

# ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY Merit System Ordinance

## Table of Contents

Section 1.	.....	2
10-1-1	THE MERIT SYSTEM. ....	2
10-1-2	RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR FOR PERSONNEL FUNCTIONS.....	2
10-1-3	THE CLASSIFIED AND UNCLASSIFIED SERVICE. ....	3
10-1-4	EMPLOYMENT BY THE AUTHORITY.....	4
10-1-5	PROBATIONARY PERIOD. ....	5
10-1-6	PERFORMANCE EVALUATIONS.....	6
10-1-7	COMPENSATION. ....	6
10-1-8	WORK HOURS. ....	6
10-1-9	LEGAL HOLIDAYS.....	7
10-1-10	VACATION LEAVE.....	7
10-1-11	SICK LEAVE.....	8
10-1-12	INJURIES IN PERFORMANCE OF DUTY. ....	9
10-1-13	LEAVE WITH PAY.....	9
10-1-14	LEAVE WITHOUT PAY. ....	11
10-1-15	LAYOFF. ....	11
10-1-16	RESIGNATIONS. ....	12
10-1-17	DISPOSITION OF AWARDS.....	12
10-1-18	POLITICAL ACTIVITY. ....	12
10-1-19	EMPLOYEE MEDIATION.....	13
10-1-20	DISCIPLINARY ACTIONS.....	14
10-1-21	THE GRIEVANCE RESOLUTION PROCEDURE. ....	15
10-1-22	APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE. ....	19
10-1-23	PERSONNEL HEARING OFFICER. ....	20
10-1-24	EMPLOYEE ORGANIZATION AGREEMENTS. ....	21
10-1-25	TRANSFERS FROM CITY OF ALBUQUERQUE. ....	21

10-2-1	SHORT TITLE Labor-Management Relations Ordinance.....	21
10-2-2	PURPOSE.....	21
10-2-3	DEFINITIONS.....	22
10-2-4	RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY. ....	23
10-2-5	MANAGEMENT RIGHTS. ....	24
10-2-6	DETERMINATION OF REPRESENTATION. ....	24
10-2-7	DUTY TO BARGAIN.....	28
10-2-8	DETERMINATION OF BARGAINING UNITS.....	29
10-2-9	PROHIBITED PRACTICES. ....	29
10-2-10	HEARINGS AND DECISIONS.....	31
10-2-11	PENALTIES AND SANCTIONS. ....	32
10-2-12	COLLECTIVE BARGAINING AGREEMENTS.....	32
10-2-13	NEGOTIATING PROCEDURES.....	32
10-2-14	IMPASSE PROCEDURES. ....	34
10-2-15	AUTHORITY LABOR-MANAGEMENT RELATIONS BOARD.....	37
10-2-16	APPLICABILITY. ....	38
10-2-17	CONSISTENCY WITH AUTHORITY BUDGET ORDINANCE. ....	38
	Section 2.SEVERABILITY CLAUSE.....	38
	Section 3.EFFECTIVE DATE AND PUBLICATION.....	39

Section 1.

10-1-1 THE MERIT SYSTEM.

There is hereby established a merit system governing the hiring, promotion and discharge of employees and providing for the general regulation of employees. The Executive Director is authorized to establish Rules and Regulations to implement this ordinance. If this ordinance conflicts with any state or federal law, state or federal law will control.

10-1-2 RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR FOR PERSONNEL FUNCTIONS.

(A) The Executive Director shall have the following responsibilities:

(1) To exercise leadership in and encourage the development of effective personnel administration within the operations of the Albuquerque Bernalillo County Water Utility Authority;

(2) To institute and consider recommendations for changes in this ordinance;

(3) To institute and approve Personnel Rules and Regulations;

(4) To issue administrative instructions to provide policy and guidance in furtherance of the responsibilities of the Executive Director;

(5) To establish a compensation plan for classified employees consistent with other provisions of this ordinance; and

(6) To designate a manager to assume the duties of the Executive Director in the event of his or her inability to act or absence from the Authority.

(B) The power of appointment or promotion to a position in the classified or unclassified service of the Authority shall rest with the Executive Director;

(C) Subject to existing law and in addition to other rights, granted by regulation, rule or this ordinance, the Executive Director shall have the following rights:

(1) To direct the work of its employees;

(2) To hire, promote, evaluate, transfer, and assign employees;

(3) To reprimand, suspend, demote or discharge employees for just cause;

(4) To determine staffing requirements;

(5) To maintain the efficiency of the organization and ensure the carrying out of normal management functions;

(6) To take actions as may be necessary to carry out the mission of the Authority in emergencies; and

(7) To manage and to exercise judgment on all matters not specifically prohibited by this ordinance or by a collective bargaining agreement in effect between the Authority employer and an employee organization.

#### 10-1-3 THE CLASSIFIED AND UNCLASSIFIED SERVICE.

(A) All employees in the Authority service shall be divided into unclassified service and classified service. Elected officials and members of boards, commissions and authorities that are not employees of the Authority shall not be covered by the classified or unclassified service.

(B) The classified service shall be comprised of all employees except those who are specifically placed in the unclassified service.

(C) The unclassified service shall be comprised of the following:

- (1) The Executive Director;
- (2) Temporary and seasonal employees employed as such;
- (3) Part-time employees employed for less than 20 hours per week;
- (4) Administrative heads of agencies or special programs sponsored by the Authority and defined as unclassified by the Executive Director;
- (5) Any position designated as unclassified by the Executive Director.

(D) Unclassified employees are employees at will and serve at the discretion of the Executive Director. Such employees shall have no property interest in continued unclassified employment and may be dismissed for any or no reason.

(E) All employees, except as otherwise provided herein, in the classified service shall be entitled to all of the rights and benefits provided for by this ordinance. All employees in the unclassified service shall be entitled to all of the rights and benefits to which classified employees are entitled except the benefits provided for in §§ 10-1-20, 10-1-21, and 10-1-22 and also such rights and benefits specifically contracted for in writing between the Executive Director and an unclassified employee.

(1) Temporary and seasonal employees are not entitled to any of the rights and benefits of employment to which other employees are entitled under this ordinance.

(2) Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the Authority; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours. Hours worked in addition to a regular work week shall not entitle an employee to additional leave benefits.

#### 10-1-4 EMPLOYMENT BY THE AUTHORITY.

(A) Every effort shall be made to fill vacant positions in the Authority with the best qualified candidate. All vacancies in classified positions will be advertised to all Authority employees, but applications from persons outside of Authority employment may be considered at the same time.

(B) Subject to preferences required by law, preference shall be given in filling a vacant position of the same or lower grade for which an employee is qualified according to the following order:

- (1) Employees reinstated as a result of administrative or judicial action as ordered;
- (2) Employees returning from active duty in the military;
- (3) Employees transferred pursuant to §10-1-2 of this ordinance;
- (4) Employees returning from physical layoff;
- (5) Non-probationary employees returning from layoff;
- (6) Employees notified of layoffs; and
- (7) Employees returning from authorized absence from work without pay.

(C) Employees who have held a classified position with the Authority for more than ten years prior to serving in an unclassified position shall be allowed to return to a classified position.

(D) The Executive Director shall have the sole authority to place employees who are granted a preference in this section in positions for which they are qualified.

(E) Preference for placement, except for employees returning from active duty in the military or placement resulting from administrative or judicial action, shall end one year from the date that the preference was created.

#### 10-1-5 PROBATIONARY PERIOD.

(A) Probationary employment is tentative and subject to a probationary period. A probationary employee does not have a legitimate entitlement to continued employment and may be terminated for any or no reason.

(B) A probationary period shall be utilized for closely evaluating the employee's work and for securing the most effective adjustment of the new employee to his or her position. Such probationary period shall be subject to a probationary period of six months immediately following the original appointment date.

(C) At any time during the probationary period, an employee may be dismissed for any reason which is not prohibited by law. The change from probationary to non-probationary status shall require positive action by the manager or his designee and failure to take positive action at the end of the probationary period shall constitute dismissal of the employee. Upon the manager's recommendation, the manager or his designee may extend the probationary period for a maximum of 60 days.

(D) An employee on probationary status is not entitled to the rights and benefits provided for in other sections of this ordinance.

10-1-6 PERFORMANCE EVALUATIONS.

(A) The Executive Director shall establish a system to evaluate the work performance of Authority employees in the classified service. Performance evaluations or ratings shall not be the subject of a grievance.

(B) The performance evaluation system will provide for:

(1) Performance standards that will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position in the classified system;

(2) Communication with each employee as to the performance standards and critical elements of the employee's position;

(3) An opportunity during a specified period of time for the employee to demonstrate an improvement in performance; and

(4) Appropriate disciplinary action to be taken if performance is inadequate including dismissal or demotion for an employee who continues to have unacceptable performance after an opportunity to demonstrate acceptable performance.

(C) The work performance of an employee shall be officially evaluated by his or her immediate manager(s) at least once a year.

10-1-7 COMPENSATION.

(A) Compensation of classified employees shall be based on a classification plan. The classification plan shall be based on duties, authority and responsibility of positions in the Authority service. A pay plan shall be maintained corresponding to the classification plan.

10-1-8 WORK HOURS.

The working time of employees shall be specified from time to time by the manager, with the approval of the Executive Director, or his designated representative. Full-time employment by the Authority shall constitute the sole employment of any employee, unless additional outside employment, to be performed at times other than hours when such employee is required to perform Authority service, is approved in writing by the Executive Director. Overtime may be paid by the Authority for work performed outside of established work hours in accordance with the Fair Labor Standards Act.

10-1-9 LEGAL HOLIDAYS.

(A) (1) The Executive Director shall annually announce the legal holidays for Authority employees which shall be generally consistent with United States, New Mexico State, Bernalillo County and the City of Albuquerque government holidays.

(2) Employees may take any holiday as a floating holiday at any time during the year with the prior written approval of the manager.

(B) Organizational units which must furnish service on legal holidays shall have formal arrangements for offering employees who must work on legal holidays appropriate compensation. Holiday pay shall be computed in accordance with the Personnel Rules and Regulations. If a designated legal holiday falls on a Saturday, the day off will be observed on the previous Friday; if a designated legal holiday falls on a Sunday, the day off will be observed the following Monday.

10-1-10 VACATION LEAVE.

(A) Vacation leave will accrue on a biweekly basis from the day of an Authority employee's current permanent employment. Vacation leave may be taken as accrued, upon approval of the employee's manager or designee. Hours worked in addition to a regular work week as given below, shall not entitle an employee to additional vacation. The Authority shall not compensate employees and officials for unused vacation time, except:

(1) Pursuant to a collective bargaining agreement; or

(2) Any permanent employee separating from the Authority service is eligible to be compensated for accrued vacation leave as provided for in the Personnel Rules and Regulations.

(B) Vacation leave will accrue as follows:

Continuous Service	Regular Workweek	Accrual Per weekly	Bi-Per	Accrual Per Year
0 to 4 years	40 hours	3.85 hours		100 hours
	56 hours	5.39 hours		140 hours
5 to 9 years	40 hours	4.62 hours		120 hours
	56 hours	6.47 hours		168 hours
10 to 14 years	40 hours	5.54 hours		144 hours
	56 hours	7.76 hours		201.60 hours
15 years and more	40 hours	6.16 hours		160 hours
	56 hours	8.62 hours		224 hours

(C) Vacation accumulation will be computed as of the pay period including December 31 each year. The excess over 78 biweekly accruals shall be dropped from the record.

(D) Notwithstanding §10-1-3, no vacation time may be accrued by employees or officials except as provided by this section or as provided by a ratified group agreement; this includes a collective bargaining agreement.

10-1-11 SICK LEAVE.

(A) Permanent Authority employees on a regular work week of 40 hours will accrue sick leave at the rate of 3.70 hours biweekly with a maximum accumulation of 1,200 hours allowed. Employees on a regular work week of over 40 hours shall accumulate additional sick leave both biweekly and maximum accumulation on a basis proportional to the 40-hour week. Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the Authority; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours.

(B) Sick leave will accrue on a biweekly basis from the date of current, permanent, full-time, probationary or non-probationary employment. Hours worked in addition to a



regular work week as listed above shall not entitle an employee to additional sick leave accumulation.

(C) Pro-rata conversion to cash payment or to vacation time of sick leave exceeding certain accumulations will be provided for in the Personnel Rules and Regulations. Pro-rata or full conversion of sick leave to early retirement will be provided for in the Personnel Rules and Regulations.

(D) Proper and reasonable provisions for controlling and verifying the use of sick and emergency leave will be established in the Personnel Rules and Regulations.

(E) In the event that collective bargaining agreements make reference to sick leave benefits, the reference will be to the ordinance as it was in effect at the time the agreement was ratified.

#### 10-1-12 INJURIES IN PERFORMANCE OF DUTY.

The provisions of the State of New Mexico Workers' Compensation Act (§§ 52-1-1 et seq. NMSA 1978) shall apply.

#### 10-1-13 LEAVE WITH PAY.

(A) Leave with pay may be authorized in writing by the Executive Director for any employee to attend an official meeting where the good of the Authority service is involved, or to serve required court-related duty, or to attend an educational institution, or to secure special instruction, or to testify on behalf of the Authority in Court. If an employee is required to serve court-related duty, any compensation he or she receives for such duty shall be paid to the Authority by the employee.

(B) Up to four bargaining unit members who are designated by a union as the union's negotiating team pursuant to the Authority's Labor-Management Relations Ordinance, will receive leave with pay to attend scheduled bargaining sessions with the Authority negotiating team which occur during the employee's normal work hours.

This benefit is limited to the bargaining necessary to negotiate the collective bargaining agreement and does not include ongoing negotiations during the term of a collective bargaining agreement. Leave for collective bargaining may begin no earlier than 60 days prior to expiration of an existing agreement and ends when tentative agreement is reached on a successor agreement. This leave must be approved by the Executive Director upon the verification of the Authority's lead negotiator. The Executive Director shall promulgate rules of procedure concerning leave for collective bargaining.

(C) Military leave with pay will be authorized for permanent employees who are members of the National Guard or Air National Guard of New Mexico or any organized reserve unit of the armed forces of the United States, including the Public Health Service, for a period not to exceed 15 working days in each federal fiscal year which begins October 1, in addition to other authorized leave, when they are ordered to active duty training with such units. Permanent employees who are members of an unorganized reserve component may be granted military leave not to exceed 15 working days in each federal fiscal year which begins October 1, for the purpose of attending organized courses of instruction or training periods authorized such personnel. Permanent employees called to active military duty in emergencies declared by the Governor or the President for short periods of time not to exceed 15 days may be granted military leave.

(D) Upon the specific recommendation of the manager, the Executive Director may grant leave with pay for a period not to exceed six calendar months to permanent employees having at least five years continuous service and 12 calendar months to permanent employees having at least ten years continuous service in the Authority upon demonstration of extreme hardship, due to personal injury or sickness. No employee will be eligible for such leave unless he has clearly exhibited exceptional performance of duties which have been specifically so certified by the employee's manager. Leave with pay for such purposes may be granted by the Executive Director only after usage of vacation leave, sick and emergency leave and injury time, and only if the employee is not eligible for pension benefits under the Authority or state retirement programs or under Federal Social Security. A decision of the Executive Director not to grant such leave with pay will not be the subject of a grievance as defined in this ordinance.

(E) Leave with pay for an employee's birthday is authorized for any employee who is not represented by an employee organization as defined in the Authority's Labor-Management Relations Ordinance, in collective bargaining. If the employee's birthday falls on a day other than a normal working day, or if the employee is required to work on the birthday, the employee may select an alternate day, but such day must be approved by the manager.

(F) An employee under investigation by the Authority for alleged misconduct may be placed in leave with pay status during the investigation. Such leave shall be limited to 30 working days and require the approval of the Executive Director.

(G) The Executive Director may develop a leave program for the purpose of allowing Authority employees to act as loaned executives.

(H) Leave with pay may also be authorized by the Executive Director for services or activities of an employee outside of the scope of his or her employment which can be reasonably anticipated to directly or indirectly benefit the Authority.

10-1-14 LEAVE WITHOUT PAY.

(A) An employee may be granted leave without pay for a period not to exceed one year as a result of sickness or disability when certified by a qualified doctor of Medicine (M.D.), Osteopathy (D.O.), or Podiatry (D.P.M.), or to run for public office, or for additional vacation time, or for good and sufficient reason which the Executive Director considers to be in the best interests of the Authority.

(B) Leave without pay may be granted for the purpose of attending schools for courses only when it is clearly demonstrated that the subject matter is directly job related and will result in improved job effectiveness in the organization.

(C) A permanent employee who has been elected or appointed to a public office may be granted sufficient leave without pay to enable the employee to hold the office.

(D) Except under unusual circumstances, voluntary separation to accept employment not in the Authority service shall be considered by the Executive Director as insufficient reason for granting a leave of absence without pay.

(E) Such leaves of over two calendar weeks shall require written approval of the Executive Director. Leaves of two calendar weeks or less may be granted by the employee's manager.

(F) For good cause and under exceptional circumstances, a request for extension of leave without pay may be approved by the Executive Director.

10-1-15 LAYOFF.

(A) Layoff is defined as the involuntary separation of classified, non-probationary employees from Authority service as a result of the abolishment of a position, program elimination or a lack of funds. Probationary, unclassified, temporary, seasonal and student employees are not eligible for layoff privileges.

(B) The Executive Director or his designee is responsible for approving all layoffs and offering transfers or placement offers to employees who are or may be identified for layoff. Prior to a layoff, the Executive Director shall develop a layoff plan which must be based on seniority principles and applicable collective bargaining agreements.

(C) If practicable, prior to the implementation of the layoff plan, the Executive Director shall offer voluntary transfers to employees affected by the plan to avoid placing employees in layoff status. These voluntary transfers will be offered using seniority principles and respecting any applicable collective bargaining agreements. If practicable, the layoff plan shall provide for the retention of employees with more than five (5) years of continuous Authority service. Employees placed in layoff status will be terminated two (2) years from the effective date of layoff if they have not been placed or upon refusal to accept an offer of transfer or placement of equal grade or comparable pay.

10-1-16 RESIGNATIONS.

(A) Any employee of the Authority wishing to leave the service in good standing shall notify his or her immediate manager in writing at least two weeks before leaving.

(B) Unauthorized absence from work for a period of three consecutive regularly scheduled work shifts or three working days, whichever is greater, may be considered as an automatic resignation. Such an automatic resignation is not the subject of a grievance as defined in this ordinance, but shall be subject to the procedure in §10-1-20 of this ordinance.

10-1-17 DISPOSITION OF AWARDS.

(A) Nothing contained in this ordinance shall prohibit the Authority from developing methods of rewarding employees by the giving of a reward, bonus, leave with pay or any other form of remuneration or extra compensation in addition to the regular compensation and employee benefits to a classified or unclassified employee so long as all of the following conditions are met:

(1) The employee renders service that is outside of and in addition to the normal requirements and expectations of his or her employment;

(2) The Authority reasonably anticipates some tangible or intangible benefit from such service; and

(3) The service rendered results from a pre-existing plan or program authorized by the Executive Director which sets up a specific criteria for such extra compensation.

10-1-18 POLITICAL ACTIVITY. No employee shall participate in the following types of political activity:

(A) Using his or her position or employment with the Authority to influence support of other officials or employees of the Authority for or against any candidate or issue or political action committee or other similar organization in any election or pre-election activity;

provided, however, that nothing herein shall deny the right of an official or employee of the Authority to express his or her views on any issue.

(B) Being a candidate for or holding elective office for the Albuquerque City Council, Bernalillo County Commission or the Mayor for the City of Albuquerque.

(C) Accepting and/or soliciting campaign contributions for any candidate or political action committee or other similar organization in any election or pre-election activity, during working hours, at an Authority workplace, or in the scope of their Authority employment.

(D) Accepting and/or soliciting contributions for the benefit of an Authority employee or official for political purposes during working hours, at an Authority workplace, or in the scope of his or her Authority employment.

#### 10-1-19 EMPLOYEE MEDIATION.

(A) The Employee Mediation Program is established to:

(1) Encourage Authority employees to resolve work place conflicts early, informally and with minimum intervention from administration;

(2) Address conflict in the work place constructively through communication and collaboration whenever possible;

(3) Aid direct communication and problem solving between individuals;

(4) Provide neutral mediators to help informal, direct communication and conflict resolution within each organizational unit of the Authority; and

(5) Provide a resource to each organizational unit to minimize the costs of conflict.

(B) All Authority employees will be notified of and encouraged to use the Employee Mediation Program to address work place conflict, including conflict between employees and conflict between an employee and a manager. Participation in the mediation program is voluntary. Participation in the mediation will not affect access to other procedural remedies for employees.

(C) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“CONFLICT” Any misunderstanding, miscommunication or difference of opinion which could affect morale or productivity in the work place.

“COORDINATOR” The person or agent in the Authority's Alternative Dispute Resolution (ADR) office who administers the Employee Mediation Program.

“MEDIATION” A specific informal meeting process which aids communication and problem solving, the goal of which is to enhance communication and promote a "win-win" approach to conflict resolution among the participants.

“MEDIATORS” Individuals available through the Authority's ADR office who may be an Authority employee from any classification who is trained and skilled in the mediation process, or who may be someone other than an Authority employee who is trained and skilled in the mediation process and has entered into a contract with the Authority to provide mediation services.

“PARTICIPANTS” Individuals excluding the mediators who attend a mediation meeting for the purpose of assisting in conflict resolution.

(D) Mediation Procedure.

(1) Mediation is initiated by any Authority employee by contacting the Coordinator by telephone, in writing or in person. Mediation may be initiated at any point during the conflict resolution process, but employees and managers should attempt to use the mediation process at an early stage in their conflict resolution efforts.

(2) During the intake process, the Coordinator will assist employees in identifying the participants and the goals of the mediation.

(3) The mediation will take place during business hours in a neutral site at a time mutually acceptable to the participants. The mediation shall be conducted in accordance with the Employee Mediation Program Guidelines. Any resolution resulting from the mediation must comply with all applicable laws, policies, rules and procedures.

10-1-20 DISCIPLINARY ACTIONS.

(A) (1) Employees may be disciplined by written reprimand, suspension, demotion or dismissal. Just cause for discipline is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the Authority. The Executive Director may enumerate in Personnel Rules and Regulations examples of behaviors that constitute just cause.

(2) The Executive Director or designee may impose any discipline. Managers may issue reprimands for any disciplinary matter which does not result in loss of pay. Any disciplinary action which results in loss of pay shall require approval of the Executive Director. An employee's immediate supervisor may issue a reprimand after informing the manager in the chain of command.

(B) Before discipline is imposed, the employee shall be notified of the reasons for which discipline is contemplated, a summary of the evidence against the employee, and the employee's right to respond to the proposed action. After giving the employee the notice of contemplated action and before the employee makes any written or oral response, the manager contemplating the discipline shall request review by the Authority Employee Mediation Program Coordinator of the circumstances on which the contemplated action is based in an effort to avoid the discipline. Mediation shall occur if it is deemed appropriate by the Coordinator. After this review or if mediation is unsuccessful, the manager may continue with the contemplated disciplinary procedure by giving the employee the right to respond to the notice of contemplated action.

(C) Suspensions shall not exceed 90 calendar days for any offense. The Executive Director or designee has the option on a suspension of five days or less to prohibit the employee from attending the work place or to allow the employee to work through the suspension with pay. Suspensions may be held in abeyance for a stated period of no longer than six months.

(D) The Executive Director shall promulgate rules of procedure concerning disciplinary actions.

(E) Any disciplinary action shall be noted in the employee's personnel file.

#### 10-1-21 THE GRIEVANCE RESOLUTION PROCEDURE.

(A) **PURPOSE.** The Grievance Resolution Procedure provides a means for reconciling complaints concerning minor disciplinary actions and working conditions or departmental rules. The purpose of this grievance procedure is to promote harmonious relations among employees and managers; to encourage the settlement of disagreements informally at the employee-manager level; to provide an orderly procedure to handle grievances through the various managerial levels when necessary; to resolve grievances as quickly as possible; and to discourage the filing of unfounded grievances.

(B) **SCOPE.** This grievance procedure applies to all permanent classified employees who are not covered by labor agreements providing an alternate grievance procedure.

(C) **DEFINITIONS.** For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“EMPLOYEE” Includes all permanent classified Authority employees.

“GRIEVANCE” A formal complaint regarding disciplinary suspensions of five days or less, letters of reprimand and the application of existing rules, regulations, or policies.

“GRIEVANCE COMMITTEE” A neutral ad hoc committee composed of four permanent Authority employees (two managerial and two non-managerial) randomly selected by the Executive Director to investigate and recommend solutions to an employee grievance.

“GRIEVANT” The employee who files a grievance.

“REPRESENTATIVE” An individual duly authorized by an employee to act on the employee's behalf.

(D) GRIEVABLE AND NONGRIEVABLE ISSUES.

(1) To be reviewable under the grievance procedure an issue must:

- (a) Concern matters or specific incidents that have occurred; and
- (b) Result from an act or omission by management regarding aspects of employee-employer relations over which the manager has control; and
- (c) Arise out of a specific situation or act that has resulted in inequity or damage to the employee.

(2) An issue is not reviewable under this grievance procedure if it is a matter which:

- (a) Is subject to those management rights (specified elsewhere in this ordinance and in the Labor-Management Relations Ordinance) which are necessary to exercise control and discretion over the organization and efficiency of the operations of the Authority;
- (b) Would require modification of a policy established by the Authority, State or Federal law;
- (c) Has been reviewed via another grievance procedure (as authorized in an agreement with a labor organization);
- (d) Is reviewable under the Personnel Rules and Regulations or another administrative procedure;
- (e) Is subject to the provisions of the Labor-Management Relations Ordinance.

(3) The Executive Director or designee shall decide whether the issue is grievable as defined in this ordinance. This decision is final.

(E) STEPS IN THE GRIEVANCE PROCEDURE. An employee must take the following steps to submit a grievance pursuant to this policy. If at any step the employee fails



to take action within the allotted time, the grievance procedure will be concluded. If at any step an Authority representative, the Executive Director or a grievance committee fails to take action within the allotted time, the procedure shall move to the following step.

(1) Step One. The employee initiates the grievance by submitting a written request for review of the dispute by the Authority Employee Mediation Program within ten calendar days from the date of the act or from the point that the employee became aware of the occurrence. If the 10th day is a weekend or holiday, the following day of business becomes the "10th day". Within seven calendar days, the Coordinator of the Authority Employee Mediation Program will determine if mediation of the dispute is appropriate. If so, mediation will be held according to the guidelines for the Authority Employee Mediation Program.

(2) Step Two. If the Coordinator determines that mediation would not be appropriate or if mediation is conducted and the dispute is not resolved, within seven calendar days after the mediation or the decision of the Coordinator, the employee shall submit a written grievance to his or her manager. The written grievance shall contain the employee's name, organizational unit, position, and immediate manager; the date of the alleged incident; a statement of the problem and the employee's suggested solution. Either the employee or the manager may request a meeting, but it is the manager's option to respond only in writing. Within seven calendar days from receipt of the grievance or a meeting, whichever is later, the manager must submit a written response to the employee.

(3) Step Three. If the employee is not satisfied with the manager's decision, the employee may submit the written grievance described in Step Two to the Executive Director who will convene a grievance committee to investigate the dispute and recommend a resolution. The committee will recommend a resolution of the grievance to the Executive Director. The Executive Director will review the Committee's recommended resolution, provide a final written resolution to the grievance and forward it to the employee and the manager. The Executive Director's decision is the final step in the administrative process.

(F) GENERAL PROVISIONS.

(1) Grievances may be initiated only by the employee concerned and may not be pursued without the affected employee's consent.

(2) Once a grievance has been investigated and denied, repeated filing of grievances on the same issue will not be permitted.

(3) While the grievant may designate a representative at any step of the grievance procedure, labor unions do not have representation rights for non-bargaining unit employees. A grievance committee is not required to recognize more than one representative for any grievance.

(4) If the grievance involves a group of employees or if several employees file separate grievances on the same matter, the grievances may be handled as a single grievance.

(5) The Authority's Human Resource office will act as facilitator for the Grievance Committee to ensure that the Committee has access to all information necessary to conduct the investigation. The Committee will have the authority to call witnesses and to review all necessary records and reports.

(6) Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.

(G) ADDITIONAL GUIDELINES.

(1) Employees and managers are strongly encouraged to request mediation at any step in this process.

(2) Any grievance will be considered resolved at the completion of any step if all parties are satisfied or if the employee concerned chooses not to present the matter to the next step of the procedure within the prescribed period.

(3) As a condition of employment, employees shall be required to appear as witnesses in grievance resolution hearings when requested by the grievant or by the members of the Authority administrative staff. In addition, refusal to appear or participate in the grievance resolution procedure at any stage by a grievant shall result in forfeiture by the grievant of any further right to use of the grievance resolution procedures to resolve the grievance.

(4) The Human Resources Manager shall develop written guidelines for the operation of the Grievance Committee, addressing such issues as confidentiality of information revealed to the Committee and bias or interest of Committee members, and operating procedures.

(5) Following completion of the grievance process, managers shall ensure the grievant experiences no retaliation for having pursued the grievance. Any Executive Director direction associated with the grievance resolution is to be carried out as quickly as possible.

10-1-22 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.

(A) A nonprobationary employee who has been suspended without pay for more than five days, demoted for disciplinary reasons, or discharged may appeal the discipline to the Hearing Officer within ten calendar days of the occurrence of the disciplinary decision. The appeal shall be in writing and shall be submitted to the Executive Director with a copy to the employee's manager. The Executive Director shall promptly refer the request to the Hearing Officer for a hearing on the matter.

(B) The written appeal shall include:

(1) The employee's name, organizational unit, position, and immediate manager;

(2) The discipline imposed and a brief summary of the offense for which the discipline was imposed; and

(3) The reason the employee disagrees with the discipline.

(C) The Hearing Officer shall prepare and submit to the Executive Director a report containing a summary of the evidence taken at the hearing and proposed findings of fact. The Authority and the employee may submit exceptions to the Hearings Officer's report and written argument within the time allowed by the Hearing Officer's procedural rules.

(D) The Executive Director may take one of the following actions:

(1) Accept the recommendation of the Hearing Officer by accepting the Hearing Officer's Proposed Findings of Fact and entering conclusions of law consistent with the findings;

(2) Reverse or modify the recommendation of the Hearing Officer by making its own Findings of Fact consistent with the evidence and entering conclusions of law consistent with the findings; or

(3) Remand the matter to a Personnel Hearing Officer for further hearing.

(E) The employee may appeal the decision of the Executive Director based on the Hearing Officer report to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision shall be affirmed unless the decision is found to be:

(1) Arbitrary or capricious and unsupported by substantial evidence;

(2) In violation of applicable constitutional provisions or otherwise illegal; or

(3) In excess of the statutory authority or jurisdiction of the Board.

(F) The Personnel Hearing Officer's have the power to administer oaths, subpoena witnesses and compel the production of documents pertinent to any hearing authorized by this ordinance. As a condition of employment, employees may be required to appear as witnesses in hearings. Refusal to testify in an appeal hearing under this ordinance is grounds for disciplinary action. An employee who files an appeal and refuses to appear or participate in the appeal process at any formal stage forfeits any further right to continue that appeal.

(G) An employee who appeals a disciplinary action shall be free from discrimination, restraint, coercion or reprisal by any manager or employee. However, appealing or showing an intention to appeal does not relieve any employee in any way of his or her responsibility to perform his or her assigned duties promptly, efficiently and completely.

#### 10-1-23 PERSONNEL HEARING OFFICER.

(A) Personnel Hearing Officers shall be selected based on competitive sealed proposals that contain a statement of the applicant's qualifications for the position and a writing sample. The Authority shall publish notice of requests for proposals in a newspaper of general circulation not less than ten days before the closing date for receipt of proposals. The Executive Director shall name an ad hoc advisory committee to evaluate the proposals and submit a ranked list of applicants. The Executive Director shall select up to three Hearing Officer(s) from the names submitted by the committee, subject to the approval of the Water Utility Authority Board.

(B) A Personnel Hearing Officer shall be an attorney licensed to practice in New Mexico or a person experienced in employer-employee relations or personnel administration. Personnel Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.

(C) A Personnel Hearing Officer shall provide services under a contract with the Authority and shall not be considered an employee of the Authority for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the Authority for any reason except violation of the Code of Judicial Conduct.

(D) For each hearing, a Personnel Hearing Officer shall be selected by agreement of both parties before the scheduled hearing from the then current list of Hearing Officers.

(E) A Personnel Hearing Officer shall not be actively involved in the political affairs of the Authority.

(F) No person shall attempt to influence a Personnel Hearing Officer's findings and conclusions pursuant to this ordinance except during a hearing or in the presence of a representative of the opposing party.

#### 10-1-24 EMPLOYEE ORGANIZATION AGREEMENTS.

(A) The provisions of this ordinance shall apply to all Authority employees; provided, however, that where a collective bargaining agreement, which has been ratified and approved by the Executive Director in accordance with the Authority's Labor Management Relations Ordinance, conflicts with a provision of this ordinance, the collective bargaining agreement shall, with respect to those employees covered by the agreement, govern over such provision of this ordinance unless it is one establishing:

- (1) Classified and unclassified service;
- (2) Methods of service rating of unclassified employees; or
- (3) Methods of initial employment, promotion recognizing efficiency and ability as the applicable standards, and discharge of employees.

(B) In the case of a conflict between a collective bargaining agreement and a provision establishing any of the above, this ordinance shall govern.

10-1-25. TRANSFERS FROM CITY OF ALBUQUERQUE. The accrued vacation leave, sick leave and longevity credit of any employee who transfers from employment with the City of Albuquerque to the Authority shall be transferred to the Authority for the employee's benefit, subject to the employee electing to transfer such benefits. The Authority shall transfer the benefits and assume all liability for payment of the benefits. Transfers between the City of Albuquerque and the Authority are not to be considered a break in service for seniority purposes within either organization. The provisions of this section shall not apply to the Authority unless the City of Albuquerque is following the same policy with respect to employees transferring from the Authority to the City.

#### 10-2-1 SHORT TITLE.

This Ordinance may be cited as the "Authority Labor-Management Relations Ordinance."

#### 10-2-2 PURPOSE.

The purpose of this Ordinance:

(A) To allow the Authority employees to organize and bargain collectively with the Authority government;

(B) To promote harmonious and cooperative relationships between all parties; and

(C) To protect the public interest by assuring, at all times, the orderly and uninterrupted operations and functions of the Authority government.

#### 10-2-3 DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“BOARD” The Authority Labor-Management Relations Board.

“AUTHORITY EMPLOYEE” Any permanent, non-probationary employee of the Authority except officials elected by popular vote or appointed to fill vacancies in elective offices; members of boards, commissions, supervisors; temporary or seasonal employees; employees paid wholly and directly from funds of the United States Government; and individuals privy to confidential matters of the Authority government affecting the employer-employee relationship.

“AUTHORITY GOVERNMENT” The government of the Authority acting through and for its agencies, units, divisions and branches and bureaus.

“COLLECTIVE BARGAINING” A procedure whereby representatives of the Authority government and an employee organization meet, confer, consult, and negotiate with one another in a good-faith effort to reach agreement or otherwise resolve differences relating, or with respect, to wages, hours and other terms and conditions of employment.

“EMPLOYEE ORGANIZATION” Any organization or labor union whose primary purpose is to represent Authority employees in collective bargaining, on matters pertaining to wages, hours, terms and conditions of employment, but it does not include any organization that:

(1) Advocates the overthrow of the constitutional form of government in the United States by other than lawful means; or

(2) Discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, age, or national origin; or

(3) Has a primary purpose other than representing employees in collective bargaining with their employer, or other than as an association or organization formed for the advancement of, or in behalf of, a specific profession or vocation.

“IMPASSE” The failure of the parties to agree with respect to any issue or issues which are subject to collective bargaining over which the parties have negotiated in good faith, and with respect to which neither party is willing to make further concessions.

“PROFESSIONAL EMPLOYEE” Any Authority employee engaged in work that:

(1) Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involves the consistent exercise of discretion and judgment in its performance;

(3) Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period;

(4) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of a specialized intellectual instruction and study in an institution of higher learning or hospital, as distinguished from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

“STRIKE” The willful failure or refusal to report for duty, the willful absence from one's assigned position, the complete or partial cessation of work, by one or more employees, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by one or more Authority employees where a purpose of such action is to induce, influence or coerce a change in, or the enforcement of, any term or condition of employment or compensation, or any right, privilege or obligation of employment; or any term or provision of a collective bargaining agreement, or proposal advanced in the course of collective bargaining.

“SUPERVISOR” Any individual having authority in the interest of the Authority employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action; 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.

#### 10-2-4 RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY.

(A) Authority employees have the right to form, join and otherwise participate in the activities of an employee organization of their own choosing for the purpose of bargaining collectively with the Authority government, and for other lawful reasons. Authority employees also have the right to refuse to join and participate in the activities of employee organizations.

An employee organization which has been certified by the Executive Director as the exclusive bargain representative for an appropriate bargaining unit of the Authority employees may bargain collectively with the Authority government concerning hours, salary, wages, working conditions, and all terms and conditions of employment.

(B) Nothing contained in this Ordinance shall be construed to limit, impair, or affect the rights of any individual Authority employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of Authority employment or their betterment aside from the method described herein, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of his employment.

(C) No organization, its representative or other individual, shall be allowed to solicit membership for an employee organization or labor union during such employees' duty hours.

#### 10-2-5 MANAGEMENT RIGHTS.

Subject to existing law, the Executive Director and his/her administrative staff shall have the following rights:

(A) To direct the work of its employees;

(B) To hire, promote, evaluate, transfer and assign employees;

(C) To demote, suspend, discharge or terminate employees for just cause;

(D) To determine staffing requirements;

(E) To maintain the efficiency of the Authority government and ensure the carrying out of normal management functions;

(F) To take actions as may be necessary to carry out the mission of the Authority government in emergencies; and

(G) To manage and to exercise judgment on all matters not specifically prohibited by this Ordinance or by a collective bargaining agreement in effect between the Authority employer and an employee organization.

#### 10-2-6 DETERMINATION OF REPRESENTATION.

(A) Any employee organization may file a written request with the Executive Director asserting that a majority of the members of a bargaining unit of the Authority 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 30% 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 on the next working day following the filing of the request, by the Authority Human Resources Manager in a place conspicuous to the Authority employees in the bargaining unit.

(B) Other employee organizations may file with the Executive Director a written claim, within ten days after the posting of the notice of the request as specified in subsection (A) above, showing a demonstration of support of at least 10% 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 on the next working day following the filing of the claim, by the Authority Human Resources Manager in a place conspicuous to the Authority employees in the bargaining unit.

(C) If an employee organization wishes to solicit membership cards from Authority employees who are not in an existing bargaining unit, upon request, the Executive Director shall provide a list of the requested employees to the employee organization. If the Executive Director finds that the employee organization subsequently presents a valid demonstration of support from fifty percent of the employees, plus one additional employee, in the proposed unit, and that no other employee organization has filed a written claim under subsection (B) of this section, the Executive Director shall certify the employee organization as the exclusive representative of the bargaining unit. If, within 10 working days of receiving the request for recognition and demonstration of support, the Executive Director finds that it is unclear or the Executive Director disputes that the employee organization has presented a valid demonstration of support from fifty percent plus one of the employees in an appropriate bargaining unit, or if the Executive Director finds that a second employee organization has met the conditions of subsection (B) of this section, or if the Executive Director finds that there is a dispute over the appropriate bargaining unit, or if the employee organization has filed a request for an election supported by 30% of the employees in the bargaining unit, the Executive Director shall refer the matter to the Labor-Management Relations Board for resolution.

(D) Upon referral of a dispute over whether an employee organization represents a majority of the employees in an appropriate bargaining unit, or if, within 10 days of the filing of a request for recognition, the Executive Director has made no decision regarding certification or referral to the Labor-Management Relations Board, the Board shall take one of the following actions:

(1) Review the employee organization's showing of interest and resolve any disputes over whether the employee organization has presented a valid demonstration of support from 50% of the employees, plus one additional employee, in an appropriately constituted bargaining unit. If the Board finds the employee organization's demonstration of support does not exceed 50% of the employees in an appropriate bargaining unit, the employee organization shall have five additional working days to submit supplemental demonstration of support. If the Board determines that a majority of Authority employees in an appropriately constituted bargaining unit support representation by the employee organization for the purpose of collective bargaining as provided for in this Ordinance, the Executive Director shall certify that employee organization as the exclusive representative for the bargaining unit; or

(2) If the employee organization has demonstrated support from at least 30% of the employees in the bargaining unit, but less than a majority of the employees in the bargaining unit, the Board shall call and hold a representation election within 45 days from the date of the posting of the notice to determine whether an employee organization shall be the exclusive representative for the unit.

(3) Neither an election nor certification by a showing of interest shall occur if:

(a) There is currently in effect a lawful written agreement between the public employer and an exclusive bargaining representative for the bargaining unit involved; or

(b) Within the preceding 12 months there has been held a representation election or a decertification election for the bargaining unit; or

(c) 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 Ordinance, or that 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 certify the employees' organization's showing of support or call and hold a representation election as provided above.

(4) In the event an employee organization fails to be certified as the exclusive bargaining representative after a showing of interest and/or election, employees in that bargaining unit may be included in an alternate bargaining unit for the purposes of a new organizational effort by that employee organization. Each such alternate unit shall be in itself

an appropriate bargaining unit. The Board shall combine the alternate units if the employee organization becomes the exclusive bargaining representative of more than one such alternate unit.

(E) The Board shall call and hold all elections within the time limits established by this Ordinance and according to the following:

(1) Included on the ballot in a representation election shall be any employee organization which has submitted evidence of support of at least 30% of the Authority employees in the bargaining unit, in accordance with subsection (A) above, any employee organization which has submitted evidence of support of at least 10% of the Authority employees in the bargaining unit in accordance with subsection (B) 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 Authority employees in the bargaining unit involved shall have the right to vote;

(4) If the majority of the ballots cast are in favor of representation by an employee organization for the purpose of collective bargaining as provided by this Ordinance, the Executive Director shall certify that employee organization as the exclusive bargaining representative for the bargaining unit. If a majority of the employees voting do not vote for representation by an employee organization the unit shall not be represented.

(F) Election disputes shall be resolved by the Board.

(1) In the event of an election involving more than one employee organization, wherein no choice on the ballot receives the vote of a majority of the Authority employees voting, then and in such event a runoff election shall be held within 30 days with a choice consisting of the employee organization receiving the greatest number of votes in the original election and the choice of no representation. The determination of representative status in such runoff election shall be governed by the provisions set forth in division (D) above.

(G) The exclusive bargaining representative shall represent all employees covered by the terms of the collective bargaining agreement.

(H) 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 30% of the employees in the bargaining unit seek to have a decertification election, or a statement by the Authority government that it harbors a 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 the Authority 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 45 days from the date of the receipt of the request. If a majority of the Authority employees in the bargaining unit vote in favor of decertification of an employee organization, the Executive Director shall decertify that employee organization as the exclusive bargaining representative for the bargaining unit.

(I) No decertification election shall be held if within the preceding 12 months the Board has held a representation election or a decertification election for the bargaining unit.

(J) No petition for representation or decertification shall be entertained by the Board unless such petition and the requisite showing of support therefor shall have been filed with the Board during the 30-day period between the 120th day and the 90th day immediately preceding the expiration date of the contract.

(K) The existence of an exclusive bargaining representative shall not prevent Authority employees in or out of the bargaining unit from taking their grievances to their supervisor or the Authority Human Resources Manager. Any action by the Authority government in connection with grievance handling shall not be inconsistent with this Ordinance or the terms and conditions of employment established by an exclusive bargaining representative and the Authority for the bargaining unit involved.

(L) Pursuant to Section 10-7E-1 NMSA 1978 (being Laws 2003, Chapter 4, Section 1 and Laws 2003, Chapter 5, Section 1) A new entity, created by or pursuant to statute, that encompasses the same powers and duties as a previous public employer and uses essentially the same employees as the previous public employer shall be treated as if it were that previous public employer for purposes of the Public Employee Bargaining Act, including the continued applicability of existing ordinances or resolutions pursuant to Section 10-7E-26 NMSA 1978 and of existing collective bargaining units pursuant to Section 10-7E-24 NMSA 1978." et. seq.

#### 10-2-7 DUTY TO BARGAIN.

The Authority government and any employee organization recognized as the exclusive representative for a unit, through their designated agents, shall bargain concerning hours,

salary, wages, working conditions and other terms and conditions of employment not in violation of law or local ordinance and not in conflict with the provisions of, the Authority Merit System; Personnel Regulations, establishing classified and unclassified service, methods of service rating of classified employees, methods of initial employment, promotion recognizing efficiency and ability as applicable standards, discharge of employees, and grievance and appeal procedures for classified employees; provided, however, that the provisions of a collective bargaining agreement which has been ratified and approved by the Executive Director shall, where in conflict with any other provision of the Authority Merit System govern. This duty includes an obligation to confer in good faith with respect to terms and conditions of employment.

#### 10-2-8 DETERMINATION OF BARGAINING UNITS.

(A) The appropriateness of the bargaining unit will be investigated and determined by the Board.

(B) Bargaining units shall be established by vocational groupings such as blue collar, maintenance, white collar or professional, with consideration being given as to whether they have traditionally been in these groupings. Individual crafts will not be designated as bargaining units unless they have been traditionally dealt with as a separate group by the Authority.

(C) In determining the appropriateness of a bargaining unit, the Board will consider:

(1) Whether the Authority employees have the same conditions of employment which apply uniquely to them;

(2) Whether the Authority employees have a mutuality of interest;

(3) How the public interest might best be served in determination of the bargaining unit.

(D) A bargaining unit shall not include both professional and non-professional Authority employees nor shall it include supervisors, or those privy to confidential information including but not limited to employees of Human Resources, Administration, the Executive Director's Office, the Authority Attorney's Office, secretaries to division managers, employees involved in payroll work and any persons privy to confidential information concerning employee relations.

#### 10-2-9 PROHIBITED PRACTICES.

(A) The Authority government is prohibited from:

(1) Interfering with, restraining or coercing Authority employees in the exercise of their rights under this Ordinance;

(2) Interfering with the formation or administration of any employee organization, interfering with the selection of an agent or representative for bargaining or adjustment of grievances;

(3) Discrimination in regard to hiring or conditions of employment for the purpose of encouraging or discouraging membership in any employee organization;

(4) Refusing to negotiate in good faith with a certified exclusive bargaining representative of an employee organization;

(5) Discharging or discriminating against an Authority employee because he has filed charges or given testimony under the provisions of this Ordinance;

(6) Violating a written agreement in force which was negotiated under the provisions of this Ordinance.

(B) An employee organization, a group of Authority employees, or an Authority employee individually is prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of their designated duties or their rights under this Ordinance;

(2) Restraining, coercing, or interfering with the public employer in the selection of its agent for bargaining or for adjustment of grievances;

(3) Causing or attempting to cause an Authority supervisor to discriminate against an Authority employee because of membership or lack of membership in an employee organization;

(4) Refusing to negotiate and/or conduct business in good faith with the designated representative of the Authority government.

(5) Violating the provisions of any written agreement in force;

(6) Interfering with, restraining or coercing any official, administrative officer or representative of the Authority government in the conduct of his private business or personal affairs;

(7) Engaging in, inducing, or encouraging any Authority employee or group of employees to engage in a strike, a work stoppage, or work slowdown.

(C) It shall be a prohibited practice for any elected or appointed official of the Authority government or for any employee organization, group of Authority employees or individual Authority employee to attempt to influence negotiations or to interfere with the

normal progress of negotiations between the duly authorized negotiating teams of the Authority government and of the employee organization.

(D) Any controversy concerning prohibited practices will be submitted to the Board within 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 service upon the accused party and the Board of a written notice together with a copy of the charges. The accused party shall have five work days within which to serve on the opposing party and the Board a written answer to such charges. Within five work days after service of the answer, the Board or its designee shall schedule a hearing to be conducted as soon as possible, and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses and submit evidence.

#### 10-2-10 HEARINGS AND DECISIONS.

(A) The Board may promulgate rules of procedure for the conduct of the hearings and proceedings required by this Ordinance. The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. The Board's hearings and decisions shall be on the record. The Board shall have the authority to administer oaths, subpoena witnesses and compel the production of documents as it deems necessary to the conduct of its proceeding and its subpoenas shall be enforceable in the District Court.

(B) At the conclusion of each hearing, the Board shall announce on the record a decision and shall order such necessary relief as is consistent with the evidence, this Ordinance and applicable law. The Board shall memorialize in written form the decision and order announced on the record and shall state the Board's findings and conclusions.

(C) Whenever the Board receives a charge that alleges that a strike as defined by this Ordinance has occurred, the Board shall within 48 hours of notification of such prohibited practice charge give notice to all parties concerned, hear the matter in emergency session and announce its decision.

(D) An aggrieved party may appeal the decision of the Board within 30 days of the issuance of a written decision by following the Rules of Civil Procedure for the District Courts. The decision of the Board shall be affirmed unless the decision is found to be: arbitrary, capricious or an abuse of discretion; unsupported by evidence in the record taken as a whole; or, otherwise not in accordance with law.

10-2-11 PENALTIES AND SANCTIONS.

(A) If the Board determines that a strike, as defined by this Ordinance, has occurred, the Executive Director may terminate the collective bargaining agreement order decertification of the employee organization, and inform the employee organization that it no longer represents employees in the bargaining unit involved after the Executive Director has met with representatives of the effected employee organization. The Executive Director shall also notify the employees in the subject bargaining unit of such action and advise them that they will not be privileged to bargain with the Authority government through a collective bargaining agent for at least 12 months. In such a case, the employee organization that represented the employees who went on strike shall be prohibited from participating in a representation election for Authority employees for a minimum of 12 months.

(B) If the Board determines that a party has committed a violation of § 9, the appropriate District Court may, if requested:

(1) Issue an order restraining and enjoining such violation.

(2) In the case of a strike as defined by this Ordinance, the District Court may impose on the employee organization a fine which will be set in accordance with the damages and/or loss of revenue involved.

10-2-12 COLLECTIVE BARGAINING AGREEMENTS.

(A) All agreements reached between the Authority 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.

(B) The cost of writing and reproducing copies of such agreements shall be shared according to the number of copies desired by each party to negotiations.

10-2-13 NEGOTIATING PROCEDURES.

(A) "Negotiating Teams"

(1) Negotiating teams will consist of a maximum of four persons designated by the employee organization and a maximum of four persons designated by the Executive Director.

(2) Each side may invite one observer to each session to present technical data. Such observers will be allowed to present facts.

(B) "Contract Opening"

(1) (a) Upon written request by the employee organization to the Executive Director or his designee, or by the Executive Director or his designee to the



employee organization, negotiating sessions will be scheduled to discuss items mutually agreed upon.

(b) Such request for negotiating sessions shall indicate the matter to be discussed and shall be answered within ten working days.

(2) Not less than 60 days prior to the contract ending date, either side may request the opening of negotiations as indicated above.

(3) (a) Prior to the start of negotiations, the Executive Director and the employee organization will designate their chairmen and spokesmen from among the designated members of their negotiating team.

(b) While normally communications will be from spokesman to spokesman, other negotiating team members may enter into discussions on specific subjects.

(C) "Procedure for Negotiations"

(1) Negotiations will be conducted as provided below and will take place at the facilities and at a time mutually agreed 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 their proposed changes, one section or subsection at a time. Each section will be read out loud with the changes and the reasons therefore indicated in some detail. This procedure will lessen the chances of misunderstandings and increase the chances for acceptance. This procedure will continue to be followed until the entire employee organization proposal has been presented.

(4) Upon complete presentation of the proposal, the other negotiating team will present their counter proposal in the same manner.

(5) Thereafter, each side will take turns presenting counter proposals with supporting data until agreement is reached a section at a time. It may be necessary to leave one section and go on to another in order to get a new look at the one passed up.

(6) Negotiating sessions will proceed with deliberate speed, but recesses and study sessions may be called for by either side. Prior to recess, the reconvening time will be agreed upon.

(7) Members of the employee organization negotiating team will be released from their normal duties without pay to participate in negotiations.

(D) "Tentative Agreement"

(1) Tentative agreements reached during negotiations will be reduced to writing and initialed by each team spokesman.

(2) Such tentative agreement is conditional and may be withdrawn should later discussion change either team's understanding of the section as it relates to another part of the agreement.

(E) "Ratification" Complete agreement on any matter in negotiations will be reached when the employee organization membership and the Executive Director have ratified the agreement.

#### 10-2-14 IMPASSE PROCEDURES.

##### (A) "Mediation"

(1) If the parties have not reached agreement and an impasse exists, either party or the Board may call for mediation. Upon the declaration of impasse, the parties involved shall mutually agree upon a mediator or request the Federal Mediation and Conciliation Service to appoint an impartial and disinterested person to act as mediator. If the services of the Federal Mediation and Conciliation Services are not available, the parties shall request the Board to appoint a neutral and disinterested person to act as mediator. Only items negotiated but not agreed upon shall be submitted to mediation. The mediator shall not have the power to compulsion and shall meet with the parties to aid in resolving their differences and effectuate a settlement of the impasse.

(2) The parties shall not issue public announcements concerning negotiations during pendency of these impasse procedures.

##### (B) "Voluntary Binding Total Package Final Offer Arbitration"

(1) If an impasse persists 15 days after the mediator has first met with the parties in joint session, the Authority and employee organization shall have the power to voluntarily agree to binding arbitration as a method of resolving the impasse. The agreement for arbitration shall be in writing and a copy shall be served upon the Board. The Board shall arrange for such arbitration consistent with the provisions of this Ordinance.

(2) Each party shall submit to the Board, within four days of the request for arbitration, its offer made to the other party resulting in the impasse, with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The parties may continue to negotiate during the arbitration proceedings until an agreement is reached or a decision rendered by the arbitrator.

(3) The submission of the impasse items to the arbitrator shall be limited to issues that had been considered by the mediator and upon which the parties have not reached agreement.

(4) The arbitrator shall be selected in the following manner:

(a) The negotiating teams of the Authority government and the employee organization may jointly agree on the selection of an arbitrator. The arbitrator shall not be an employee of the Authority or a union official.

(b) If agreement on the selection of the arbitrator cannot be reached, the negotiating teams shall jointly request a list of five names from the Federal Mediation and Conciliation Service from which the arbitrator shall be selected. The negotiating team that wins the flip of the coin shall have the right to strike the first name from the list submitted by the Federal Mediation and Conciliation Service. The negotiating teams shall continue to alternate striking names until one name remains. The remaining person shall be the arbitrator.

(5) The arbitrator shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(6) From the time of selection until such time as the arbitrator makes his or her final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the arbitrator with parties other than those who are direct parties to the dispute. The arbitrator may conduct formal or informal hearings to discuss the content of the final total package offer submitted by each party.

(7) The arbitrator shall consider in his or her deliberations the following standards:

(a) The lawful authority of the Authority government;

(b) Stipulations of the parties;

(c) The interests and welfare of the public;

(d) The financial ability of the Authority government to meet costs;

(e) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other public sector employees performing similar services and with other employees generally in public employment in comparable communities;

(f) The relevant average consumer prices for goods and services, commonly known as the cost-of-living;

(g) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received;

(h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(i) The effect of financing the resulting decision on the normal level of services offered by the Authority government;

(j) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(8) Within 15 days after the conclusion of the presentation of the parties and submission of briefs, the arbitrator shall select the complete final offer submitted by one of the parties and shall issue an award incorporating that final offer without modification. The arbitrator shall give written explanation for the selection of the final offer and inform the parties of the decision.

(9) The final offer selected by the arbitrator and the items previously agreed upon by the Authority and the employee organization shall be deemed to represent the agreement between the parties.

(C) "Costs" All costs for mediation and arbitration shall be borne equally by the Authority and the employee organization, except the cost of any representatives of each party shall be borne by that party.

(D) "Review of Arbitration Decision"

(1) The decision and award of the arbitrator shall be reviewable in the appropriate District Court and subject to vacation, modification or remand of rehearing:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where the award was in excess of statutory authority or jurisdiction of the arbitrator;

(c) Where the award was made in violation of applicable constitutional provisions;

(d) Where the award was in violation of this Ordinance or affected by other error of law;

(e) Where the arbitrator committed acts unlawfully prejudicial to the rights of any party;

(f) Where the award exceeds the lawful authority of the Authority government as to funding, spending, or budgeting or would substantially impair or limit the performance of any statutory duty of the Authority government;

(g) Where the award is unsupported by substantial evidence or is arbitrary and capricious or characterized by clearly unwarranted exercise of discretion.

(E) "Resort to Procedure not a Condition Precedent to suit" The impasse procedures set forth herein are voluntary and shall not constitute a condition precedent to the bringing of any action for relief in an appropriate tribunal, nor shall the failure or refusal of the Authority government or any employee organization to participate in said voluntary impasse procedures constitute a defense in any such action or proceedings.

#### 10-2-15 AUTHORITY LABOR-MANAGEMENT RELATIONS BOARD.

There shall be formed, to assist in the implementation and administration of the Ordinance, an Authority Labor-Management Relations Board of three members. In view of the legal work involved in the interpretation of this Ordinance, Board members shall normally be members of the legal profession or individuals who possess expertise in the field of employee relations or both. Board members shall serve for a period of two years commencing October 1, provided that, upon the initiation of any proceeding or hearing, the Board as then constituted may retain jurisdiction to finally decide the matter. The Board shall be selected as follows:

(A) Each Authority employee organization whose principal interest is to represent Authority employees in bargaining collectively with the Authority government concerning wages and conditions of employment, shall appoint one person to a committee that will be charged with selecting one person to the Board. This committee will meet once every two years in September and select the employees' member of the Board for the following years.

(B) The Water Utility Authority Board shall during the same month appoint the second member of the Board.

(C) The third member and chairperson of the Board shall be appointed mutually by the members appointed by the Water Utility Authority Board and the employee organizations.

(D) In case the Board must meet in accordance with this Ordinance during the absence of a member of the Board, the Chair of the Authority Board shall appoint an interim Board member from the public at large with due regard to the representative character of the Board. In the event a Board member cannot complete the two year term, a new member shall be selected for the remainder of the term in accord with the selection process of this Ordinance.

(E) The members of the Board shall be compensated at the rate of \$100 each for each day of hearing or meeting. In any proceeding wherein the Board hears and decides a controversy between parties, the Board members' daily fee will be shared equally by the parties involved.

#### 10-2-16 APPLICABILITY.

This Ordinance shall preempt all contrary local ordinances, or executive orders except those provisions of the Authority Merit System Personnel Regulations, establishing:

- (A) Classified and unclassified service;
- (B) Methods of service rating of classified employees;
- (C) Methods of initial employment, promotion recognizing efficiency and ability as applicable standards, and discharge of employees; and

(D) Grievance and appeal procedures for classified employees. Other provisions of the Authority Merit System, where they do not conflict with this Ordinance or a collective bargaining agreement which has been ratified and approved by the Executive Director shall be administered in conjunction with this Ordinance. All provisions of the Authority Merit System shall continue in effect for all employees not represented by a bargaining agent.

#### 10-2-17 CONSISTENCY WITH AUTHORITY BUDGET ORDINANCE.

Any contract between the Authority and an employee organization, which contains provisions that result in expenditures greater than the amount appropriated for wages and benefits in an adopted Authority budget for the initial fiscal year of the contract or which contains a multi-year commitment shall require the review and approval by the Authority Board. All such contracts shall contain re-opening language for economic items.

Section 2. SEVERABILITY CLAUSE. If any Section, paragraph, sentence, clause, work or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Authority hereby declares that it would have passed this

Ordinance and each Section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 3. EFFECTIVE DATE AND PUBLICATION. This Ordinance shall become effective on July 1, 2007 and after publication by title and general summary.