ORDINANCE NO. 16

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

BE IT ENACTED BY THE BOARD OF QUAY COUNTY COMMISSIONERS:

SECTION 1. SHORT TITLE. -- Sections 1 through 22 of this Ordinance may be cited as the "Quay County Labor Management Relations Ordinance".

SECTION 2. PURPOSE OF THE ORDINANCE.— The purpose of the Labor Management Relations Ordinance is to guarantee employees the right to organize and bargain collectively with their employers and to promote harmonious and cooperative relationships between employers and employees.

SECTION 3. CONFLICTS.— In the event of conflict with other laws or ordinances, the provisions of the Labor Management Relations Ordinance shall supersede other previously enacted ordinances; provided that the Quay County Labor Relations Ordinance shall not supersede the State or Federal laws.

County sanctioned administrative regulations, standard operating procedures and work place practices shall control unless there is a conflict with a collective bargaining agreement, where a conflict exiots, the collective bargaining agreement shall control.

SECTION 4. DEFINITIONS.— As used in the Labor Management Relations Ordinance:

- 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 and para-professional), professional, corrections, fire and police.
- B. "board" means the County of Quay 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;

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State of New Mexico

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- F. "employee" means only a regular full-time non entry probationary employee of Quay County; this definition does not include casual employees such as temporary, seasonal or temporarty part-time employees. Supervisory, elected officials, managerial or confidential employees are also excluded from this definition;
 - G. "employer" means the County of Quay;
- 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 a third party for an advisory recommendation:
- J. "governing body" means the Board of Quay County Commissioners;
- K. "grievance" means a written complaint by a bargaining unit employee regarding an action taken by management resulting in a disciplinary action;
- L. "impasse" means failure of the employer and an exclusive representative, after good-faith bargaining to reach agreement in the course of negotiating a collective bargaining agreement;
- M. "labor organization": means any employee organization which represents employees in collective bargaining;
- N. "lockout" means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;
- O. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or officiating management policies;
- P. "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;
- Q. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

- R. "stril means an employee's refusal, 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 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 commonly known as, the blue flu, sick outs, slow downs, traffic ticket writing campaigns, working to the rule, mass resignations and sympathy strikes.
- S. "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 5. 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. 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 6. MANAGEMENT RIGHTS.— Unless limited by a collective bargaining agreement or other statutory provision, the rights of the employer shall include, but are not limited to the following:
- A. To direct and supervise all operations, functions and the work of the employees.
- B. To hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate employees:
- C. To determine what and by whom services will be rendered to the citizens;
- D. To determine staffing requirements, create, abolish positions or to eliminate or reorganize work units;
 - E. To determine and revise schedules of work:
- F. To establish, revise and implement standards for hiring and promoting employees;
- G. To assign shifts, work days, hours of work and work locations;
 - H. To designate, assign and reassign all work duties:
- I. 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;
- J. To take actions as necessary to carry out the mission of the employer in emergencies; and
- K. To retain all rights not specifically prohibited by a collective bargaining agreement or the Quay County Labor Management Relations Ordinance.

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

- A. The "labor-management relations board" is hereby created. The board shall consist of three members appointed by the Board of Quay County Commissioners. The Board of Quay County Commissioners shall appoint one member recommended by certified organized labor representatives actively involved in representing employees in the County, one member recommended by management and one member jointly recommended by the two other appointees.
- B. Board members shall serve for a period of one year with terms commencing in the month of September except the initial appointment which will be a shorter term effective the same day as this ordinance. 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 he 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 per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act (10-8-1) to 10-8-8 NMSA 1978).
- E. The cost of any hearing will be borne equally by the parties to the hearing.

SECTION 8. 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 employers 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 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 and 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.
- 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 9. 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 to that act.
- B. 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 constitution.



- C. Charge of prohibited labor practices to are filed within 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. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.
- D. All adopted rules and regulations shall be filed accordance with applicable local ordinances.
- 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.
- F. Any party negotiating action by the board sall first pay a filing fee in the amount of fifty dollars (\$50.) to the office of the Quay County Clerk.
- G. Each party to a prohibited labor practice shall pay its witnesses for any lost wages for time spent at hearings.

SECTION 10. APPROPRIATE BARGAINING UNITS.--

A. The Board shall, upon receipt of a petition for a represent-ative 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. Occupational groups shall generally be identified as blue collar, white collar, and corrections. 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. 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.



- A. Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the valid signatures of at least thirty 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 percent of the employees in the appropriate bargaining unit no later than ten days after the Board and the employer post a written notice that the petition containing the signatures of not less than thirty 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 sisty percent (60 %) of the bargaining unit voted and none of the choices received a majority of the votes cast, a run-off election shall be held within 30 days. The choices on the run-off election shall consist of the two choices which received the greates number of votes in the original election.
- E. Where a majority of the votes cast are in favor of representation by a labor organization and at least 60% 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 60% 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 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 parties.



- 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 interest 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 a bargaining unit from taking their grievances to their supervisor or filing a prohibited practice with the Board based upon discrimination by the exclusive representative or the employer. The Board will adjudicate issues over contract interpretations only when the issue is between the employer and the exclusive representative. Any settlement of a grievance taken by an individual employee or relief given on a prohibited practice brought by an individual employee shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or good faith resolutions made between the employer and the exclusive representative in the day—to—day administration of the collective bargaining agreement.

SECTION 13. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE .--

- A. Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent 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 a 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 bard no earlier than ninety days and no later that sixty 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 months subsequent to a labor organization's certification as the exclusive representative.

SECTION 14. SCOPE OF BARGAINING. --

- A. The parties shall bargain in good faith on wages, hours and other terms and conditions of employment, provided, that the Public Employee Retirement Act is not a negotiable issue.
- B. Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.
- C. The obligation to bargain collectively imposed by the Labor Management Relations Ordinance shall not be construed as authorizing the employer and the exclusive representatives to enter into any agreement that is in conflict with State statutes or Federal statutes.

In the event of conflict between the provision of any Federal or State statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

- D. Payroll deduction of the exclusive representative's membership dues 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 a Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.
- E. Any agreement 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 to fund the agreed upon provision.
- F. 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.

SECTION 15. NEGOTIATIONS AND IMPASSE RESOLUTION.



- A. The following meetings shall be closed:
- (1) meetings for the discussion of collective bargaining strategy between the employer and the employer and the employer's negotiating team;
 - (2) collective bargaining sessions; and
- (3) consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.
- B. The following negotiation procedures shall apply to the employer and exclusive representatives:
- (1) Initial negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date. Failure to open negotiations as provided herein shall automatically extend the contract for one year. The parties may open negotiations at any time by mutual agreement.
- (2) Negotiating teams will consist of a maximum of six (6) persons designated by the exclusive representative and a maximum of six (6) persons designated by the County Manager with consent of the Board of Quay County Commissioners.
- (3) All negotiations will be held at the facilities and at sessions. Negotiations will be held at the facilities and at a time mutually agreed upon by the negotiating teams. Negotiations will begin with the party that requested the negotiations presenting their complete proposal and changes, section by section.
- (4) 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.
- (5) Recesses and study sessions may be called by either team. Prior to these recesses or study sessions the reconvening time will be agreed upon. Caucuses may be taken as needed.
- (6) Employees who are members of the exclusive representatives negotiating team will be released from their normal duties without pay to participate in negotiations.
- (7) 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.

- (8) Agreement on contract negotiations is accomplished when the Union President and the Chairman of the Board of Quay County Commissioners sign the agreement. Provisions in multi-year agreements, providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year or years. Should the governing body not appropriate sufficient funds to fund the agreed upon increase either party may reopen negotiations.
- C. The following impasse procedure shall be followed by the employer and exclusive representatives:
- (1) Either party may declare an impasse if no agreement has been reached by the contract expiration date. Once an impasse has been declared, either party may request that the Board assign a mediator to assist in the negotiations. Mediators from the Federal Mediation and Conciliation Service will be assigned by the Board.
- (2) If the impasses continues beyond a thirty calendar day period, the mediator will be released and the Board shall assign a fact-finder 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 with the parties. 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 package. The fact-finder should complete his work and submit his recommendation to the governing body within 45 calendar days of his appointment.
- (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 upon by the parties.
- (5) The cost for the mediator or the fact-finder shall be borne equally by the parties to the impasse.
 - SECTION 16. EMPLOYERS--PROHIBITED PRACTICES.--
 - A. No employer or his representative shall;
- (1) discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

- (2) restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Ordinance:
- (3) dominate or interfere in the administration of any labor organization;
- (4) discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in a labor organization;
- (5) discharge or otherwise discriminate against an employee because 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;
- (6) refuse to bargain collectively in good faith with the exclusive representative;
- (7) refuse or fail to comply with any provision of the Labor Management Relations Ordinance or Board regulation; or
- (8) refuse or fail to comply with any collective bargaining agreement.
- B. During the negotiating process, including the impasse procedure, elected Quay County Commissioners 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 17. EMPLOYEES-LABOR ORGANIZATIONS-PROHIBITED PRACTICES.--

- A. An employee, labor organization or its representative shall not:
- (1) discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, sex, disability or national origin:
- (2) conduct union business, including soliciting membership for an employee or labor organization during the employee's duty hours.
- (3) use County time, property or equipment for union business:
- (4) restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance:
- (5) restrain or coerce any elected or appointed official, for the purpose of gaining a concession;
- (6) refuse to bargain collectively in good faith with the employer;

(7) ruse or fail to comply with any lective bargaining or other agreement with the employer;

- (8) refuse or fail to comply with any provision of the Labor Management Relations Ordinance;
- (9) picket homes or private businesses of elected officials or employees of the County;
- (10) coerce the employer in the selection of its agent for bargaining; and
- (11) during the negotiating process, including the impasse procedure, discuss any issue with elected officials which is a subject of negotiations.
- B. Unions or employee groups who represent Quay County employees may not endorse or support any candidate running for Quay County elective office.

SECTION 18. STRIKES AND LOCKOUTS PROHIBITED .--

- A. No employee or labor organization shall engage in a strike. No employee or labor organization shall cause, instigate, encourage or support a strike. The employer shall not cause, instigate or engage in an employee lockout.
- B. Should the employer allege that a strike has occurred by bargaining unit employees, the Labor Management Relations Board shall meet in emergency session, within 48 hours of the filing of the charge by the employer, and determine whether a strike has indeed occurred. Should the Board be required to meet in accordance with this provision during the absence of a Board member, the Board of Quay County Commissioners shall appoint an interim member with due regard to the representative character of the Board.
- C. Should the Board determine that bargaining unit employees participated in, caused, instigated, encouraged or supported a Quay County employee strike, walkout or slow-down, the exclusive representative for that bargaining unit shall be decertified by the Labor Management Relations Board. In such case, the collective bargaining agreement in force between the parties shall be null and void; the exclusive representative for that appropriate bargaining unit may not collect dues, negotiate, or represent Quay County employees and shall be barred from serving as the exclusive representative for any bargaining unit of Quay County employees for a period of not less than one year.

SECTION 19. 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 this Labor Management Relations Ordinance.

SECTION 20. JUDICIAL ENFORCEMENT -- STANDARD OF REVIEW.

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

SECTION 21. SEVERABILITY. -- If any part or application of Quay County Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 22. EFFECTIVE DATE .-- The effective date of the Quay County Labor Management Relations Ordinance is the 1st day of April, 1993.

ADOPTED BY THE GOVERNING BODY OF QUAY COUNTY THIS 26thDAY OF February , 1993.

QUAY COUNTY BOARD OF COMMISSIONERS

Glenn Briscoe, Chairman

Thrasher, Member

Jim Bob Hendrickson: Member

annette Maddaford, County/Clerk

STATE OF NEW MEXICO)	
	:	SS
COUNTY OF QUAY)	

The Board of County Commissioners of Quay County, New Mexico, met in special session in full conformity with law and the rules and regulations of the Board at the Quay County Courthouse, Tucumcari, New Mexico, being the regular meeting place of the Board, on the 13th day of December, 1993, at the hour of 10:00 a.m. Upon roll call, the following members were found to be present:

	Glenn Briscoe			
	Jim Bob Hendrickson			
	Robert E. Thrasher			
Absent:	None			
Also present:				

Thereupon, there was officially filed with the County Clerk a copy of a proposed ordinance in final form. Commissioner Thrasher thereupon introduced the following ordinance:



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