SANTA FE COUNTY

Ordinance No. 1993-2 897616

RELATING TO COLLECTIVE BARGAINING FOR THE COUNTY OF SANTA FE; PROVIDING RIGHTS, RESPONSIBILITIES AND PROCEDURES IN THE EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEES AND THE COUNTY.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:

SECTION 1. SHORT TITLE.

This Ordinance may be cited as the "Santa Fe County Labor Management Relations Ordinance".

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SECTION 3. PURPOSE OF THE ORDINANCE.

The purpose of the Labor Management Relations Ordinance is to guarantee employees of Santa Fe County the right to organize and bargain collectively with the County of Santa Fe. Furthermore, it is the intent of this policy to promote a harmonious and cooperative relationship between the County and its employees in assuring the orderly and uninterrupted delivery of services.

SECTION 4. CONFLICTS.

In the event of conflict with other laws or ordinances, the provisions of the Labor Management Relations Ordinance shall not supersede other enacted federal, state or local legislation.

SECTION 5. DEFINITIONS.

A. "appropriate bargaining unit" means a group of employees designated by the Board for the purpose of collective bargaining. Appropriate units shall be formed by occupational group, such as blue collar (unskilled, semi-skilled, and skilled), white collar (clerical, secretarial, administrative, technical, professional and paraprofessional), firefighters and law enforcement.

B. "Board" means the Santa Fe County Labor Management Relations Board;

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

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

E. "confidential employee" means a person who assists and acts in a confidential capacity with respect to a person who formulates, determines, and effectuates management policies;

F. "employee" means a regular nonprobationary public employee filling a classified position for the County of Santa Fe;

G. "employer" means the County of Santa Fe;

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

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

J."governing body" is defined as the Board of County Commissioners of Santa Fe County.

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

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

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

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

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

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

Q. "strike" means an employee's refusal, in concerted action with other employees, to report for duty or willful absence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment. The definition of strike includes, but is not limited to such actions as, the blue flu, sick outs, slow downs, traffic ticket writing campaigns, mass resignations and sympathy strikes.

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

SECTION 6. RIGHTS OF EMPLOYEES.

Employees other than management employees, supervisors and confidential employees, may form, join or assist any labor organization for the purpose of collective bargaining through representatives chosen by employees through representation elections without interference, restraint or coercion from anyone. Such employees also have the right to refuse to form, join, or assist any labor organization. Employees may not be required to pay "fair-share" contributions.

SECTION 7. MANAGEMENT RIGHTS.

Without limitation, but by way of illustration, the exclusive prerogatives, functions and rights of the employer shall include the following:

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

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

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

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

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

F. To determine and revise schedules of work;

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

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

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

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

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

L. To retain all rights not specifically prohibited by a collective bargaining agreement or the Santa Fe County Labor Management Relations Ordinance.

SECTION 8. CREATION OF LABOR MANAGEMENT RELATIONS BOARD; TERMS.

A. The "Labor Management Relations Board" is hereby created. The Board shall consist of three members appointed by the governing body. The governing body shall appoint one member recommended by organized labor representatives actively involved in representing employees in the County, one (1) member recommended by the County Manager and one (1) member jointly recommended by the two other appointees.

B. Board members shall serve for a period of one (1) year with terms commencing on the date of appointment. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

C. During the term for which a Board member is appointed, no Board member shall hold or seek any other political office or be an employee of a union, an individual representing the employer in collective bargaining or an employee of the County.

D. Each Board member shall be paid two hundred dollars per day or a portion thereof, for participation in hearings.

E. The cost of any hearing will be borne equally by the parties to the hearing.

SECTION 9. 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 Labor Management Relations Ordinance, including the establishment of procedures for:

(1) the designation of appropriate bargaining units;

(2) the selection, certification and decertification of exclusive representatives; and

(3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The Board shall:

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

(2) request from the County and labor organizations the information and data necessary to carry out the Board's functions and responsibilities.

C. The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including book's, records, correspondence or documents relating to any matter in question. The Board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The Board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on interpretation and applications of the ordinance and collective bargaining agreements are final and binding on the parties if not appealed by either party.

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

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

G. No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Ordinance to pay money to any labor organization that is certified as an exclusive representative.

SECTION 10. 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 Labor Management Relations Ordinance and rules and regulations adopted pursuant thereto.
The Board may appoint a hearing examiner to conduct any ajudicatory hearing authorized by the Board. At the conclusion of the hearing, the examiner shall prepare a written report of findings and recommendations, all of which shall be submitted to the Board for its decision.

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

C. Charges of prohibited labor practices that are filed within thirty (30) days of the commission or omission of the act that generated the charges shall be heard by the Board. Such charges must identify the specific violation and relief requested. The party alleging a violation of labor practices shall commence a proceedings against the party alleged to have committed a prohibited practice by serving upon it and the Board a written notice together with a copy of the charges and relief requested.

D. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be ordained. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the County or, a notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advanced notice of hearing.

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

F. Each party to a prohibited labor practice shall pay its witnesses for any lost wages for time spent at hearings.

SECTION 11. APPROPRIATE BARGAINING UNITS.

A. The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups, a clear and identifiable community of interest in employment terms and conditions and related personnel matters among the employees involved. Bargaining units shall not be determined by craft or trade designations. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government and the history of collective bargaining within the County.

B. Within thirty (30) days of a disagreement arising between the employer and a labor organization concerning the composition of an appropriate bargaining unit, the board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

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

SECTION 12. ELECTIONS.

A. Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the valid signatures of a least thirty (30) percent of the employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election.

B. Once a labor organization has filed a valid petition with the Board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the valid signatures of not less than ten (10) percent of the employees in the appropriate bargaining unit no later than ten (10) days after the Board and the employer post a written notice that the petition containing the signatures of not less than thirty (30) percent of the employees has been filed by a labor organization.

C. Every election shall include the option for no representation.

D. In the event of an election with two or more organizations on the ballot where neither of the choices received a majority of the votes cast, then in such an event, a run-off election shall be held within thirty (30) days.

E. Where a majority of the votes cast are in favor of representation by a labor organization and at least sixty (60) percent of the members in the bargaining unit have cast a vote, the Board shall certify the labor organization as the exclusive representative for all employees in that appropriate bargaining unit. No labor organization shall be certified as an exclusive representative unless at least sixty (60) percent of the members of the bargaining unit vote in the election.

F. No election shall be conducted if an election or run-off election has been conducted in the twenty-four (24) 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 14B of the Labor Management Relations Ordinance.

G. Election disputes shall be resolved by the Board.

H. The cost of elections shall be borne equally by the participating labor organizations.

SECTION 13. EXCLUSIVE REPRESENTATION.

A. A labor organization that has been certified by the Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate bargaining unit. The exclusive representative shall act for all employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

B. The existence of an exclusive bargaining representative shall not prevent employees in or out of a bargaining unit from taking their grievances or prohibited practices to their supervisor or the Personnel Director. Any adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the employer and the exclusive representative.

SECTION 14. 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 employees in the appropriate bargaining unit make a written request to the Board for a decertification election. Decertification elections shall be held in manner prescribed by rules of the Board.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement; provided, however, that a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in subsection B of this section, a competing labor organization files a petition containing signatures of a least thirty percent of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than twelve (12) months subsequent to a labor organization's certification as the exclusive representative.

SECTION 15. SCOPE OF BARGAINING.

A. Except for retirement programs provided under the Public Employees Retirement Act, employers and exclusive representatives shall bargain in good faith on wages, hours and other terms and conditions of employment. However, neither the employer nor the exclusive representative shall be required to agree to a proposal or to make a concession. All agreements between the parties shall be reduced to writing and included in the Collective Bargaining Agreement.

B. The obligation to bargain collectively imposed by the Labor Management Relations Ordinance shall not be construed as authorizing employers and exclusive representatives to negotiate or enter into any agreement that is in conflict with the provisions of any other State or federal statute or County ordinance including the "Management Rights" section of this Ordinance.

C. Payroll deduction of the exclusive representative's membership dues is a negotiable item by either party. The amount of dues, if such provision's agreed to by the parties, shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular appropriate bargaining unit, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

D. Any agreement provision by the employer and an exclusive representative that requires the expenditure of County funds shall be contingent upon the specific appropriation of funds by the County and the availability of funds.

E. The parties shall negotiate a grievance procedure that culminates with a binding decision for grievances which will apply only to alleged violations of the Collective Bargaining Agreement.

F. The following meetings shall be closed:

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

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

Section 16. NEGOTIATIONS AND IMPASSE RESOLUTION.

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

(1) Negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Such request shall be post marked no earlier than ninety (90) days nor later than sixty (60) days prior to the contract ending date. The parties may open negotiations at any time by mutual agreement. Failure to open negotiations as provided herein shall automatically extend the contract by one (1) year.

(2) Negotiating teams will consist of a maximum of five (5) persons designated by the exclusive representative and a maximum of five (5) persons designated by the governing body.

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

(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 team's understanding of the language as it relates to another part of the agreement.

(5) Agreement on contract negotiations is accomplished when the Union President and the County Commission Chairperson or their designees, sign the agreement. At the commencement of negotiations for a new agreement or reopeners of an existing agreement, the parties shall negotiate bargaining ground rules. A tentative agreement on contract clause negotiation is accomplished when reduced to writing, dated, and initialled by each team spokesperson. Final agreement is accomplished when the contract is signed by the Union representative and the County Commission Chairperson or their designees. Should the legislature and/or the County not appropriate sufficient funds to fund an agreed upon increase for subsequent years, either party may reopen negotiations.

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

(1) If an impasse occurs, either party may request from the Board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator from the Federal Mediation and Conciliation Service will be assigned by the Board to assist negotiations.

(2) If the impasse continues after a sixty (60) day mediation period, either party may request from the Board that a fact-finder be assigned to the negotiations. A fact-finder will be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

(3) The fact-finder shall conduct hearings and submit written findings and recommendations to the parties and the Board. The fact-finder shall select either the exclusive representative's total and complete last best offer or he may select the employer's total and complete last best offer. The fact-finder may not create his own settlement. If the parties have not reached agreement within fifteen (15) days after receipt of the fact-finder's report, the Board shall publish the fact-finder's recommendation.

(4) If no agreement has been reached within thirty (30) days of the issuance of the fact-finder's recommendation, the recommendation of the fact-finder will be forwarded to the governing body and the governing body may accept or modify the fact-finder's recommendation as they see fit. The decision of the governing body is final and binding on both parties and shall be incorporated into a contract along with those items that had been tentatively agreed to by the parties.

(5) The cost of any impasse proceeding that requires a third party shall be borne equally by the parties to the impasse.

SECTION 17. EMPLOYERS--PROHIBITED PRACTICES.

No employer or his representative shall:

A. discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. interfere with, restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Ordinance;

C. dominate or interfere in the formation, existence or administration of any labor organization;

D. discriminate in regard to hiring, tenure or any term or condition of employment in order to encourage or discourage membership in a labor organization;

E. discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, grievance or complaint or given any information or testimony under the provisions of the Labor Management Relations Ordinance or because an employee is forming, joining or choosing to be represented by a labor organization;

F. refuse to bargain collectively in good faith with the exclusive representative;

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

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

I. during the negotiating process, including the impasse procedure, elected officials are prohibited from discussing any issue, which is a subject of negotiations, with employees of the bargaining unit involved in negotiations or employees of the exclusive representative.

SECTION 18. EMPLOYEES-LABOR ORGANIZATIONS-PROHIBITED PRACTICES.

An employee, labor organization or its representative shall not:

A. discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

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

C. interfere with, restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;

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

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

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

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

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

I. Unions or employee groups who represent Santa Fe County employees may not endorse or publicly support any candidates for County commissioner.

SECTION 19. STRIKES AND LOCKOUTS PROHIBITED.

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

B. A public 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. Any bargaining unit whose employees participate in, causes, instigates, encourages, or supports a public employee strike, walkout or slow-down shall be automatically decertified. In such a case, the collective bargaining agreement shall be null and void, the exclusive representative for that appropriate bargaining unit may not collect dues, negotiate or represent employees in any fashion, and shall be barred from serving as the exclusive representative of any bargaining unit of Santa Fe County employees for a period of not more than one (1) year.

SECTION 20. AGREEMENTS VALID--ENFORCEMENT.

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

SECTION 21. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.

A. A decision of the Board which is appealed to the District Court must be appealed within thirty (30) days of the date of the Board's decision.

B. the Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those of appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the Board. It shall uphold the action of the Board and take appropriate action to enforce it unless it 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.

C. The decisions of the Board are considered final and binding on the parties, unless the decision is appealed.

SECTION 22. SEVERABILITY.

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

SECTION 23. EFFECTIVE DATE.

The effective date of the Santa Fe County Labor Management Relations Ordinance is April 1, 1993.

SANTA FE BOARD OF COUNTY COMMISSIONERS

Raymond S. Chavez

APPROVED AS TO LEGAL SUFFICIENCY:
TERRY BRENNAN

Terry Brennan

A T T E S T:

Jona G. Armijo, County Clerk

804,028

COUNTY OF SANTA FE)SS
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 15 day of Feb A.D. 19 93, at 3:08 o'clock p m and was duly recorded in book 897 page 616-629 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, N.M.
Veronica Clayton
Deputy