

FINAL

**RESOLUTION**

RELATING TO COLLECTIVE BARGAINING FOR NEW MEXICO HIGHLANDS UNIVERSITY; PROVIDING RIGHTS, RESPONSIBILITIES, AND PROCEDURES IN THE EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEES AND THE EMPLOYER.

**WHEREAS**, the Board of Regents of New Mexico Highlands University recognizes the existence of the State of New Mexico Public Employee Bargaining Act which establishes the right for public employees to organize and bargain collectively and allows local governing bodies to adopt local resolutions governing all facets of public sector collective bargaining within the governing body's jurisdiction; and

**WHEREAS**, the Board of Regents hereby exercises its right in adopting a local resolution and creating its local Labor Management Relations Board; and

**WHEREAS**, the Board of Regents, in adopting this resolution, recognizes the State of New Mexico Constitution places control and management of New Mexico Highlands University within the sole authority of the New Mexico Highlands Board of Regents; and

**WHEREAS**, the Board of Regents desires to pass this Amended Resolution thereby superceding all previously adopted labor management relations resolutions;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF NEW MEXICO HIGHLANDS UNIVERSITY:**

SECTION 1. SHORT TITLE. -- This Resolution may be cited as the "New Mexico Highlands University Labor Management Relations Resolution".

SECTION 2. PURPOSE. -- The purpose of the Labor Management Relations Resolution is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens.

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

New Mexico Highlands University sanctioned rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

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

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

B. "Labor Management Relations Board" or "LMR Board" means the New Mexico Highlands University Labor Management Relations Board;

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

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

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

F. "emergency" means a one-time crisis that was unforeseen and unavoidable;

G. "employee" means a regular (eligible for benefits), non-probationary or probationary full-time and part-time employee of the New Mexico Highlands University;

H. "employer" means the New Mexico Highlands University;

I. "exclusive representative" means a labor organization that, as a result of certification by the LMR Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining;

J. "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;

K. "governing body" means the New Mexico Highlands University Board of Regents;

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

M. "labor organization" means any employee organization one 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;

N. "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;

O. "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;

P. "mediation" means assistance by an impartial third party to resolve an impasse in contract negotiation between the employer and an exclusive representative through interpretation, suggestion, and advice;

Q. "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;

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

S. "supervisor" means an employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to hire, promote, or discipline other employees or to recommend such actions effectively. This definition does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who occasionally participate in peer review or evaluation of employees.

#### SECTION 5. RIGHTS OF EMPLOYEES. --

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

SECTION 6. MANAGEMENT RIGHTS. -- 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:

A. To direct the work of, hire, promote, demote, assign, transfer, discharge, or terminate employees;

B. To determine qualifications for employment and the nature and content of personnel examinations;

C. To take actions as necessary to carry out the mission of the employer in emergencies; and

D. The employer retains all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

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

A. The "Labor-Management Relations Board" is hereby created. The LMR Board shall be composed of three members appointed by the Chair of the New Mexico Highlands University Board of Regents. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the University President, and one member shall be appointed on the recommendation of the first two appointees.

B. LMR 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 this Resolution. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A LMR Board member may serve an unlimited number of terms.

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

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

SECTION 8. LABOR MANAGEMENT RELATIONS BOARD-POWERS AND DUTIES. --

A. The LMR Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the Labor Management Relations Resolution, including the establishment of procedures for:

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

B. The LMR Board shall:

- 1) hold hearings and make inquiries necessary to carry out its functions and duties;

2) request from employers and labor organizations the information and data necessary to carry out the functions and responsibilities of the LMR Board.

C. The LMR Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents relevant to the matter in question. The LMR 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 LMR 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 LMR 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 LMR Board on interpretation and applications of the Resolution are final and binding on the parties subject to the appeal process provided in Section 20. The LMR 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 LMR Board has the power to enforce provisions of the New Mexico Highlands University Labor-Management Relations Resolution and the LMR Board's Labor-Management Relations Rules and Regulations through the imposition of appropriate administrative remedies.

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

G. No rule or regulation promulgated by the LMR Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Resolution to pay money to any labor organization that is certified as an exclusive representative. This issue of fair share shall be a permissive as opposed to a mandatory subject of bargaining between the employer and the exclusive representative.

#### SECTION 9. HEARING PROCEDURES. --

A. The LMR Board may hold hearings for the purposes of:

- 1) information gathering and inquiry;
- 2) adopting rules and regulations; and

3) adjudicating disputes and enforcing the provisions of the Labor Management Relations Resolution, and rules and regulations adopted pursuant to the Resolution.

B. The LMR Board shall adopt regulations setting forth procedures to be followed during hearings of the LMR Board. Such regulations shall meet minimal due process requirements of the state and federal constitution.

C. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the LMR Board of a written notice together with a copy of the charges and relief requested.

D. All adopted rules and regulations shall be filed in accordance with applicable laws.

E. A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the LMR Board. Payment for the transcription shall be made by the party requesting the transcript or in the case of a judicial review, 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 this Resolution.

G. No regulation proposed to be adopted by the LMR Board that affects any person or governmental entity outside of the LMR Board and its staff shall be adopted, amended, or repealed without public hearing and comment on the proposed action before the LMR Board. The public hearing shall be held after notice of the subject matter of the 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 University facility. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the Las Vegas, New Mexico area, 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.

#### SECTION 10. APPROPRIATE BARGAINING UNITS. --

A. The LMR Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate

bargaining units shall be established on the basis of occupational groups or a clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial, technical, para-professional, professional, firefighters, security officers, and sworn police officers. Bargaining units shall not be determined by department, craft, or trade designations other than as specified above. The parties, by mutual agreement and approval of the LMR Board, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the Resolution.

B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the LMR Board shall hold a hearing and determine the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the LMR Board.

C. The LMR Board shall not include in any appropriate bargaining unit supervisory, managerial, or confidential employees.

#### SECTION 11. ELECTIONS. --

A. Whenever, in accordance with regulations prescribed by the LMR Board, a petition is filed by a labor organization containing the signatures of at least thirty percent (30%) of the employees in an appropriate bargaining unit, the LMR Board shall 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 petition with the LMR Board requesting a representation election, other labor organizations may seek to be placed on the ballot. Any labor organization may file a competing petition containing the signatures of not less than thirty percent (30%) of the employees in the appropriate bargaining unit no later than ten (10) calendar days after the LMR Board has posted a written notice that a petition 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 of the two choices that received the highest votes.



D. A valid election requires that at least forty percent (40%) of the eligible employees in an appropriate bargaining unit cast a vote. In an election with only one labor organization, and the majority of the votes cast are in favor of representation, the LMR Board shall certify the labor organization as the exclusive representative for all the employees in the bargaining unit.

E. In the event of an election with two 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.

F. No election shall be conducted if an election has been conducted in the twelve (12) month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in Section 13.B. of this Resolution, 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 LMR 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.

SECTION 12. EXCLUSIVE REPRESENTATION. -- A labor organization that has been certified by the LMR Board as the exclusive representative for employees in an appropriate bargaining unit shall represent all employees in the bargaining unit. The exclusive representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees in the bargaining unit without discrimination or regard to membership or non-membership in the labor organization. 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 LMR 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 in 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.

SECTION 13. 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 percent (30%) of the employees in the appropriate bargaining unit make a written request to the LMR Board for a decertification election. A decertification election shall be valid only if at least forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the LMR Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement; provided, however, that a request for a 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 percent (30%) of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the LMR Board shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

SECTION 14. SCOPE OF BARGAINING. --

A. Except for retirement programs provided under the Educational Retirement Act, the parties shall bargain in good faith on all wages, hours, and other terms and conditions of employment and other issues agreed to by the parties. The parties shall enter into a

written 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.

C. The obligation to bargain collectively imposed by the Labor Management Relations Resolution shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with state statutes or federal statutes. In the event of conflict between the provision of any federal or state statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

D. 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. During the time that a LMR Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

E. Any agreement or impasse resolution 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 to fund the agreed upon provision. An arbitrator's decision shall not require the re-appropriation of funds.

F. The parties have a requirement that a grievance procedure 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 cost of any proceedings conducted pursuant to this subsection shall be shared equally by the parties. Each party is responsible for paying any cost related to its witnesses and representation.

G. The scope of bargaining for representatives of public school employees, as well as educational employees of state educational institutions, shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

SECTION 15. 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 initiated upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may engage in 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 session 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 University President, after Board of Regents approval, and the Union President sign the agreement. Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating/budgeting the funds necessary to fund the increase for the subsequent year or years. Should the governing body not appropriate/budget sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

C. The following impasse procedure shall be followed by the employer and exclusive representative:

1) If an impasse occurs, either party shall request mediation assistance. If the parties cannot agree on a mediator, either party may request the assistance of the federal mediation and conciliation service; and

2) If the impasse continues after thirty (30) calendar days, 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 alternately striking names from such list. Which party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues 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 of the two parties' complete, last, best offer. 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 governing body to re-appropriate funds. All of the arbitrator's costs conducted pursuant to this subsection shall be shared equally by the parties. 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.

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 to increase any employees' levels, steps, or grades of compensation contained in the existing contract.

#### SECTION 16. EMPLOYERS -- PROHIBITED PRACTICES

A. A public employer or 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 Labor Management Relations Resolution;

- 3) dominate or interfere in the formation, existence, or administration of any labor organization;
- 4) discriminate in regard to hiring, 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 the provisions of the Labor Management Relations Resolution 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 the Labor Management Relations Resolution, LMR Board regulations, or the Public Employee Bargaining Act; 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.

B. During negotiation and the impasse procedure, the New Mexico Highlands University Board of Regents and management employees are prohibited from negotiating issue(s) that are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the University's appointed negotiating team. It is the intent of this language that the integrity of the negotiations process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

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

- A. An employee, a labor organization, or its representative shall not:
- 1) discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin;
  - 2) solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;
  - 3) restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Resolution;
  - 4) refuse to bargain collectively in good faith with the employer;

5) refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

6) refuse or fail to comply with any provision of the Labor Management Relations Resolution;

7) picket homes or private businesses of employees or appointed or elected officials of the New Mexico Highlands University; or

8) restrain or coerce the employer in the selection of its agent for bargaining.

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

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

A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate, or engage in an employee lockout.

B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges, or obligations of employment.

SECTION 19. AGREEMENTS VALID -- ENFORCEMENT. --

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

SECTION 20. JUDICIAL ENFORCEMENT -- STANDARD OF REVIEW. --

A. The LMR Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Resolution, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the LMR Board. The Court shall uphold the action of the LMR Board and take appropriate action to enforce it unless the Court concludes that the order is:

- 1) arbitrary, capricious, or an abuse of discretion;
- 2) not supported by substantial evidence on the record considered as a

whole; or

- 3) otherwise not in accordance with law.

B. Any person or party, including any labor organization, affected by a final regulation, order, or decision of the LMR Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the LMR Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order, or decision of the LMR Board. Actions taken by the LMR Board shall be affirmed unless the Court concludes that the action is:

- 1) arbitrary, capricious, or an abuse of discretion;
- 2) not supported by substantial evidence on the record taken as a

whole; or

- 3) otherwise not in accordance with law.

SECTION 21. SEVERABILITY--

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

SECTION 22. EFFECTIVE DATE.--

The effective date of this New Mexico Highlands University Labor Management Relations Resolution is June 10, 2004.



PASSED by the Board of Regents of New Mexico Highlands University this 10<sup>th</sup> day of June, 2004.

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Toney Anaya, Chairman  
NMHU Board of Regents