

ORDINANCE ADOPTING A COUNTY "SECOND ONE-EIGHTHS"  
GROSS RECEIPTS TAX

ORDINANCE NO. 0-93-21

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF EDDY COUNTY, NEW MEXICO.

Section 1. Imposition of Tax. There is imposed on any person engaging in business in this County for the privilege of engaging in business in this County an excise tax equal to 1/8 of one percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the County Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the "County Gross Receipts Tax - Second One-Eighths".

Section 2. General Provisions This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

Section 3. Specific Exemptions. No County gross receipts tax shall be imposed on the gross receipts arising from:

A. The transmission of messages by wire or other means from one point within the County to another point outside the County; or

B. Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the County to another point outside the County.

Section 4. Dedication. The revenue derived from the Second One-Eighths County Gross Receipts Tax shall be used for the purpose provided by statute, specifically: the second 1/8% county gross receipts tax shall be imposed for the support of indigent patients who are residents of Eddy County, or such other purposes as may be authorized by interpretation of or amendment to the County Gross Receipts Tax Act, Section 7-20-1, et seq., Laws 1983 as Amended.

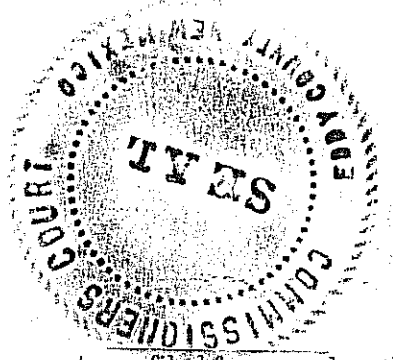
Section 5. Effective Date. The effective date of the County Gross Receipts Tax shall be July 1, 1993.

ADOPTED BY THE GOVERNING BODY OF EDDY COUNTY, NEW MEXICO, this 5th day of January 1993.

Julius Doubrava  
Julius Doubrava, Chairman  
Eddy County Board of Commissioners

ATTEST:

Karen Davis  
County Clerk



STATE OF NEW MEXICO, County of Eddy, ss. I hereby certify that this instrument was filed for record on the 6 day of January, A.D. 19 93 at 9:27 o'clock A. M., and duly recorded in BOOK 1 PAGE 237 of the Eddy County Ordinance.

KAREN DAVIS, County Clerk

By Sharon G. DeWilde Deputy

ORDINANCE NUMBER 0-93-22

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

BE IT ENACTED BY THE COUNTY COMMISSION OF EDDY COUNTY:

SECTION 1. SHORT TITLE.-- This Ordinance may be cited as the "Eddy 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 employer, to protect the rights of the employer and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the rights of the citizens to the orderly and uninterrupted delivery of services as the parties exercise their rights under this Ordinance.

SECTION 3. CONFLICTS.-- In the event of conflict with other County Ordinances, the provisions of the Eddy County Labor Management Relations Ordinance shall supersede other previously enacted ordinances; provided that the Eddy County Labor Management Relations Ordinance shall not supersede the Merit System Ordinance.

County sanctioned administrative regulations, departmental rules and regulations, standard operating procedures and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists

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, white collar, professional, fire, police and corrections.

B. "board" means the Eddy County Labor Management Relations Board;

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

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

E. "confidential employee" means a person who assists and acts in a confidential capacity with respect to labor-management issues; This includes, but is not limited to, the County Manager's Staff, the County Attorney's Staff, the Human Resource/Personnel Staff, the Secretary to a Department Director, the Chief Deputy to an elected official, and the Department Director's Administrative Assistant.

F. "employee" means a regular full-time non-probationary employee of Eddy County; this definition does not include temporary, seasonal, part-time, supervisory, managerial or confidential employees;

G. "employer" means Eddy County;

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. "governing body" means the Eddy County Commission;

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

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

L. "labor organization" means any employee organization whose purpose is the representation of employees in collective bargaining;

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

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

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

P. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced

nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

Q. "strike" means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service 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 working conditions, compensation, rights, privileges or obligations of employment. The definition of strike includes, but is not limited to such actions as, the blue flu, sick outs, slow downs, traffic ticket writing campaigns, mass resignations and sympathy strikes.

R. "supervisor" means an employee who devotes a significant amount of work time in supervisory duties, who customarily directs the work of two or more employees and who has the authority in the interest of the employer to effectively recommend the retention, promotion, evaluation or discipline of employees. This includes, but is not limited to foremen, department directors, sergeants and above in the Sheriff's Office, and the Emergency Preparedness Director.

#### SECTION 5. RIGHTS OF EMPLOYEES.--

Employees may form, join or assist any labor organization for the purpose of collective bargaining through representatives chosen by employees through representation elections. Employees also have the right to refuse, to form, join or assist any labor organization.

#### SECTION 6. MANAGEMENT RIGHTS.--

Unless limited by a collective bargaining agreement

be held within 30 days. The choices on the run-off election shall consist of the employee organization which received the greatest number of votes in the original election and the choice of "no representation".

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 has been conducted in the 12 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 13B of the Labor Management Relations Ordinance.

G. Election disputes shall be resolved by the Board.

H. The cost of elections, including the Board members and the election supervisor compensation, shall be borne equally by the parties.

#### SECTION 12. EXCLUSIVE REPRESENTATION.--

A. A labor organization that has been certified by the Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate bargaining unit. The exclusive representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees

in the bargaining unit without discrimination or regard to membership or non membership in the labor organization.

B. The existence of an exclusive bargaining representative shall not prevent employees in or out of a bargaining unit from taking their grievances to their supervisor or management or filing prohibited practices with the Board based upon discrimination by the exclusive representative or the employer. The Board will adjudicate disagreements over contract interpretations only when the disagreement is between the employer and the exclusive representative. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of good faith resolution made between the employee 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 bargaining unit or a labor organization 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 the Board.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than 90 days and no later than 60 days before the expiration of the collective bargaining agreement; provided, however, that a request for a decertification 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 at 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 and other issues agreed to by the parties.

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 employers and exclusive representatives to enter into any agreement that is in conflict with County Ordinances, State statutes or Federal statutes. In the event of a conflict between the provisions 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 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 provisions.

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 negotiation impasses.

#### SECTION 15. NEGOTIATIONS AND IMPASSE RESOLUTION.--

A. The following meetings shall be closed:

(1) meetings for the discussion of bargaining strategy for the collective bargaining negotiations between 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 five (5) persons designated by the exclusive representative and a maximum of five (5) persons designated by the County Manager.

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

(5) 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.

(6) Agreement on contract negotiations is accomplished when the Union President and the County Commission Chairperson sign the agreement. Multi-year agreements, which provide for economic increases for the second and subsequent years shall be considered ratified if and when the governing body appropriates the funds necessary to fund the increase for those years that follow. 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 impasse continues beyond a thirty calendar day period, the mediator will be released and the Board shall assign an arbitrator to the negotiations. An arbitrator will be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

(3) The arbitrator shall conduct hearings with the parties. The arbitrator 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 arbitrator may not create his own package. The arbitrator 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 arbitrator'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 arbitrator shall be borne equally by the parties to the impasse.

#### SECTION 16. EMPLOYERS--PROHIBITED PRACTICES.--

No employer or his representative shall:

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

B. restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations

Ordinance;

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

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

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

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

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

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

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

SECTION 17. EMPLOYEES-LABOR ORGANIZATIONS-PROHIBITED PRACTICES.--

An employee, labor organization or its representative shall not:

A. discriminate against an employee with regard to labor organization membership because of race, color,

religion, creed, age, disability, sex or national origin;

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

C. use County time, property or equipment for union business;

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

E. restrain or coerce any elected official, for the purpose of gaining a concession;

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

G. refuse or fail to comply with any collective bargaining with the employer;

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

I. picket homes or private businesses of Board members, elected officials or employees of the County;

J. interfere with or coerce the employer in the selection of its agent for bargaining;

K. interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative; and

L. unions that represent Eddy County employees may not endorse or support any candidate running for Eddy County elective office.

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

#### 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 County Manager 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 an Eddy County employee strike, walkout or slow-down, such bargaining unit shall be decertified by the Labor Management Relations Board. In such a 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 Eddy County employees and shall be barred from serving as the exclusive representative for any bargaining unit of Eddy 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 Board may appeal to District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to District Court shall be taken within thirty days of the date of final regulation, order or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

- (1) arbitrary, capricious or abuse of discretion;
- (2) not supported by substantial evidence on the record taken as a whole; or
- (3) otherwise not in accordance with law.

SECTION 21. SEVERABILITY.--

If any part or application of the Eddy 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 Eddy County Labor Management Relations Ordinance is 4-1-93.

SECTION 23. HEARING.--

On the 2nd day of February, 1993, a public hearing was held by the Board of County Commissioners of Eddy County, New Mexico to consider the passage of Ordinance Number 0-93-22, relating to collective bargaining for Eddy County; providing rights, responsibilities and procedures in the employment relationship between the employees and the employer.

SECTION 24. ADOPTION.--


On this 2nd day of February, 1993, after due consideration of the results of the public hearing described in the foregoing section, Ordinance Number 0-93-22, "Collective Bargaining" is hereby adopted.

PASSED AND ADOPTED by the Eddy County Board of Commissioners in an open public hearing in Carlsbad, Eddy County, New Mexico on this 2nd day of February, 1993.

EDDY COUNTY BOARD OF COMMISSIONERS  
EDDY COUNTY, NEW MEXICO

  
\_\_\_\_\_  
Fred Alvarez, Commission Chairman

ATTEST:

  
\_\_\_\_\_  
Karen Davis, County Clerk

SECTION 25. CERTIFICATION.--

I, Karen Davis, Eddy County Clerk, hereby certify that Ordinance Number 0-93-22 being "Collective Bargaining" ordinance was passed, approved and adopted by the Eddy County Board of Commissioners on this 2nd day of February, 1993.

BY: *Karen Davis*  
Karen Davis, County Clerk

MY TERM EXPIRES: 12/31/94