

APS Labor Board Policy:

This policy will be cited as the "Albuquerque Public Schools Employee Relations Policy." It is the policy in this District to

1. allow employees to organize and bargain collectively with the Board of Education;
2. promote harmonious and cooperative relationships between these parties;
3. protect the rights of employees who do not desire representation; and
4. protect the public interest by assuring at all times, the orderly and uninterrupted operations and functions of the Albuquerque Public Schools.

Nothing contained in this policy shall be construed to limit, impair, or affect the right of any employee to express a view or grievance, complaint, or opinion on any matter related to the conditions or terms of employment, so long as the same does not interfere with the full, faithful, and proper performance of the employee's duties.

Definitions

"Albuquerque Public Schools employee" or "APS employee" means: Any regular, full- or part-time employee of the Albuquerque Public Schools except

1. supervisors;
2. employees paid directly by the U.S. government, not including those employees who are paid by the Board from funds furnished by the federal government and earmarked for that purpose; and
3. individuals privy to confidential matters of the employer affecting the employer-employee relationship.

Confirming the Board's long standing construction of Board Policy H.01, substitute teachers are not included in this definition. Substitutes are, and for many years have been, provided for in Board Policy H.02.

"Supervisor" means: Any individual having the authority and responsibility to establish and direct the employment, duties, and responsibility of other employees; to hire, transfer, suspend, lay off, recall, promote, discharge, assign, evaluate, reward, or discipline other employees; or to adjust their grievances, or to recommend such action.

"Employee organization" means: Any organization whose purpose includes representation of employees in collective bargaining on matters pertaining to terms and conditions of employment. No organization is eligible which discriminates with regard to the terms and conditions of membership because of race, color, sex, creed, age, or national origin.

"Strike" means: The concerted failure of employees to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment by APS employees.

"Unit" means: A group which has a clear and identifiable community of interest as determined by the Board.

Right to Organize and Bargain Collectively

APS employees have the right to form, join, and otherwise participate in the activities of employee organizations of their own choosing for the purpose of bargaining collectively with the Board. Employees also have the right to refuse to join or participate in the activities of employee organizations. An employee organization which has been certified by the Board pursuant to the provisions hereof as the exclusive bargaining agent for a determined bargaining unit of employees may bargain collectively for all employees in the unit concerning hours, salary, wages, and working conditions. Such an organization may also represent its membership in the implementation of the bargaining agreement; but nothing contained herein shall be construed as prohibiting any employee from securing the services of independent counsel to represent the employee's interests regarding any dispute which may arise under the terms of the agreement.

Management Rights

The Board retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of New Mexico; and subject to existing law, the Board, or its supervisory personnel, will also have the following rights:

- to direct the work of its employees; to hire, promote, lay off, and assign employees; to evaluate, demote, transfer, suspend, discharge, terminate, and discipline employees in the manner provided herein;
- to take such actions as may be necessary in times of emergency when such a situation is declared to exist by the Board or the Superintendent;
- to manage and to exercise judgment on all matters not prohibited by a collective bargaining agreement in effect between the Board and an employee organization; and
- to direct the operations and functions of the District in the most efficient and economical manner including, but not limited to, the right to enter into contracts with agencies or companies for services or materials.

Determination of Representation

A. Certification

Any employee organization may file a written request with the Board requesting recognition as the exclusive bargaining agency or representative for members of that bargaining unit. Any employee organization seeking recognition will submit to the Board a roster of its officers and

representatives, a copy of its constitution and bylaws, and a statement of its objectives. Such request will comply with and be subject to the following requirements and conditions:

- Such written request will state that at least thirty percent (30%) of the members of that unit desire to be represented by the employee organization requesting recognition, and such written request will demonstrate such support by signed and verified authorization cards from at least thirty percent (30%) of the members of such unit signed and dated within ninety (90) days prior to submission of the request.
 - The Board will be responsible for determining the authenticity of the authorization cards and the signatures thereon, and for determining whether satisfactory proof has been provided.
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- Individual members of the unit may withdraw their authorization cards by filing a written request with the Human Resources Department within ten (10) days after the posting of the notice herein after described.

Notice of the request for recognition will be posted on the next working day after receipt thereof by the Human Resources Department in a place or places conspicuous to all employees.

Any other employee organization may file with the Board a competing written request for recognition within the (10) days after the posting of the notice of the original request. Such competing requests must include a demonstration of support of at least ten percent (10%) of the employees in the unit through signed authorization cards to be verified as provided in paragraph A.2. above. Any members of the unit signing authorization cards may withdraw their names by filing written requests with the Human Resources Department within ten (10) days after posting of the notice of the competing request for recognition herein after described.

Notice of the competing request for recognition will be posted on the next working day after receipt thereof in a place or places conspicuous to all employees involved in accordance with the provisions of A.4. above.

Within ten (10) days of submission of a valid request, the Board will call a representation election to be held within forty-five (45) days from the date of posting of the notice, unless:

- the Board has held, within the preceding twelve (12) months, a representation or decertification election for the bargaining unit(s) requesting recognition; or,
 - in the opinion of the Board, the bargaining unit described in the request is not an appropriate unit as such is defined herein. Then, and in that event, no such election will be called. However, if the Board subsequently determines that the requested bargaining unit is appropriate, or if the request is amended to make the bargaining unit appropriate, the Board will then call and hold a representation election within forty-five (45) days of such decision or amendment.
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- Decertification

If thirty percent (30%) or more of the employees in a bargaining unit petition the Board to conduct an election to decertify the then authorized bargaining agent for that unit, and the Board verifies the signatures on the petition as provided in paragraph A.2. above, the Board will call said election to be held within forty-five (45) days of the receipt of the petition. All employees signing said petition must have done so within ninety (90) days preceding its submission to the Board. No election will be called, however, unless the then authorized bargaining agent has been such for at least twelve (12) months preceding receipt of said petition or to certify a different employee organization.

- Notice of the petition for a decertification election will be posted on the next working day after receipt thereof by the Human Resources Department in places conspicuous to all employees involved.
- If a decertification election results in decertification of one existing bargaining agent, and no replacement is selected, then there will be no bargaining agent and no further election will be held for this bargaining unit for twelve (12) months. No agreement will be in effect for this period.
- If a decertification election results in the selection of a new bargaining agent and there is currently in effect a lawful written agreement between the Board and an exclusive bargaining representative for the bargaining unit involved, the new bargaining agent will assume the position of the decertified agent with regard to implementation of the terms of the agreement in existence for all employees in the particular unit provided no more than eighteen (18) months remain in the period of the contract. If more than eighteen (18) months remain, the new agent will commence negotiations on a replacement agreement within sixty (60) days following certification of the results of the election. The existing agreement will remain in effect for six (6) months or until a new one is negotiated and ratified.

- Elections

The following rules will govern the conduct of all elections:

- In a representation election, the initiating organization which has submitted evidence of support of at least thirty percent (30%) of the employees in the unit, and any competing organization which has submitted evidence of support of at least ten percent (10%) of the employees in the unit will be included on the ballot. The ballot will also include a choice for no representation.
- The elections will be by secret ballot with the majority of votes cast determining the outcome, subject to provisions of paragraph C.5. below.
- All employees in the bargaining unit on the date of filing the written request pursuant to A.1. above will have the right to vote.
- Additional procedures for the holding of an election may be agreed to by the parties involved.
- In a representation election, an employee organization will be recognized as the exclusive bargaining representative of the employees in the unit if at least sixty percent (60%) of the employees eligible to vote do so in the election and if the employee organization is selected by a majority of those who vote. If more than one employee organization is on

the ballot and if no employee organization obtains a majority of the vote and if there is not a majority voting for the "no employee organization" option, then the two questions on the ballot receiving the highest number of votes will be placed on a ballot for a runoff election, which will be held in the same manner as the original election. If less than sixty (60%) of the employees eligible to vote do so or if the "no representation" choice received the majority of votes of the employees in the bargaining unit, the Board will certify that there is no bargaining representative for the bargaining unit and there will be no further election held for this bargaining unit for the next twelve (12) months.

- In decertification/certification elections, at least sixty percent (60%) of the employees eligible to vote must do so and the organization receiving the majority of those voting will become, or continue to be, the bargaining representative. This election will serve the purpose of both decertifying and certifying a new bargaining representative or recertifying an existing bargaining representative. If less than sixty percent (60%) of the employees eligible to vote do so or if the "no representation" choice received the majority of the votes in the bargaining unit, then the Board will certify that there is no bargaining representative for the bargaining unit and there will be no further election held for the unit for the next twelve (12) months. In the event a new bargaining representative is certified, the new bargaining agent will assume the position of the decertified agent with regard to implementation of the terms of the agreement in existence for all employees in the particular unit, provided no more than eighteen (18) months remain in the period of the contract. If more than eighteen (18) months remain, the new agent will commence negotiations on a replacement agreement within sixty (60) days following certification of the results of the election. The existing agreement will remain in effect for six (6) months or until a new one is negotiated and ratified.
- The Board will conduct all elections and the expenses thereof will be borne equally by all participating parties provided, however, in the decertification election the expenses will be borne by the challenging party(ies). The Board may require participating parties to post their share of the expenses in advance of the election.
- Election disputes will be resolved by the Board using the following procedure. Within five (5) days after the tally of ballots has been furnished, any party may file with the Board objections to the conduct of the election or conduct affecting the results thereof which must contain a statement of the reasons therefore. If ballots have been challenged, such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A copy of the objections will immediately be served upon each of the other parties to the election by the party filing such objection, and written proof of service must be made and filed with the Board. Within five (5) days thereafter, the challenged party will file with the Board its written response to said objections and immediately serve a copy thereof on the other parties.
- The Board will investigate the objections or challenged ballots and may hold a hearing in connection therewith at which time all parties including the voter whose vote is being challenged, will be allowed an opportunity to present evidence concerning the issues raised by the objections. The Board will render its decision in writing concerning the investigation. If it finds that the objections are meritorious and that the objectionable conduct materially and substantially affected the election process or results, it will set aside the results thereof and set a date within a reasonable time for the holding of another

election. If the Board determines that the objections are not meritorious, it will certify the results of the election in accordance with the tally of ballots.

- In the case of challenged ballots, the Board will determine whether the challenges should be sustained or overruled. If sustained, the results of the election will be certified in accordance with the tally of ballots. If overruled, the ballots will be counted and the tally will be certified in accordance therewith.

Duty To Bargain

The Board and the employee organization recognized as the exclusive bargaining representative for a unit, through their designated representatives, may bargain concerning hours, salary, wages, and working conditions. This duty includes an obligation of the parties to meet at reasonable times, to confer in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreement reached.

Collective Bargaining Agreement

All agreements reached between the Board and the employee organization, as a result of collective bargaining, must be reduced to writing in the form of a contract which must be approved by a majority of the employees voting in an election. All employees in the unit must be permitted to vote by secret ballot without distinction between members and non-members of the employee organization for approval of the contract at an election held within twenty-one (21) days after the agreement has been reduced to writing. The election will be called and supervised by two (2) persons, one (1) representing the Board and one (1) representing the bargaining representative. If within five (5) days after an agreement has been signed by the representatives of the two (2) parties, they fail to agree on the manner in which the election should be called and supervised, the Board will appoint a disinterested person to perform this function. If a majority of the employees vote in favor of the contract, the Board will accept or reject the contract at its next regular or special meeting. If there is not a majority in favor of the agreement, the parties may resume negotiations or proceed in accordance with "Resolving Disputes" on page H-9 of this policy. As a condition to acceptance of the terms of the agreement by the Board, the contract will affirmatively state that the agreement is entered into pursuant to the terms of this policy and that should there be any conflict between the terms of the agreement and the terms of the Employee Relations policy, the policy will control.

Determination Of Bargaining Units

The appropriateness of the bargaining unit will be determined by the Board. The mixing of bargaining units is prohibited.

Prohibited Practices

Albuquerque Public Schools supervisory personnel are prohibited from:

- interfering with the formation or administration of any employee organization or interfering for bargaining specifically including, but not limited to, the dissemination of

material in employees' mailboxes by any employee organization provided, however, no such organization will be permitted to distribute material in an employee mailbox where objection thereto has been registered by the employee;

- discriminating in regard to hiring or conditions of employment for the purpose of discouraging membership in any employee organization;
- discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the provisions of this policy;
- violating the provisions of a written agreement in force under the provisions of this policy; or
- interfering with the adjustment of employee grievances.

An employee organization of Albuquerque Public Schools is prohibited interfering with the formation or administration of any employee organization or interfering for bargaining from:

- restraining, coercing, or otherwise interfering with employees in the exercise of their rights or the performance of their duties under this policy;
- restraining, coercing or otherwise interfering with the Board in the selection of its agent for bargaining or adjustment of grievances;
- discriminating against or causing or attempting to cause supervisory personnel to discriminate against an employee because of lack of membership in the employee organization;
- discriminating against or attempting to discriminate against an employee because of lack of membership in an employee organization specifically including, but not limited to, the assessment of a maintenance fee for representational purposes;
- restraining, coercing, or otherwise interfering with any elected official, administrative officer or representative of the Albuquerque Public Schools administration in the conduct of school business, the individual's private business, or personal affairs;
- solicitation of memberships, dues, or other internal organization business during duty hours of the employee affected. Such solicitation includes electioneering of any kind; or
- engaging in any strike, work stoppage, or slowdown.

Complaints of violation of any provisions of this subsection ("Prohibited Practices") should be made and determined in accordance with regular grievance procedures in effect from time to time in all instances where such grievance procedures are applicable. All other complaints or violation of any provisions of this subsection ("Prohibited Practices") should be filed, in writing, with the Superintendent and copy thereof furnished by the complainant to the person or persons complained against within five (5) working days after the alleged prohibited act. Written response thereto may be filed with the Superintendent by any party charged with such violation in the complaint within five (5) working days after such party has been furnished a copy of the complaint. Copy of such responses will be furnished to the complainant by such party within such five (5) day period. The Superintendent or the Superintendent's designee will conduct an investigation on the complaint, and prepare a report thereon. Copy of such report will be made available to the complainant and the party or parties charged. If the complaint is not resolved, the Superintendent or the Superintendent's designee will furnish the report to the Board. The Board may, at its discretion, refuse to act further, adopt the report, require further investigation, or

conduct a hearing on the complaint. If the Board conducts a hearing on the complaint, it will make its determination in writing.

Consequences Of Strike

In the case of a party committing a violation of "Prohibited Practices" B.7. of this policy, the Board may impose penalties or require remedies as follows.

In case of a strike as defined herein, the Board may direct that the collective bargaining agreement cease to exist, order decertification, and inform the employee organization that it no longer represents employees in the bargaining unit involved. In such a case, the employee organization that represented the employees who went on strike will be prohibited from participating in a representation election for twelve (12) months. In such a case, employees in the bargaining unit will be informed by postal notice that they will not be represented in collective bargaining for this period of time.

In the case of a party committing a violation of "Prohibited Practices" B.7. of this policy, the Board may seek injunctive relief and money damages. Violation of this provision by an employee will be construed as a breach of contract which may be deemed grounds for dismissal from employment.

In accordance with Section 22-10-22 NMSA, 1978 comp., and New Mexico State Board of Education regulations, should any person requiring certification, including substitute teachers, refuse to fulfill a valid contract of employment, the local Board may file a written request with the state Board for the suspension of the certificate(s) held by such employees.

Resolving Disputes

Disputes involving negotiations on initial contract, or to a contract reopened, and not involving the administration of an existing contract, may be submitted to the Federal Mediation and Conciliation Service for mediation.

Grievance Adjustment Procedure

Grievance adjustment procedure will be as described in the APS Administrator's Handbook except as it may be modified by contract.

The existence of an exclusive bargaining representative will not prevent employees in the bargaining unit, individually or through a representative, from presenting grievances to their supervisor.

Any action by the supervisor should not be inconsistent with the terms and conditions of employment previously established by the exclusive bargaining representative and the Board.

Severability

If any part or application of this policy is held invalid, the remainder of its application to other situations will also be affected.

NSBA/NEPN Classification: HC, HHE, HI, HO, HP

Procedural Directive Cross Ref.:

- [Labor Relations](#)

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