

**Chapter 17  
PERSONNEL**

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## Chapter 17 PERSONNEL

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### ARTICLE I. IN GENERAL

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#### **Sec. 17-1. Personnel Policy.**

The document entitled "City of Aztec Personnel Policy, Revised November, 2020" is adopted by reference.

(Ord. 2020-512, eff. 2021-Jan-07; Ord. 2015-448, eff. 2015-Nov-25; Ord. 2015-445, eff. 2015-Sept-16; Ord. 2014-435, eff. 2014-Mar-18; Ord. 2013-425, eff. 2013-July-04; Ord. 2012-411, eff. 2012-Aug-22; Ord. 2010-393, eff. 2011-Jan-14; Ord. 2008-351, eff. 2008-Mar-26; Ord. 2007-347, eff. 2007-Oct-24; Code 2007, 17-1)

#### **Sec. 17-2. Retiree Health Care.**

The city determines to be included from the Retiree Health Care Act (NMSA 1978, §10-7C-1 et seq.).

(Ord. 2004-313, eff. 2005-Jan-01; Code 2007, 17-2)

#### **Sec. 17-3. Safety Policy.**

The document entitled "City of Aztec Safety Policy, Revised November 2020" is adopted by reference. All future renditions and amendments to the Safety Policy can be done administratively and requires no further action by the City governing body.

(Ord. 2020-512, eff. 2021-Jan-07; Ord. 2017-454, eff. 2017-Feb-22; Ord. 2015-447, eff. 2015-Nov-25; Ord. 2014-434, eff. 2014-Mar-04; Ord. 2013-421, eff. 2013-May-09)

#### **Secs. 17-4 to 17-25. Reserved.**

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**ARTICLE II. MERIT SYSTEM**

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**Sec. 17-26. Establishment.**

Pursuant to the provisions of NMSA 1978, § 3-13-4, a merit system for the hiring, promotion, discharge and general regulation of municipal employees is established.

(Code 2007, 17-26)

**Sec. 17-27. Administration.**

1. The sole authority to hire and fire the personnel of the City is vested in the City Manager.
2. The City Manager shall establish rules and regulations pursuant to this section and pursuant to approval by resolution of the city commission, which will provide for the:
  - (1) Recruitment, selection and retention of any qualified person on the basis of merit without regard to race, creed, color, ancestry or national origin and without regard to age, sex or physical or mental disability except where age, sex or degree of physical or mental fitness is a bona fide occupational qualification;
  - (2) Employment and promotion in accordance with accepted principles of equal employment opportunity and affirmative action based upon valid job requirements;
  - (3) Personnel decisions and actions as to compensation, benefits, transfer, layoff, suspension, dismissal, reinstatement, training and social and recreational programs without regard to race, creed, color, ancestry or national origin and without regard to age, sex or physical or mental fitness except where such is a bonafide occupational qualification; and
  - (4) The provision of an administrative system of due process for appealing adverse actions taken against an applicant for employment or an employee who has attained permanent status through successful completion of a probationary employment period.

(Code 2007, 17-27)

**Sec. 17-28 to 17-40. Reserved.**

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**ARTICLE III. COLLECTIVE BARGAINING**

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**Sec. 17-41. Applicability.**

The personnel rules stated in the city personnel policy and all department policies and regulations shall apply to all employees except for those employees who are members of a collective bargaining unit formed and certified pursuant to the provisions of this article and then only with respect to those matters permitted by this article to be subject to collective bargaining and specifically covered in a current collective bargaining agreement.

(Code 2007, 17-41)

**Sec. 17-42. Short Title.**

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

(Code 2007, 17-42)

**Sec. 17-43. Definitions.**

As used in this article:

**Appropriate bargaining unit**

A group of employees designated by the board for the purpose of collective bargaining. There shall be two (2) appropriate units specifically as police and city employees except for management employees, supervisors and confidential employees.

**Board**

The Aztec Labor-Management Relations Board.

**Certification**

The designation by the board of labor organization as the exclusive representative for the purpose of entering into a written agreement regarding wages, hours and conditions of employment.

**Confidential employee**

A person who assists and acts in a confidential capacity with respect to a management employee.

**Employee**

A regular full-time non-probationary employee of the City of Aztec.

**Employer**

The City of Aztec.

**Exclusive representative**

A labor organization that, as a result of certification by the board, represents all employees in an appropriate bargaining unit for the purpose of collective bargaining.

**Governing body**

The Aztec City Commission.

**Grievance**

A written complaint by a bargaining unit employee regarding an action taken by management resulting in a disciplinary action that does not involve an application or interpretation of a collective bargaining agreement in effect between the exclusive representative and the employer.

**Impasse**

Failure of the employer and an exclusive representative, after good-faith bargaining to reach agreement in the course of negotiating a collective bargaining agreement.

**Labor organization**

Any employee organization which represents employees in collective bargaining.

**Lockout**

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**

An employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or officiating management policies.

**Mediation**

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.

**Professional employee**

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.

**Strike**

An employee's refusal, in concerted action with other employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of 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.

**Supervisor**

Any individual having authority in the interest of the city employer to hire, transfer, suspend, discipline other employees, or responsibility to direct them, or responsibility for evaluating employees' work performance, or to adjust their grievances, or effectively to recommend any of the actions listed above if, in connection with the foregoing, the exercise of such authority

is not of a merely routine or clerical nature but requires the use of independent judgment. In the police department lieutenants, captains, and higher ranks shall be classified as supervisors.

(Code 2007, 17-43)

#### **Sec. 17-44. Rights of Employees.**

City 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. 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.

1. Nothing contained in this article shall be construed to limit, impair or affect the rights of any individual city employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of city employment or their betterment aside from the method described therein, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of that employee's employment.
2. No organization, its representative or other individual shall be allowed to solicit membership for an employee organization or labor union during employee's duty hours.
3. Every employee organization representing city employees pursuant to this article shall submit at least annually to the city manager a detailed financial report detailing financial receipts and expenditures, including payments to officers, agents and representatives.

#### **Sec. 17-45. Appropriate Bargaining Units.**

1. The board shall, upon receipt of a valid petition for a representation election med by a labor organization, designate the appropriate bargaining units for collective bargaining. Occupational groups shall be identified as police, and all other city employees. 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 principals of efficient administration of government, a clear and identifiable community of inheres in employment terms and condition, and related personnel matters, and the history of collective bargaining within the municipality, if any, and the assurance to the employees of their rights guaranteed by this article in Section 17-44.
2. Within thirty (30) days of the filing of a show of interest petition, the board shall hold a hearing concerning the composition of the bargaining unit.
3. The board shall not include in any appropriate bargaining unit supervisors, managers or confidential employees.

**Sec. 17-46. Determination of Representation.**

1. Any employee organization may file a written request with the board asserting that a majority of the members of a bargaining unit of the city desires to be represented by it for the purpose of collective bargaining, and asking to be recognized as the exclusive bargaining representative. The request shall include a demonstration of support of at least thirty (30) percent of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of the request shall be posted by the city personnel department in a place conspicuous to city employees in the bargaining unit on the next working day following the filing of the request.
2. Other employee organization may file, within ten (10) days after the posting of the notice of the request as specified in Section 17-46-1 above, a written claim with the board showing a demonstration of support of at least ten (10) percent of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of this claim shall also be posted by the city personnel department in a place conspicuous to city employees in the bargaining unit on the five (5) calendar days following the filing of the claim.
3. Upon authentication of the list or cards, the city manager shall so advise the board, which then shall call and hold a representation election within forty-five (45) days from the date that the appropriateness of the bargaining unit is determined in order to determine whether an employee organization shall be the exclusive bargaining representative for the unit. Such election shall not be held if:
  - (1) There is currently in effect a lawful written agreement between the city and an exclusive bargaining representative for the unit; or
  - (2) Within the preceding twelve (12) months there has been held a representation election or a decertification election for the bargaining unit; or
  - (3) In the opinion of the board after holding such hearing as may be appropriate, the bargaining unit described in the request for representation is not an appropriate unit in accordance with this article or such appropriateness has not yet been determined by the board. If the board subsequently determines that the requested bargaining unit is appropriate, the board shall then call and hold a representation election.
4. The board shall call and hold all elections within the time limits established by this article and according to the following:
  - (1) Included on the ballot in a representative election shall be any employee organization which has submitted evidence of support of at least thirty (30) percent of the city employees in the bargaining unit in accordance with Section 17-54-1 above, any employee organization which has submitted evidence of support of at least ten (10) percent of the city employees in the bargaining unit in accordance with Section 17-54-2 above, and a choice for no representation. The choices on a ballot in a decertification election shall be the incumbent exclusive bargaining representative and no representation.
  - (2) Voting shall be by secret ballot.

- (3) All city employees in the bargaining unit involved shall have the right to vote.
- (4) 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 or run-off election.
- (5) The certified exclusive bargaining representative shall represent all employees covered by the terms of the collective bargaining agreement.
- (6) The decertification of any employee organization which has been recognized as the exclusive bargaining representative of employees in an appropriate bargaining unit may be affected by the filing of a written request for decertification supported by either a showing that thirty (30) percent of the employees in the bargaining unit seek to have a decertification election or a statement by city government that it harbors good-faith doubt that the exclusive bargaining representative has the support of the majority of the employees in the bargaining unit. If, in the opinion of the board, the showing of interest in support of such a petition is sufficient or, in the case of a petition filed by city government, there is objective evidence to support a good-faith doubt as to the majority status of the exclusive bargaining agent, the board shall call and hold a decertification election within forty-five (45) days from the date of the receipt of the request. Decertification election shall be held in a manner prescribed by rules of the board.
- (7) No decertification election shall be held if within the preceding twelve (12) months the board has held a representation election or decertification election for the bargaining unit.
- (8) No petition for representation or decertification shall be entertained by the board unless such petition and the requisite showing of support therefore shall have been filed with the board during the thirty-day period between the one hundred twentieth day and the ninetieth day immediately preceding the expiration date of an existing collective bargaining agreement.

(Code 2007, 17-46)

### **Sec. 17-47. Duty to Bargain; Scope of Bargaining.**

1. City government and any employee organization recognized as the exclusive representative for a unit, through their designated agents, shall bargain in good faith concerning all wages, hours and other terms and conditions of employment not in violation of law or local ordinance. The methods and procedures of initial employment, establishing classified and unclassified employees, performance evaluations, promotional procedures, the right to reprimand and discharge employees are non-negotiable issues. However, the provisions of a collective bargaining agreement which has been ratified and approved by the governing body shall, where in conflict with any other provision of its chapter, govern. The duty to bargain includes an obligation to confer in good faith with respect to wages, hours and terms and conditions of employment, to execute a written contract incorporating any agreement



reached, but does not require either party to agree to a specified proposal or make a concession.

2. The duty to bargain on economic issues is limited to the funding appropriated by the city commission. Multi-year agreements are subject to the city commission appropriating sufficient funds to fund the collective bargaining agreement for subsequent years. Should this not occur, either party may re-open negotiations on the sections of the agreement affected.
3. Payroll deduction of the exclusive representative's membership dues is a negotiable item by either party. The amount of dues, if such provision is 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 the 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.
4. Any 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.
5. The parties have a requirement that grievance procedures culminating with binding arbitration be negotiated. This applies only to grievances and does not apply to negotiations impasse.
6. The following meeting shall be closed as defined by the Open Meetings Act:
  - (1) Meeting for discussion of bargaining strategy for collective bargaining negotiations between the employer and the exclusive representative;
  - (2) Collective bargaining sessions; and
  - (3) Consultation and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

(Code 2007, 17-47)

#### **Sec. 17-48. Management Rights.**

Unless limited by the provisions of a collective bargaining agreement or other statutory provision, the exclusive prerogatives, functions and rights of the employer shall include, but are not limited to, the following:

1. To hire, promote, reclassify, transfer, assign, lay-off and recall employees;
2. To reprimand, suspend, demote, discharge or otherwise discipline employees;
3. To direct and supervise all of operations, functions and the work of the employee;
4. To determine the place to report to work, to determine methods, process and manner of performing work;

5. To evaluate and judge the employee's skill, ability, efficiency and general performance;
6. To revise, eliminate, combine or establish new jobs and job classifications;
7. To determine the need for and the job qualifications for new employees and to determine the qualifications for and qualifications of employees considered. for transfer and promotion;
8. To establish, organize, reorganize, close down, expand or otherwise change the operation of any city facility, division or department and reduce, increase, alter, combine, transfer or cease any department's operation, equipment or service;
9. To establish working hours, size and composition of work forces, shifts or units, to designate, assign and reassign all work duties, and otherwise determine staffing requirements;
10. To subcontract, contract for goods and services, and otherwise determine the methods or means by which operations and services are to be delivered, made or purchased;
11. To determine what and by whom services will be rendered to the citizens;
12. To maintain the efficiency of city government and to take actions as may be necessary to carry out the mission of city government in emergencies; and
13. To retain all rights, manage and to exercise judgment on all matters not specifically limited by a collective bargaining agreement in effect or the provisions of this article.  
(Code 2007, 17-48)

#### **Sec. 17-49. Prohibited Practices.**

1. City government, as employer, its agents or representatives, shall not:
  - (1) Interfere with the formation or administration of any employee organization;
  - (2) Interfere with the selection of an agent or representative for bargaining or adjustment of grievances;
  - (3) Discriminate in regard to hiring or conditions of employment for the purpose of encouraging or discouraging membership in any employee organization;
  - (4) Refuse to negotiate in good faith with a certified exclusive bargaining representative of an employee organization;
  - (5) Discharge or discriminate against a city employee because that employee has filed charges or given testimony under the provisions of this article. This provision may not be used as immunity from discipline for cause.
  - (6) Violate a written collective bargaining agreement which was negotiated under the provisions of this article.

2. An employee labor organization, its agent or representative, a group of city employees, or a city employee individually shall not:
  - (1) Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin.
  - (2) Interfere with, restrain or coerce employees in the exercise of their designated duties or their rights under this article.
  - (3) Restrain, coerce or interfere with the public employer in the selection of its agent for bargaining or for adjustment of grievances.
  - (4) Cause or attempt to cause a city supervisor to discriminate against a city employee because of membership in an employee organization.
  - (5) Refuse to negotiate and/or conduct business in good faith with the designated representative of city government.
  - (6) Violate the provisions of any written agreement in force, or attempt to cause a change or cause li change to an existing written agreement other than through the negotiating process identified in this article.
  - (7) Interfere with, restrain or coerce any official, administrative officer or representative of city government in the conduct of their city duties, private business or personal affairs.
  - (8) Engage in, induce or encourage any city employee or group of employees to engage in a strike, a work stoppage or work slowdown.
  - (9) Picket and/or boycott the residence and/or business of city employees or elected officials.
  - (10) Using city property, time or money for union business, including soliciting membership for an employee or labor organization during the employee's working hours.
  - (11) Interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative.
  - (12) During the negotiating process, including the impasse procedure, discuss, directly or indirectly, any issue with the city's elected officials which is a subject of negotiations.
  - (13) An employee organization that represents city employees may not assist or endorse a candidate in a city election.
  - (14) It shall be a prohibited practice for any elected official of city government to attempt to negotiate or discuss any issue, which is the subject of negotiations, directly or indirectly, with any employee organization or a group of city employees or individual city employees who are members of a bargaining unit involved in negotiations and employee of the exclusive representative during the negotiating process, including the impasse procedure. All negotiations shall be conducted between the negotiating teams as identified, in writing, by the parties.

3. Any controversy concerning prohibited practices will be submitted to the board within thirty (30) days of the occurrence of the alleged prohibited practice. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by a service upon it and the board of a written notice together with a copy of all the charges and the relief requested. The accused party shall have fourteen (14) calendar days within which to serve a written answer to such charges. If the board finds that reasonable cause exists to believe that a prohibited practice has occurred, it will, within five (5) working days, schedule a hearing to be conducted as soon as practical. At such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses and submit evidence, although formal rules of evidence shall not be strictly applied. The board may promulgate reasonable rules or regulations concerning these proceedings or the conduct of other proceedings before it pursuant to this article.
4. The board shall determine if a prohibited practice has been committed according to this article, shall state its findings of fact and shall report its findings to the parties and the city manager. In case of an alleged strike as defined in this article, the board shall meet in emergency session with all parties concerned and shall report its findings to the city manager in a joint session within twenty-four (24) hours of such alleged prohibited practice.  
(Code 2007, 17-49)

#### **Sec. 17-50. Strikes and Lockouts Prohibited; Penalties and Sanctions.**

1. No employee or labor organization shall engage in a strike. No employee labor organization shall cause, instigate, encourage or support a strike, walkout or slowdown. No employer shall cause, instigate or engage in any employee lockout.
2. In the case of an action by bargaining unit employees where the employer alleges a strike has occurred, the board shall meet in emergency session, within twenty-four (24) hours of the filing of the charge by the employer, and determine whether a strike has indeed occurred. In case the board must meet in accordance with this emergency during the absence of a board member, the mayor shall appoint an interim member with due regard to the representative character of the board.
3. In case of a strike as defined by this article, the city manager, after determination by the board that a strike has occurred, shall direct that the collective bargaining agreement ceases to exist, shall order an automatic decertification that the exclusive representative no longer represents employees in the bargaining unit involved. The city manager shall notify the employees in subject bargaining unit of such action and advise them that they will not be privileged to bargain with the city government through a collective bargaining agent for at least sixty (60) months. In such case, the exclusive representative that represented the employees who went on strike shall be prohibited from collecting dues, negotiating for or representing employees in any fashion and shall be barred from serving as the exclusive representative of any bargaining unit of city employees for a minimum of sixty (60) months.
4. In the case of a violation of Section 17-57, the city may petition the appropriate district court to:
  - (1) Issue an order restraining and enjoining such violation.

- (2) In the case of a strike, walkout or slow down, impose on the employee organization a fine which will be set in accordance with the damages, loss of revenue and/or services involved.

(Code 2007, 17-50)

### **Sec. 17-51. Agreements.**

1. All agreements reached between the city and an exclusive bargaining representative as a result of collective bargaining will be reduced to writing in the form of a contract between the parties.
2. A hand-executed copy of the agreement will be provided to each party and each will bear the cost of reproducing copies as needed. The city is responsible for providing copies and orientation to management employees, supervisors and confidential employees. The exclusive representative is responsible for providing copies and orientation to members of the bargaining unit.

(Code 2007, 17-51)

### **Sec. 17-52. Negotiation Procedures.**

1. Negotiating Teams. Any negotiating team will consist of a maximum of five (5) persons designated by the employee organization and a maximum of five (5) persons designated by the city manager.
2. Contract Openings.
  - (1) Upon written request by the employee organization to the city manager or his designee, or by the city manager or his designee to the employee organization, negotiating sessions will be scheduled to discuss items mutually agreed upon. Such request for negotiating sessions shall indicate the matter to be discussed and shall be answered within ten (10) working days.
  - (2) Not earlier than one hundred twenty (120) days nor later than sixty (60) days prior to the contract ending date, either side may request the opening of negotiation, as indicated above.
  - (3) Prior to the start of negotiations, the city manager and the employee organizations will designate their chairperson and spokesperson from among the designated members of their negotiating team.
3. Procedure for Negotiations.
  - (1) Negotiation will be conducted as provided below and will take place at the facilities and at the time mutually agreeable to by the negotiating teams.
  - (2) All negotiations will be held in closed sessions.
  - (3) Negotiations will start with the negotiating team of the party requesting negotiations delivering its proposed changes, in writing, to the other party. Each section will be read

with the changes and the reasons therefore explained in some detail. This procedure will continue to be followed until the entire proposal has been presented.

- (4) Upon complete presentation of the proposal, the other negotiating team will present its issues and its counter proposal in the same manner.
- (5) Following the complete presentation of both proposals the parties will identify the economic and non-economic issues. All non-economic issues must be resolved prior to negotiating economic issues.
- (6) Thereafter, each side will take turns presenting counter proposals with supporting data until agreement is reached.
- (7) Negotiating sessions will proceed with deliberate speed, but recesses and study sessions maybe called for by either side. Prior to recess, the reconvening time will be agreed upon. A caucus may be taken as needed.
- (8) Members of the employee organization team will be released from their normal duties without pay to participate in negotiations.

#### 4. Tentative Agreement.

- (1) Tentative agreements reached during negotiations will be reduced to writing and initialed by each team spokesperson.
- (2) Such tentative agreements are conditional and may be withdrawn should later discussions change either team's understanding of the section as it related to another part of the agreement.

5. Ratification. Agreement on contract negotiations is accomplished when the union president and the mayor sign the agreement. Provisions in multi-year agreements providing for economic increases in subsequent years shall be contingent upon the governing body appropriating sufficient funds to fund the agreed upon increase; for a subsequent year either party may reopen negotiations.

(Code 2007, 17-52)

### **Sec. 17-53. Impasse Procedures.**

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 thirty-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. The governing body may accept, reject, or modify the fact finder's recommendation. The decision of the governing body is final and binding on both parties and shall be incorporated into the agreement 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, except that the cost of any representative of each party shall be borne by that party.  
(Code 2007, 17-53)

#### **Sec. 17-54. Labor Management Relations Board Creation and Terms.**

1. The "Labor-Management Relations Board" is hereby created. The board shall consist of three (3) members appointed by the Commission. The Commission shall appoint one (1) member recommended by organized labor representatives actively involved in representing employees, one (1) member recommended by management and one (1) member jointly recommended by the two (2) other appointees.
2. Board members shall serve for a period of one (1) year with terms commencing April 1, 1993. 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.
3. During the term for which he is appointed, no board member shall hold or seek any other political office or public employments, be an individual representing the employer in collective bargaining or be an employee of the labor organization representing city employees.
4. Each board member shall be paid two hundred dollars (\$200.00) per day or portion thereof for mileage and per diem, whichever is greater for hearings required under this article.
5. The cost of any hearing will be borne equally by the parties to the hearings.  
(Code 2007, 17-54)

#### **Sec. 17-55. Board Powers and Duties.**

1. The board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in this article, including the establishment of procedures for:
  - (1) The designation of appropriate bargaining units.
  - (2) The selection, certification and decertification of exclusive representatives.

- (3) The filing of, hearing on, and determination of complaints of prohibited practices.
2. The 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 board's functions and responsibilities.
  - (3) Hire such personnel or contract with such third parties as the governing body deems necessary to assist the board in carrying out its functions.
3. 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 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.
4. 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 this article and collective bargaining agreements are final and binding on the parties subject to the appeal provisions in Section 17-66.
5. The board has the power to enforce provisions of this article and labor-management agreements through the imposition of appropriate administrative remedies.
6. The board shall have no power to promulgate policy other than to accomplish and perform its functions and duties.
7. No rule or regulation promulgated by the board shall require, directly or indirectly, as a condition of continuous employment, an employee covered by this article to pay money to any labor organization that is certified as an exclusive representative.  
(Code 2007, 17-55)

#### **Sec. 17-56. Board Hearing Procedures.**

1. The board may hold hearing for the purpose of:
  - (1) Information gathering and inquiry;
  - (2) Adopting rules and regulations; and
  - (3) Adjudicating disputes and enforcing the provisions of this article, and rules and regulations adopted pursuant to this article.
2. The board shall adopt regulations setting forth procedures to be followed during hearings of the board. Such regulations shall meet minimal due process requirements of the state and federal constitutions.



3. Charges of prohibited labor practices that are filed within thirty (30) days of the time the complainant knew, or with reasonable diligence should have known, 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. 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. See also Sections 17-57-5 and 17-57-6.
4. All adopted rules and regulations shall be filed in accordance with applicable local ordinances.
5. 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 review.
6. Each party to a prohibited labor practice shall bear the cost of producing its own witnesses for hearings.
7. 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 reasonable 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 obtained. All meetings shall be held in the city. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the city and notice shall be mailed at least thirty (30) days prior to the hearing date to persons who have made written request to the appropriate city official for advance notice of hearings related to this article.  
(Code 2007, 17-56)

### **Sec. 17-57. Preemption.**

1. This article shall preempt all contrary local ordinances or executive orders except those provisions of the personnel rules and regulations establishing:
  - (1) Classified and unclassified service.
  - (2) Performance evaluations.
  - (3) Methods of initial employment and promotion procedures.
  - (4) Grievance and appeal procedures for classified employees.
2. Other provisions of the personnel rules and regulations which do not conflict with this article or a collective bargaining agreement which has been ratified and approved by the governing body shall be administered in conjunction with this chapter. All provisions of the personnel rules and regulations shall continue in effect for all employees not represented by a

bargaining agent.  
(Code 2007, 17-57)

**Sec. 17-58. Judicial Enforcement; Standard of Review.**

1. The board may request the district court to enforce any order issued pursuant to this article, including those for 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.
2. Any person or party, including any labor organization, affected by a final regulation, order or decision of the board may appeal to district court for further relief. All such appeals shall be based upon the record made at the board hearing. All such appeals to district court shall be taken within thirty (30) days of 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 abuse of discretion;
  - (2) Not supported by substantial evidence on the record taken as a whole; or
  - (3) Otherwise not in accordance with law.  
(Code 2007, 17-58)

**Secs. 17-59 to 17-80. Reserved.**

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**ARTICLE IV. POLICE OFFICER ACADEMY CONTRACTUAL COMMITMENT**

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**Sec. 17-81. Compensation While Training.**

Officers of the city police department who are assigned to attend the New Mexico State Police Academy (or similar basic police officer training program) shall, while in attendance, be compensated by the city at the salary and benefits rates they qualify for were they to remain on duty in the city.

(Code 2007, 17-81)

**Sec. 17-82. Contract Required.**

These officers shall be required by the chief of police to enter into a contract, here called an academy contract, when the city hires them. This contract will state that the city agrees to provide the salary for the officer while attending the required basic training, and in return the officer agrees to work as a police officer for the city for two (2) years upon return from the training. This two-year period shall be called a "service commitment." This contract shall incorporate by reference and inclusion the terms described in this article and shall be reviewed and approved by the city attorney and city manager.

(Code 2007, 17-82)

**Sec. 17-83. Breach of Contract; Payback Clause.**

1. Should the officer later decide to not complete this service commitment, the officer shall pay back all or some of the amount of the salary he or she received while attending the training academy or school, which shall be calculated by the city department of finance director at the completion of the training. This amount shall be called the officer's "academy debt" and shall be incorporated into a letter signed by the finance director and entered into the personnel file of the officer along with the academy contract. These documents shall be signed by the officer, who shall receive copies.
2. Officers who do not serve their two-year service commitment shall be credited with a pro rata portion of their academy debt proportionate to the percentage of time they actually serve in their service commitment. For example, an officer who serves twenty-six (26) weeks of the one-hundred-four-week commitment shall be credited with twenty-five (25) percent of his academy debt, and shall be contractually liable for seventy-five (75) percent of his academy debt.
3. Officers who do not serve their two-year service commitment, and are not employed within the law enforcement field for a time period that is three (3) years past the date they resign, are not obligated to repay their "academy debt." If they go to work for any law enforcement agency within that three-year period they must pay back the amount due on the contract.

(Code 2007, 17-83)

**Sec. 17-84. Applicability.**

1. Officers hired after the enactment of this article shall be fully subject to its provisions.
2. Officers hired prior to the enactment of this article shall not be subject to its provisions, but only the provisions that were in place at that time.  
(Code 2007, 17-84)

**Sec. 17-85. Conflicts.**

Should an officer dispute the actions of the city in any matter arising out of this academy contract, they shall seek to resolve the matter through the police department organizational structure. Should the issue then remain unresolved, the office shall file a grievance according to the personnel policies of the city.  
(Code 2007, 17-85)