

increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

CA. The following impasse procedure shall be followed by the employer City of Hobbs and exclusive representative:

1. If an impasse occurs, either party ~~shall may~~ request from the Board that a mediator be assigned ~~to the negotiations unless the parties can agree on a mediator. mediation assistance. A mediator with the federal mediation and conciliation service shall be assigned by the Board to assist negotiations unless the parties agree to another mediator; and~~ if the parties cannot agree on a mediator, either party may request the assistance of the federal mediation and conciliation service.
2. If the impasse continues after ~~thirty (30) calendar days~~ a thirty-day mediation period, either party may request an ~~unrestricted~~ list of seven (7) arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternatively striking names from such list. The parties shall choose one (1) arbitrator by alternately striking names from such list. Who ~~Which~~ party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Section 14 of this ordinance and the Uniform Arbitration Act no later than thirty (30) calendar days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one (1) of the two (2) parties' complete, last, best offer. The cost of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. ~~However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's costs incurred pursuant to this subsection equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.~~

B. The City of Hobbs may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

C. 3.—In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the employer the City of Hobbs to increase any employees' levels, steps, or grades of compensation contained in the existing contract.

(Ord. 927 (part), 2004)

#### 2.60.160 - Employers—Prohibited practices.

- A. ~~A public employer~~ The City of Hobbs or his or her ~~its~~ representative shall not:
1. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;
  2. Interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under the ordinance codified in this chapter or use public funds to influence the decision of its employees or the employees of this subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a

member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred;

- a. addressing a grievance or negotiating or administering a collective bargaining agreement;
  - b. allowing a labor organization or its representatives access to the City of Hobbs facilities or properties;
  - c. performing an activity required by federal or state law or by a collective bargaining agreement;
  - d. negotiating, entering into or carrying out an agreement with a labor organization;
  - e. paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or
  - f. representing the City of Hobbs in a proceeding before the Board or in a judicial review of that proceeding;
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 the employee has signed or filed an affidavit, petition, grievance, or complaint or given any information or testimony under pursuant to the provisions of this chapter ordinance or because an employee is forming, joining or choosing to be represented by a labor organization;
  6. Refuse to bargain collectively in good faith with the exclusive representative;
  7. Refuse or fail to comply with any provisions of this chapter ordinance, Board regulations, or the Public Employee Bargaining Act, or Board rule; or
  8. Refuse or fail to comply with any collective bargaining agreement. ~~This issue is subject to the required grievance procedure negotiated by the parties.~~
  9. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

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

(Ord. 927 (part), 2004)

#### 2.60.170 - Employees—Labor organizations—Prohibited practices.

- A. An employee, a labor organization, or its representative shall not:
  1. Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex or national origin;
  2. Solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;
  3. Restrain or coerce any employee in the exercise of any right guaranteed by the provisions of this chapter 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 this ~~chapter~~ordinance;
7. Picket homes or private businesses of employees, appointed individuals or elected officials of the City of Hobbs;
8. Restrain or coerce the employer in the selection of its agent for bargaining.
9. Negotiate issues which are the subject of negotiations or make any offer, commitment, or promise whatsoever to the public employer, other than through the appointed negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

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

(Ord. 927 (part), 2004)

#### 2.60.180 - Strikes and lockouts prohibited.

- A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate or engage in an employee lockout.
- B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.
- C. The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence or withholding of service in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment.

(Ord. 927 (part), 2004)

#### 2.60.190 - Agreements valid—Enforcement.

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

(Ord. 927 (part), 2004)

#### 2.60.200 - Judicial enforcement—Standard of review.

- A. The Board may request the District Court to enforce any order issued pursuant to this ~~chapter ordinance~~, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:
1. Arbitrary, capricious or an abuse of discretion;
  2. Not supported by substantial evidence on the record considered as a whole; or
  3. Otherwise not in accordance with law.
- B. Any person or party, including any labor organization, affected by a final regulation, order or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:
1. Arbitrary, capricious or an abuse of discretion;
  2. Not supported by substantial evidence on the record taken as a whole; or
  3. Otherwise not in accordance with law.

(Ord. 927 (part), 2004)

#### 2.60.210 - Severability.

If any part or application of the ~~ordinance codified in this chapter~~ City of Hobbs Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

(Ord. 927 (part), 2004)

#### 2.60.220 - Effective date.

The effective date of the ~~ordinance codified in this chapter~~ City of Hobbs Labor Management Relations Ordinance is ~~July 1, 2004~~ December 31, 2020.

(Ord. 927 (part), 2004)

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PASSED, ADOPTED AND APPROVED this 7th day of December, 2020.



SAM D. COBB, Mayor

ATTEST:



JAN FLETCHER, City Clerk

