

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

UNITED ELECTRICAL RADIO AND  
MACHINE WORKERS OF AMERICA,

Petitioner,

and

PELRB NO. 307-20

UNIVERSITY OF NEW MEXICO,

Respondent.

**ORDER**

**THIS MATTER** came before the Public Employee Labor Relations Board (“Board”) on January 4, 2022 on University of New Mexico’s (UNM) Objections to the Card Check (“Objections”) conducted on December 27, 2021 pursuant to NMSA 1978, § 10-7E-14(C) (2020) in connection with the United Electrical, Radio and Machine Workers of America’s Petition for Initial Certification of a New Bargaining Unit (“Petition”). The Board, after reviewing the numerous pleadings in this matter, hearing oral argument from the parties and being otherwise sufficiently advised, by a vote of 3-0, enters find the following:

FINDINGS OF FACT

1. The United Electrical, Radio and Machine Workers of America (the “Union”) filed its Petition with the Board on December 9, 2020.
2. The Petition contemplates a new bargaining unit consisting of all full-time and part-time graduate students engaged in instruction and/or research at the University’s campuses at Albuquerque, Gallup, Taos, Los Alamos and Valencia County.
3. On March 16, 2021, the Board’s Executive Director reported to UNM and to the Union that he had checked the showing of interest cards submitted against the employee list provided by UNM and found that a sufficient number of valid interest cards had been submitted to advance the Union’s petition.

## 4-PELRB-2022

4. Following a five-day hearing held in March and April 2021, the Board's Executive Director issued a Hearings Officer's Report and Recommended Decision dated June 11, 2021, finding that graduate students are not public employees as that term is described by the Public Employee Bargaining Act, NMSA 1978, Section 10-7E-1 to 26 (2003, as amended through 2020) ("PEBA"), and recommending dismissal of the Petition.
5. Upon consideration of the June 11, 2021 Hearings Officer's Report and Recommended Decision and the record created before the Executive Director, on August 17, 2021, the Board issued its Order, concluding that graduate students fall within PEBA's definition of regular employees and directing the Executive Director to proceed with processing the Petition.
6. Following an August 27, 2021 Status and Scheduling Order and supplemental briefing by the parties, the Executive Director issued a Hearings Officer's Report and Recommended Decision dated October 4, 2021 providing a lengthy analysis in support of finding that graduate students are regular public employees, the Union's petitioned-for job titles form an appropriate bargaining unit, and the Union is a labor organization under PEBA.
7. On November 9, 2021, the Board issued its Order adopting the Executive Director's recommended decision concerning the appropriate bargaining unit for UNM graduate students, as stated in the October 4, 2021 Hearings Officer's Report and Recommended Decision, and directed the card check to proceed "without delay."
8. On December 17, 2021, the Executive Director and Board staff conducted the card check at the Board offices located at 2929 Coors Blvd. NW, Suite #303,

## 4-PELRB-2022

Albuquerque, NM 87120 beginning at 9 a.m. and continuing into the afternoon.

The public was invited to observe via a Zoom link.

9. Counsel for the union and counsel for the employer were present during the card check. They were able to observe the proceedings and to lodge objections while the card check was conducted.
10. During the card check, both physical and electronic cards were counted.
11. The results of the card check are memorialized on the Board Form titled Results of Card Check in Lieu of Election signed and dated by the Executive Director on December 17, 2021.
12. The results of the card check were reported as follows:

1. Total Number of Employees in Bargaining Unit	1547
2. 50% of Employees in Bargaining Unit Equate	774
3. Total Interest Cards Indicating Support	887
4. Number of Challenged Cards	73
5. Challenged Cards Rejected by Umpire	72
6. Challenged Cards Agreed To By Parties	1
7. Percent of Employees in Bargaining Unit indicating support	57.3
13. UNM filed its Objections to Card Check on December 27, 2021, essentially on the grounds that the Board has not adopted rules governing the process of card checks in lieu of elections.
14. The Union files its Response to UNM's Objections to Card Check on December 29, 2021., stating that even in the absence of rules governing the conduct of card checks, PEBA confers upon the Board express authority to certify a labor organization as the exclusive representative of all public employees in an appropriate

## 4-PELRB-2022

bargaining unit upon verification that a majority of the employees in the bargaining unit have signed valid organization cards.

15. On December 30, the Executive Director provided his Report on Objections to the Card Check, in which he notes “it makes no sense to lock the union into a time frame for gathering interest cards at one point, then allowing the employer to choose another later point for verifying the cards when, as it acknowledges the transitory nature of the graduate students’ employment over one third of the original list are no longer in the unit. Unless a card check can be completed within the same semester in which a union submits its Petition for Recognition, this Board risks entering into a never-ending cycle of a filed Petition for Recognition, followed by scheduling a card check, followed by an amended employee list from the employer on the eve of the scheduled card check, followed by another rescheduled card check date giving the union time to update its interest cards. That this may be accomplished within a single semester is belied by the fact that it has taken this Board over a year to reach this stage of the proceeding. The better course is to adopt the approach advocated by the union that the purpose of a card check is to test majority support as of the time a petition is submitted.”
16. The Executive Director then recommended that the Board proceed with a fact-finding hearing, as contemplated by Section 10-7E-14(C) of PEBA, during its January 4, 2022 meeting, Agenda Item 7a, and make appropriate findings thereafter.
17. Notwithstanding the Executive’s Director clear recommendation, counsel for UNM informed the Board that it was not clear to UNM whether it would be allowed or required to present witnesses at the January 4 meeting.
18. After hearing from both counsel for UNM and the Union, the Board proceeded to hear oral argument from both.

## 4-PELRB-2022

19. UNM's objections may be summarized as follows: procedural rules were not adopted by the Board before proceeding with the card check; an updated employee list was not utilized during the card check; multiple lists were used; the total number of graduate students in the bargaining unit differed from the initial check to the final check; and not all cards were dated.
20. The Union argued that even in the absence of procedural rules, the Board is bound by PEBA to certify a labor organization as the exclusive representative of all public employees in an appropriate bargaining unit upon verification that a majority of the employees in the bargaining unit have signed valid organization cards. See NMSA 1978, Section 10-7E-14 (C) (2003, as amended through 2020).

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject in these proceedings.
2. Section 10-7E-14 provides:
  - C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

## 4-PELRB-2022

3. The December 17, 2021 Card Check was conducted pursuant to and in accordance with PEBA Sec. 10-7E-14(C).
4. Procedural rules on the conduct of a card check are not specifically mandated by PEBA and the Board has discretion to determine what rules are “necessary to accomplish and perform its functions and duties as established in the (PEBA).” Section 10-7E-9(A) NMSA.
5. UNM’s first objection, that procedural rules were not adopted by the Board before proceeding with the card check, is without merit. The card check encompasses the simple task of counting the cards. Furthermore, the parties were present during the card check to lodge their objections as the counting proceeded.
6. The lack of rules for the conduct of this card check does not render the card check invalid.
7. The card check, unlike an election, merely requires the Board to count the cards and then verify they are from graduate students on the employee list.
8. UNM’s second objection, that an updated employee list was not utilized during the card check, is without merit. A majority of the employees of the proposed bargaining unit signed valid authorization cards within 3 months of the petition which were submitted with the petition.
9. UNM’s third objection, that multiple lists were used, is not supported by the evidence. Only one list was used. Furthermore, if the electronic cards that were not counted were included in the tally, it would have increased the showing of support for the Union.
10. UNM’s fourth objection, that the total number of graduate students in the bargaining unit, differed from the initial check to the final check, is without merit.

## 4-PELRB-2022

The difference was 1547 compared to 1542, five students. The number is inconsequential to the outcome of the card check.

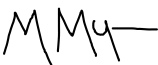
11. Further, UNM raised no objection to the initial count of 1542 when it was first reported in March of 2021.
12. UNM's fifth objection, that not all cards were dated, is without merit. The Executive Director reported that the cards were all signed within three months of the Petition submitted on December 9, 2020.
13. In addition, the Executive Director reported that one card had a date that was nonsensical in the context of the proceeding. Removing that one card would be inconsequential to the outcome of the card check.
14. A majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

### **IT IS THEREFORE ORDERED:**

- a. UNM's objections to the results of the December 17, 2021 card check are hereby DENIED; and
- b. Board staff is hereby directed to issue a Certification of Exclusive Representation.

### **PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

01/27/2022  
DATE

  
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MARK MYERS, BOARD CHAIR