



PUEBLO OF ISLETA
P.O. BOX 1270 ISLETA, NM 87022

RESOLUTION NO. 2001- 132

**THE PUEBLO OF ISLETA
EMPLOYEE GRIEVANCE REVIEW PROCEDURES**

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, the following Resolution was passed:

WHEREAS, the Isleta Tribal Council is the Legislative Branch of the Pueblo of Isleta Tribal Government; Pueblo of Isleta Tribal Constitution, Article V;

WHEREAS, the Tribal Council has determined it necessary to establish procedures to provide tribal employees an opportunity for the impartial and independent administrative review of management action on employee grievances;

WHEREAS, the Tribal Council is empowered to authorize and establish such positions or entities it deems necessary pursuant to the Isleta Tribal Constitution, Article V, Section 2(j);

WHEREAS, it is necessary and proper to establish a Grievance Review Board to ensure a system of checks and balances, ensure that policies are applied consistently and ensure that all employees will be treated equally without preferential treatment toward any person;

WHEREAS, it is necessary that all persons including all tribal officials strictly adhere to the procedures established herein;

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council of the Pueblo of Isleta hereby establishes the Pueblo of Isleta Employee Grievance Review Board and that the Tribal Council adopts and enacts the Pueblo of Isleta Employee Grievance Review Procedures as follows:

**PUEBLO OF ISLETA
EMPLOYEE GRIEVANCE REVIEW PROCEDURES**

**Section 1.
Definitions**

- A. **“Chain of Command Grievance Process”** means Steps I and II of the grievance process provided by (1) Section 1002 of the Human Resources Internal Controls incorporated in the Isleta Casino & Resort Employee Policies and Procedures Manual or (2) the Pueblo of Isleta Personnel Policies and Procedures Manual, as appropriate for the position in which the Grievant is employed.
- B. **“Ex Parte Communication”** means any communication concerning a grievance appeal or potential appeal that involves only one party or potential party, the Grievant or Management, without the participation of the other.
- C. **“Grievance Review Board”** means the Employee Grievance Review Board established pursuant to Section 2 of these Procedures.
- D. **“Grievance Review Panel”** means the three member panel composed of Regular and/or Alternate Grievance Review Board Members that shall be seated to conduct and decide a particular hearing pursuant to Section 2.F.
- E. **“Grievant”** means the person who has grieved the action taken by Management against such person through the Chain of Command Review Process and has filed a timely petition for appeal pursuant to Section 4.
- F. **“Management”** means the supervisory employee who has taken the action grieved and each higher level of management hierarchy who has approved or sustained such action.
- G. **“Immediate Family Member”** means parent, grandparent, sibling, child, step relations, aunts, uncles, nieces, nephews, in-laws, spouse, or cohabitant.

**Section 2.
Employee Grievance Review Board.**

- A. **Establishment.** The Tribal Council of the Pueblo of Isleta hereby establishes an Employee Grievance Review Board (the “Grievance Review Board”) for the purposes and having such authority, powers and responsibilities as are described herein. The grievance review process shall apply to grievances of employees of the Isleta Casino & Resort and to all other tribal employees of the Pueblo of Isleta.
- B. **Qualifications of Board Members.** The Members of the Grievance Review Board, Regular and Alternate, shall be familiar with the Pueblo of Isleta

Personnel Policies and Procedures Manual, the Isleta Casino & Resort Employee Policies and Procedures Manual and the portions of the Regulations of the Isleta Gaming Commission dealing with personnel administration, and shall be of such character and temperament to be able to impartially hear disputes regarding the application of such rules and to issue a decision resolving such disputes. Any member serving on such Board shall attend appropriate training seminars as directed by the Isleta Tribal Council. No Member of the Grievance Review Board shall be an employee of the Isleta Casino & Resort, a full time employee of the Pueblo of Isleta, or be a member of Tribal Council, Governor or a Lieutenant Governor of the Pueblo of Isleta, or a member of the Pueblo of Isleta Judiciary while serving on the Grievance Review Board.

- C. **Appointment of Board Members.** The Isleta Tribal Council shall appoint three (3) Regular and two (2) Alternate Board Members to the Grievance Review Board. Initially, the Tribal Council will designate two Regular and one Alternate Member to a one year term and another Regular and Alternate to two year terms. Thereafter each Member appointed to the Board, Regular or Alternate, shall serve for a two (2) year term. The members may not serve more than two consecutive terms. The Regular members shall select among themselves a Chairman, Vice-Chairman, and Secretary.
- D. **Compensation of Board Members.** Each Member of the Grievance Review Board shall receive a stipend of \$ 50.00 for each hearing that he or she serves on as a Grievance Review Panel conducting such hearing and rendering a decision. The panel shall select among themselves the person responsible for writing the decision. The person responsible for rendering a written decision shall be paid an additional \$ 50.00.
- E. **No Conflicts; Code of Conduct.** No Member of the Grievance Review Board shall serve on a panel which hears any grievance in which any of the parties in interest, either the employee or any manager involved in the action that is subject of the grievance, is an immediate family member of such Board Member (i.e. parent, child, brother, sister, spouse or as otherwise defined in Section 1 of these procedures). A Board Member shall recuse, him or her self from any panel that is to hear a matter that would pose a conflict of interest due to immediate family relationship, financial interest or otherwise. The Grievant or Management may move to recuse any Member of a Grievance Review Panel on the grounds of conflict of interest. If the Member does not recuse himself, the merits of the motion to recuse shall be determined by the remaining Members of the Grievance Review Panel and they shall issue an order granting or denying such recusal. If a Member of a Panel is recused, an Alternate shall be chosen to replace him. If any Member of the Grievance Review Board refuses to recuse himself notwithstanding a clear conflict of interest, the remaining Grievance Review Board Members shall be required to report such event to the Tribal Council. Failure to strictly comply with this provision shall result in the immediate removal of all members of the Board.

- F. **Board Composition.** All hearings must be conducted with 3 Board members being present to hear the appeal. The remaining Board Members shall choose an Alternate member, if any Regular member is unable to hear a particular appeal for any reason.
- G. **Quarterly Report To Tribal Council.** The Chairman of the Board shall submit a written quarterly report to the Isleta Tribal Council describing the number of cases heard, the nature of the issues presented and the outcome of the cases. It shall also advise the Council, whether the Human Resources Department for the Pueblo and/or Isleta Casino and Resort are strictly complying with the terms of these procedures.

**Section 3.
Jurisdiction of Grievance Review Board**

- A. The Grievance Review Board shall have jurisdiction to hear appeals of only those employee grievances that:
- (1) have completed each step of the Chain of Command Grievance Process and for which a decision has been rendered in the final stage of that process; and
 - (2) has been appealed by the employee by petition filed with the Human Resources Office within seven (7) days of the date upon which the written decision rendered in the final step of the Chain of Command process has been delivered to the employee.

**Section 4.
Petition For Appeal Hearing**

- A. **Notice of Appeal.** Any employee exercising their right to appeal any grievance decision that is appealable under the terms of Section 3 shall file, within seven (7) days of such employee's receipt of a written decision at Step II of the Chain of Command Grievance Process, a petition for review by the Grievance Review Board that shall contain:
- (1) The name and position of the grievant;
 - (2) The name of the person ("respondent") that the grievance is against;
 - (3) The specific incident about which the grievance is filed;
 - (4) The date upon which the incident occurred;
 - (5) The facts and other pertinent information that the grievant has presented or offered in the Chain of Command Grievance process to support the grievance

(the grievant may not offer new evidence or arguments not presented or offered for presentation in the Chain of Command Grievance Review Process);

- (6) The remedial action sought;
 - (7) The reason(s) that the grievant believes that the decision at the last step of the Chain of Command Grievance Review Process was wrong or inadequate;
 - (8) Copies of all written grievance petitions or submissions made by the grievant in the Chain of Command Grievance Review Process, any written backup materials submitted by grievant in that process and the written decisions received by grievant from such process; and
 - (9) If the grievant is represented, the grievant shall identify the name, phone number and address of his attorney or advocate;
- B. The petition shall be filed at the Human Resources Office. The Human Resources Office shall forward three copies of the petition and all appended materials to the Grievance Review Board within Seven (7) regular working days of receiving the Petition.

Section 5. Scope and Standard of Review

- A. The Grievance Review Board shall conduct a de novo review of the facts and applicable policies or law with respect to each Management action grieved from. The Board is not required to accord the Management action any deference or presumption of validity. The Grievance Review Board may overturn the action of Management and provide to the appellant any of the remedies permitted under Section 6 of these Procedures only if they find that the action at issue was:
- (1) arbitrary, capricious or an abuse of management's discretion;
 - (2) not supported by substantial evidence as presented by Management to the Grievance Review Panel;
 - (3) contrary to the Isleta Casino & Resort Personnel Policies and Procedures or Operations Manuals, or Pueblo of Isleta Personnel Policies and Procedures, or other established work rules, as applicable; or
 - (4) Otherwise not in accordance with Pueblo of Isleta Tribal law.
- B. The Grievance Review Board is independent of the Governors of the Pueblo of Isleta. The Grievance Review Board is empowered to overturn decisions made by

the Governors of the Pueblo. The Governors of the Pueblo do not have any type of authority over the members of the Grievance Review Board members.

Section 6.
Hearing Rules and Procedures

- A. **Time of Appeals Hearing**. The Grievance Review Board shall conduct the appeal hearing within fifteen (15) days after the date on which the appeal petition is filed.
- B. **Representation By Attorney or Advocate**. Parties appearing before the Review Office shall have the right to legal representation by an attorney or representation by a non-attorney advocate at their own expense. In no event shall the grievant be entitled to representation by an advocate that is an elected or appointed official of the Pueblo of Isleta. Any attorney appearing before the Review Board must submit evidence to the Board that they have been admitted by the Isleta Tribal Courts to practice law within the territory and jurisdiction of the Pueblo and that they have paid an annual fee of \$300.00 to the Pueblo of Isleta. Such fee shall be made payable to the Pueblo of Isleta and shall be collected by the Isleta Tribal Courts who shall remit such fee to the Isleta Treasury Department.
- C. **Representation of Management**. For any hearings, an attorney may represent Management, only if an attorney or any other advocate represents the Grievant. If the Grievant is not represented, then the Management shall not be allowed to have legal representation at any hearing before the Grievance Review Panel. This provision does not prohibit or otherwise limit the right of either party to consult with an attorney prior to any hearings.
- D. **Discovery**. Discovery shall be conducted by the parties as follows:
- (1) The parties shall exchange a list of persons that each party intends to call as witnesses no later than ten (10) business days before the scheduled appeals hearing. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. For each witness a summary of the nature and relevance of the testimony expected to be elicited from each such witness shall be delivered to the other side at the same time. Any witness not so identified and the scope of any testimony not so summarized shall be excluded from presentation at the appeals hearing.
 - (2) The Parties shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made with the opposing party no later than ten (10) business days before a scheduled appeal hearing. Any document or tangible thing not so provided to the other party shall be excluded from presentation at the appeals hearing.

- (3) Upon written request, the Human Resources Department of the Pueblo or Isleta Casino & Resort, as applicable, shall provide to the Grievant copies of all applicable and relevant policies and procedures manuals. Also, if requested in writing, the Human Resources Department of the Pueblo or Isleta Casino & Resort, as applicable shall provide the Grievant with a complete and accurate copy of the Grievant's personnel file. The Human Resources Department may charge a reasonable fee to cover the costs of copying, shipping and handling.
- E. **Subpoenas.** The Grievance Review Panel has the authority and discretion to issue subpoenas upon motion of either or both parties or upon its own initiative. Subpoenas may be issued only to compel any person to appear at a hearing before the Grievance Review Panel to give oral testimony or to produce documents or other tangible things.
- F. **Ex Parte Communication Prohibited.** The members of the Grievance Review Board (including Alternates) shall not engage in ex parte communication with any person, including any Pueblo or Isleta Tribal Official, regarding any pending grievance appeal or matter that may become a grievance appeal. If any Member of the Grievance Review Board receives any such ex parte communication, he or she shall notify the other party and the other Grievance Review Board Members immediately. The Board shall then conduct a hearing to consider what, if any, sanction permitted by Subsection H is an appropriate response to such violation.
- H. **Sanctions For Violations of Hearing Rules and Procedures.** If any party or its counsel fails to comply with any provision of these Procedures, including without limitation any violation of the prohibition against ex parte communication or rules of discovery, the Grievance Review Panel upon motion of a party or upon its own initiative, may in its discretion impose upon the violator or such party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just from among the following:
- (1) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these Procedures;
 - (2) An order that designated facts shall be taken as established;
 - (3) An order that the disobedient party may not support or oppose designated claims or defenses;
 - (4) An order dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party; or
 - (5) A finding against the disobedient party.

I. **Protection of Proprietary Information.** If any testimony offered or documentary evidence proposed to be introduced is proprietary to the Pueblo of Isleta and/or its Gaming Enterprise and the disclosure of such information would in any manner be detrimental to the Pueblo or its Gaming Enterprise, upon motion by Management or at the initiative of the Grievance Review Panel, shall take appropriate measures to protect the Proprietary nature of such information. If the Grievant requests disclosure of such information, the Gaming Review Panel shall consult with an independent attorney that is not representing the Pueblo's Management to determine whether disclosure is necessary for a proper defense to be made by a Grievant.

J. **Conduct of Appeals Hearing.**

- (1) Any party to the hearing may call and examine witnesses subject to proper discovery disclosure as stated above. The Grievance Review Panel shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.
- (2) The Grievance Review Panel shall have the authority to eject from the hearing any person who is disruptive, disorderly, or who shows a lack of proper respect for the Grievance Review Panel or the nature of the proceedings.
- (3) Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts. No testimonial evidence may be offered against a Grievant or by Grievant in his or her defense, except by personal testimony of the witness subject to cross-examination. In no event shall testimonial evidence be admitted, if there has been no opportunity for cross-examination.
- (4) All hearings held under these Procedures shall be closed to the public.
- (5) At all hearings, each witness other than the person(s) filing an appeal, shall remain out of the hearing room except at such time as they are called to testify under oath.

K. **Evidence.**

- (1) In appeal hearings governed by these Procedures, the Grievance Review Panel shall not be bound by formal evidentiary rules applicable in any court system. The Grievance Review Panel shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Grievance Review Panel shall give effect to the rules of privilege unless such privilege is waived. Basic principles of

relevancy, materiality and probative force shall govern the proof of all questions of fact.

- (2) Each party shall be afforded the opportunity to rebut or offer countervailing evidence.
- (3) The Grievance Review Panel may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (4) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

L. Transcript of Proceedings. The Grievance Review Board shall properly record the proceedings of any hearing through audio tape recording or court reporter. Upon written request, the Board shall provide a transcript of the hearing to any party of the proceeding. Provided that any portion of the proceeding sealed pursuant to Subsection H shall not be provided by transcript, but said party shall have the opportunity to inspect or listen to the sealed portion at a secure location. Any party requesting a transcript shall pay the costs of preparing and providing such transcript. The fee shall be collected by the Chairman of the Board who shall be responsible for properly remitting such payment to the Pueblo of Isleta Treasury Department.

M. Decision On Appeal. The Grievance Review Panel shall render a decision in writing within fifteen (15) days of the conclusion of the grievance appeals hearing. The Grievance Review Panel shall state its findings of fact and conclusions of law in the written decision. If the Grievance Review Panel does not sustain Management's action that is the subject of the appeal, it shall clearly describe the remedy ordered consistent with the provisions of these Procedures.

Section 7 Remedies

A. The Grievance Review Panel is limited to providing the following relief to the Grievant if it determines that the action of Management should be overturned:

- (1) an order of reinstatement if the Grievant has been terminated;
- (2) lost back pay not to exceed one month including health care premiums and benefits (minus any compensation, including unemployment benefits, that the employee received or should have received if he or she had exercised reasonable diligence to mitigate his or her damages during the period of

suspension or between the period of termination and the decision of the Grievance Review Panel). Any back pay and benefits so awarded shall be paid from the budget of the Department in which the Grievant is or was employed; and

- (3) an order granting non-monetary relief requiring Management to follow the Personnel Policies and Procedures and/or other binding law or work rules that the Grievance Review Board determines Management has violated.

Section 8.

Finality of Grievance Review Panel Decision

- A. Pursuant to Article V, Section 2(j) and Article IX, Section 6 of The Pueblo of Isleta Tribal Constitution, the Tribal Council has by these Procedures delegated its authority to hear any and all grievance appeals to the Grievance Review Board. The decision of the Grievance Review Board shall be final. The Governors of the Pueblo or the Isleta Tribal Council shall honor and enforce decisions made by the Grievance Review Board. These Procedures provide the exclusive review process and available remedies for any employee grievance involving the Pueblo of Isleta or Isleta Casino & Resort.

Section 9.

Miscellaneous

- A. **Rules and Procedures.** The Grievance Review Board may submit recommendations to the Isleta Tribal Council for the adoption of any such additional rules and procedures not inconsistent with these Procedures as it may determine necessary to carry out the purposes of this Resolution. Such Rules become effective if adopted by the Isleta Tribal Council.
- B. **Severability.** In the event that any provision of these Procedures is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.
- C. **Sovereign Immunity.** The sovereign immunity of the Pueblo of Isleta shall not be waived by these Procedures; except that any decision and order of the Grievance Review Board rendered in accordance herewith may be docketed with and enforced by process issued by the Tribal Court.
- D. **Employment At Will Not Affected.** Notwithstanding the establishment of these procedures to provide an opportunity for review of Management action for fairness and consistency with established policies and procedure, nothing contained herein shall negate or restrict the employment at will relationship between each employee and either the Pueblo of Isleta or the Isleta Casino & Resort. As at will employees, each employee is subject to termination with or without cause at any time.

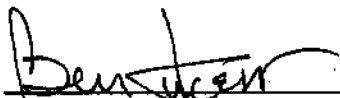
- E. **Applicability.** These policies and procedures do not apply to any tribal official appointed by the Isleta Tribal Council. These policies and procedures do not apply to any contract employee. These policies and procedures do not apply to any person terminated or suspended from employment or otherwise reprimanded by the Pueblo of Isleta Tribal Council.

CERTIFICATION

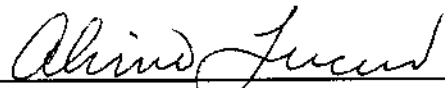
We, the undersigned officials of the Pueblo of Isleta, hereby certify that the foregoing Resolution was duly adopted by the Pueblo of Isleta Tribal Council at a regular meeting held on **October 24, 2001**, a quorum present, with **8** voting for, **0** voting against, and **2** abstaining.

Motion made by: Seferino Lente

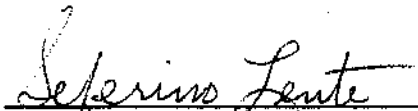
Seconded by: Robert Lucero



**Ben Lucero, President
Isleta Tribal Council**



**Alvino Lucero, Governor
Pueblo of Isleta**



**Seferino Lente, Secretary
Isleta Tribal Council**