STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROBERT GALLEGOS,
Complainant,

v. **PELRB No. 124-14**

N.M. CHILDREN, YOUTH AND FAMILIES DEP'T,
Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board on the Complainant's Appeal from the Hearing Officer's Report and Recommended Decision issued January 28, 2015 dismissing the PPC.

Upon a 2-0 vote at the Board's April 7, 2015 meeting (Chair Westbrook being absent) the Board adopts the Hearing Officer's Report and Recommendation, including its Findings of Fact, Conclusions of Law and Rationale as its own for the reasons stated therein, to wit:

A. The PELRB has jurisdiction over this case and all issues therein. CYFD's challenge to the right of an individual employee to bring a PPC, as contrasted with his bargaining representative, is without merit.

B. Mr. Gallegos' withdrawal of his appeal to the State Personnel Board does not constitute a failure to exhaust administrative remedies, nor did his election to appeal the denial of his grievance to the State Personnel Board in lieu of arbitration constitute a waiver of his right to bring a PPC to this Board on the same facts.

C. Withdrawal of Mr. Gallegos' State Personnel Board appeal did not render this PPC moot nor does our exercise of jurisdiction conflict with the State Personnel Act.

D. The 45-day period in Article 24, Section 3 of the parties' CBA within which disciplinary action must be imposed (unless special circumstances warrant a greater

period of time) begins to run from the time a complaint is first levelled against an employee; the Employer acquires "knowledge of the employee's misconduct for which the disciplinary action is imposed" from that event.

E. The 45-Day timeframe in Article 24, Section 3 contemplates that the deadline may be extended whenever an outside agency or division is involved in the investigation. That exception does not apply here because the investigation was conducted by CYFD's Employee Relations Bureau, which is not "an outside agency or division" within the meaning of Article 24, Section 3.

F. CYFD has established facts and circumstances that require a period of time longer than the 45-day timeframe in article 24, section 3 to impose discipline in this case.

IT IS THEREFORE ORDERED that this PPC shall be and is hereby **DISMISSED** on the ground that there was no violation of the contract.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Date: 4/15/15

R.E. Bartósiewiscz, Presiding by Designation

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

ROBERT GALLEGOS,
Complainant

-v- **PELRB No: 124-14**

N.M. CHILDREN, YOUTH AND FAMILIES DEP'T,
Respondent

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

STATEMENT OF THE CASE: This matter comes before Thomas J. Griego, designated as the Hearing Officer in this case, on allegations by Mr. Gallegos that the New Mexico Children, Youth and Families Department (CYFD) violated the PEBA §10-7E-19(H) of the Public Employee Bargaining Act (Act or PEBA) by issuing discipline beyond a 45-day limitation period found in Article 26, Section 3 of the applicable Collective Bargaining Agreement (CBA). On November 20, 2014, I denied CYFD's Alternative Motion to Dismiss or for Summary Judgment brought on the grounds that Gallegos failed to exhaust administrative remedies, that his election to appeal the denial of his grievance to the State Personnel Board (SPB) in lieu of arbitration constituted a waiver of his right to bring a Prohibited Practices Complaint (PPC) on the same facts; and, because his eventual withdrawal of his SPB appeal rendered this PPC moot. A hearing on the merits was held Tuesday, December 23, 2014 after which the evidentiary record was closed. All parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by Complainant and Respondent in lieu of oral closing arguments. Both briefs were duly considered. On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable

evidence considered along with the consistency and inherent probability of testimony, I submit the following Findings of Fact, Conclusions of Law and Recommended Decision.

FINDINGS OF FACT:

1. Robert Gallegos is a member of a duly recognized collective bargaining unit represented by AFSCME, Council 18. (Complaint ¶¶ 1 and 2; Answer ¶¶ 1 and 2; Stipulated Facts No's. 2 and 4).

2. AFSCME has negotiated a Collective Bargaining Agreement (CBA) with CYFD that includes provisions regarding Discipline and Discharge, Article 24. (Stipulated Fact No. 3; Exhibit 2).

3. Robert Gallegos is an intake Worker – SOC/COM SV COORD-B – with CYFD's Protective Services Division and has been so employed since October 1, 2011. (Testimony of Robert Gallegos; Exhibits 6 and D; Stipulated Fact No. 1).

4. On May 13, 2014 Robert Gallegos, received a Notice of Contemplated Action (NCA) for a 5-day suspension, alleging two instances of misconduct on February 10, 2014. (Exhibits 6 and D).

5. According to the NCA Gallegos allegedly did not follow intake protocol related to two phone calls he received as an Intake Worker operating the child abuse and neglect hotline. (Stipulated Fact No. 5).

6. On February 11, 2014, Gallegos' County Manager notified him of a complaint and removed all telephone intake functions from Gallegos until further notice. (Stipulated Fact No. 6).

7. On March 5, 2014, Gallegos' manager referred the February 10, 2014 complaint to CYFD's Employee Relations Bureau for investigation. (Stipulated Fact No. 7, modified).

8. The misconduct alleged in the NCA was substantiated after the Employee Relations Bureau investigation was completed on April 2, 2014. (Exhibits 5 and C).

9. On May 13, 2014, CYFD Protective Services Division issued a Notice of Contemplated Action (NCA) to Gallegos to suspend him without pay for five days. (Stipulated Fact No. 8).

10. On June 5, 2014, CYFD Protective Services Division issued a Notice of Final Action (NFA) to Gallegos and suspended him without pay for three days for the instances of misconduct set forth in the NCA. (Exhibits 7 and E; Stipulated Fact No. 9).

11. On June 12, 2014, AFSCME filed a Step 1 grievance on Gallegos' behalf stating Article 24, Section 3 of the CBA was violated because the Notice of Contemplated Action issued on May 13, 2014, and was beyond the 45 day time period set forth in Article 24, Section 3 of the CBA. (Stipulated Fact No. 10).

12. On June 16, 2014, CYFD Protective Services Division denied Gallegos' Step I grievance. (Stipulated Fact No. 11).

13. On June 19, 2014, AFSCME filed a Step 2 grievance on Gallegos' behalf alleging a violation of Article 24, section 3. (Stipulated Fact No. 12).

14. On June 30, 2014, NMCYFD Protective Services Division denied Gallegos' Step 2 grievance. (Stipulated Fact No. 13).

15. On July 8, 2014 AFSCME tiled a Step 3 grievance on Gallegos' behalf alleging a violation of Article 24, Section 3. (Stipulated Fact No. 14).

16. On July 21, 2014, NMCYFD Cabinet Secretary Yolanda Berumen-Deines denied Gallegos Step 3 grievance. (Stipulated Fact No. 15).

17. On or about September 3, 2014 Mr. Gallegos filed a Motion with the SPB to Stay the SPB proceeding pending resolution of the PPC, which Motion was denied on September 23, 2014. See Exhibit 2B of CYFD's Motion for Summary Judgment).

18. On September 4, 2014 CYFD sent a notice to AFSCME of its failure to timely submit the denial of the grievance to arbitration stating the "processing of this matter is complete." (Stipulated Fact No. 16).

19. On September 18, 2014 Mr. Gallegos filed the Prohibited Practices Complaint (PPC) herein alleging that the agency violated the PEBA §10-7E-19(H) by issuing discipline against him beyond a 45-day limitation period in Article 26, Section 3 of the applicable CBA. (Complaint Introductory paragraph and ¶¶ 26 and 27).

20. The CBA language at issue is as follows:

> "[e]xcept for disciplinary actions related to performance which are governed by Article 25 and/or cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than 45 days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time."

See CBA Article 24, Section 3. (Exhibit 2).

21. On October 29, 2014 Mr. Gallegos withdrew his SPB Appeal with prejudice and an Order of Dismissal with prejudice was entered by the SPB Administrative Law Judge on that same date. (Exhibits 2C and 2D of CYFD's Motion for Summary Judgment).

22. Tisha Maes, Employee Relations Bureau Supervisor, testified at the merits hearing that documentation of the disciplinary checklist was complicated in its attachments and this delayed the checklists referral to the Employee Relations Bureau. The Bureau was short-staffed at the point when the disciplinary checklist was received which delayed the issuance of the NFA. The assigned investigator, Ms. Bartucca, submitted her resignation during the

course of the investigation and although she completed the Fact Finding Report regarding discipline pending against Mr. Gallegos prior to her departure, she left before preparing the Notice of Contemplated Action to be issued. She also testified that it took almost two weeks to reassign Ms. Bartucca's caseload, other reports and paperwork that then had to be submitted to the Deputy Director to make decisions on disposition. (Testimony of Tisha Maes).

ISSUES:

Complainant contends that to correctly implement the 45-day time limit within which disciplinary action must be taken pursuant to Article 24, Section 3 of the CBA, the operative date in this case is February 11, 2014, when Gallegos' County Manager notified him that a complaint against him had been filed, in contrast with CYFD's position that the 45 days does not begin to run until the investigation substantiating the allegations was completed. If Complainant's approach is the correct one, then both the NCA and the NFA were issued to him more than 45 days after acquiring knowledge of the offense. Therefore, that violation of the CBA Gallegos argues is in violation of NMSA 1978 § 10-7E-19 (H).

The parties acknowledge that "where outside agencies or divisions are involved in the investigation" the 45-day timeframe may be extended but Gallegos contests that the exception applies because the investigation was conducted by CYFD's Employee Relations Bureau, which is not an independent third party. Neither did CYFD assert that any "facts and circumstances exist which require a longer period of time", he argues, until Step 3 of the grievance procedure. Even then, CYFD did not state with specificity what those "facts and circumstances" warranting a longer investigation period might be.

CYFD contends that it did not "acquire knowledge of the employee's misconduct for which the disciplinary action is imposed," until after a thorough investigation was

completed and allegations were substantiated. Until that time a complaint against an employee is a mere allegation. CYFD argues that the operative when the 45-day period began to run in this case is the date the NCA was issued; May 13, 2014, after the investigation was completed and misconduct substantiated. With regard to the question whether the 45-day timeframe may be extended because an "outside investigation" CYFD stresses that the exception applies not only to outside agencies but to "divisions" of the same agency as well. According to CYFD the investigation in this case was conducted by the Employee Relations Bureau of the Human Resources Department, which is an independent investigatory division of CYFD. Therefore, Article 24, Section 3 expressly permitted CYFD to take longer than 45 days to complete its investigation and take disciplinary action in this case. Additionally, CYFD asserts that facts and circumstances existed in this case that justified taking a longer period of time to issue the NCA.

CYFD again raised the same jurisdictional challenges that had already been disposed of by Summary Judgment. See Letter Decision re: Summary Judgment, issued herein November 20, 2014.

With regard to the alleged violation of NMSA 1978 §10-7E-19 (H), CYFD asserts that intent to "refuse or fail to comply with [the] collective bargaining agreement," is a necessary element and it has not intentionally refused or failed to comply with the Collective Bargaining Agreement.

REASONING AND CONCLUSIONS OF LAW:

A. THE PELRB HAS JURISDICTION OVER THIS CASE AND ALL ISSUES THEREIN; GALLEGOS' WITHDRAWAL OF HIS APPEAL TO THE SPB DOES NOT CONSTITUTE A FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, NOR DID HIS ELECTION TO APPEAL THE DENIAL OF HIS GRIEVANCE TO THE SPB IN LIEU OF ARBITRATION CONSTITUTE A WAIVER OF HIS RIGHT TO BRING A PPC ON THE SAME FACTS. WITHDRAWAL OF GALLEGOS' SPB APPEAL DID NOT

RENDER THIS PPC MOOT NOR DOES OUR EXERCISE OF JURISDICTION CONFLICT WITH THE STATE PERSONNEL ACT.

With respect to each of the aforementioned jurisdictional challenges I incorporate by reference my conclusions and reasoning in my Letter Decision re: Summary Judgment issued herein on November 20, 2014.

B. THE 45-DAY PERIOD IN ARTICLE 24, SECTION 3 OPERATES AS A CEILING WITHIN WHICH AN INVESTIGATION MUST BE COMPLETED AND DISCIPLINE INITIATED UNLESS SPECIAL CIRCUMSTANCES WARRANT A GREATER PERIOD OF TIME.

1. The 45 Days Begins to Run From the Time a Complaint is First Levelled Against an Employee. The Employer Acquired "Knowledge of The Employee's Misconduct For Which The Disciplinary Action Is Imposed" From That Event.

This is not a case of first impression. The PELRB construed the same contractual language as is at issue today, in the matter of *SEA-CWA v. N.M. Environment Dep't*, PELRB No. 140-07. Just as in the present case, in PELRB 140-07 the Union argued that the phrase "acquires knowledge of the employee's misconduct for which the disciplinary action is imposed" meant that discipline must be imposed or noticed within 45 days of first learning of the allegations which, if proven, would support discipline. The Environment Department requested PELRB review of the Hearing Examiner's Amended Report and Recommended Decision in PELRB No. 140-07 and on July 6, 2009 the Board ordered in part:

> "...the hearing examiner's decision is reversed based on collateral estoppel. The Board is collaterally estopped regarding the issue whether there was any violation of the collective bargaining agreement as alleged in the instant prohibited practices complaint. The State Personnel Board has ruled that there was no violation of that agreement and has upheld the disciplinary action involved in the instant prohibited practices complaint, and this Board is bound by the ruling in this case. Because the State Personnel Board's decision necessarily applies only to this specific case, the Board's decision here does not preclude the Board, in a case involving similar facts, from reaching a different conclusion than the State Personnel Board reached here.

> Our decision here is required because the complainant and the employee chose to litigate the alleged breach of contract, in the first instance, before the State Personnel Board and it is our judgment that the complainant and the employee cannot litigate that issue twice."

Board Decision and Order in PELRB Case No. 140-07 (July 6, 2009).

Therefore, I am free to take as much or as little from the rationale and conclusions reached by the Hearing Examiner in PELRB No. 140-07 as I deem to be helpful. There is much there that reflects sound reasoning and provides me with guidance in deciding this case. For example, just as CYFD does in this case, in PELRB 140-07 the Environment Department argued that discipline must be imposed or noticed within 45 days of confirming by investigation that the incident or conduct constituted just cause for discipline. Then, as now, the Environment Department also asserted that, in the alternative, facts and circumstances warranted an exception to the 45-day limit because an outside Department or Division (in the former case, the Motor Vehicle Division of the Taxation and Revenue Department) was involved in an aspect of the investigation.

In PELRB No. 140-07 the Hearing Examiner applied the plain language of the contract to decide:

> "…the 45-day period is [the] period of time allowed for investigation unless facts and circumstances warrant a greater period of time for that investigation. This conclusion, which is reaffirmed herein, was based on the following points of reason. First, at the very start of the section, the CBA provision speaks plainly of 'investigation' in the context of explaining and delimiting the 45-day time limit, by stating '[e]xcept for ... cases where outside agencies or divisions are involved in the investigation,' discipline may not be noticed or imposed more 'than 45 days after it acquires knowledge of the ... misconduct for which the disciplinary action is imposed...' *Id.* Article 24, Section 4. Second, the 45-day limit would be of questionable value unless it was for the purpose of conducting an investigation to determine whether or not there was 'just cause' for discipline. Third, the existence of a final 'facts and circumstances' exception, in addition to that provided when outside agencies are involved, ensures the State's interests will not be prejudiced where a greater delay is properly mandated by due process requirements for investigating and issuing discipline. Thus, the disputed contract language is properly applied as a kind of 'statute of limitations,' under which the time to

> take action begins to run from the moment the act or conduct complained of either occurs, or was or could reasonably have been discovered with due diligence."

PELRB No. 140-07, Hearing Examiner's Report and Recommended Decision pp.10-11. Likewise, I am persuaded by the evidence in this case that the 45-day period Article 24, Section 3 of the CBA is the period of time allowed for investigation unless facts and circumstances warrant a greater period of time for that investigation and that the phrase "acquires knowledge of the employee's misconduct for which the disciplinary action is imposed" in Article 24, Section 3 operates as a kind of "statute of limitations" under which the time an employer must take action begins to run from the moment the employer is informed of the act or conduct complained of or could reasonably have discovered that conduct with due diligence. Accordingly, in this case CYFD acquired knowledge of Gallegos' misconduct on February 11, 2014 at the latest based on the date his County Manager notified him of a complaint and removed all telephone intake functions until further notice (Stipulated Fact No. 6). Unless extended under one or more of the other clauses in Article 24, Section 3 of the CBA, the NCA and NFA at issue would be untimely. I turn my attention therefore, to the question whether there is justification for extending the 45-day time limit.

CYFD's proffered contract proposal, which it offers as evidence of trying to "clear up" a longstanding disagreement as to meaning of Article 24, Section 3 during 2008 negotiations of the current contract is not helpful to its cause because the State's counter proposal stating the same position it advances herein, was not accepted by AFSCME. That evidence argues ***against*** my taking a position in this decision that would grant to CYFD a concession that it failed to win at the bargaining table.

2. **The 45-Day Timeframe in Article 24, Section 3 Contemplates That the Deadline May Be Extended Whenever an Outside Agency or Division is Involved in the Investigation. That Exception Does Not**

Apply Here Because the Investigation Was Conducted By CYFD's Employee Relations Bureau, Which Is Not "An Outside Agency or Division" Within the Meaning of Article 24, Section 3.

As an affirmative defense CYFD bears the burden of proof to demonstrate by a preponderance of the evidence that an exception to the 45-day limit exists. Based on the facts established in this case I conclude that CYFD's Employee Relations Bureau is not an outside agency or division within the meaning of Article 24, Section 3 of the parties' CBA. Helen Quintana testified that in her view the term "outside agencies or divisions" should be read to include separate divisions even within the same agency. In this case, however, it appears that there is insufficient attenuation to consider CYFD's Employee Relations Bureau to be an outside Agency or division. CYFD is a single agency and all of its divisions are part of same chain of command. The Employee Relations Bureau reports to the same Cabinet Secretary as do all other CYFD bureaus and divisions. See, Exhibit 1. The Employee Relations Bureau exists to provide assistance to CYFD's other divisions about CBA interpretation and to assist in writing grievance responses and it shares the services of CYFD's Office of General Counsel along with the other CYFD divisions. Exhibit 1. I considered as part of my analysis that none of the reasons given by CYFD's witnesses to justify the extension of time concerned what I consider to be logistical problems associated with the fact that the investigation was being conducted by its Employee Relations Bureau.

3. CYFD Has Established Facts and Circumstances That Require a Period of Time Longer Than the 45-Day Timeframe in Article 24, Section 3 to Impose Discipline in This Case.

As an affirmative defense CYFD bears the burden of proof to demonstrate by a preponderance of the evidence that extraordinary facts and circumstances exist that require a period of time longer than the 45-day timeframe in Article 24, Section 3. Based on the facts established in this case I conclude that CYFD has met that burden.

Gallegos argues that CYFD should have informed him of the facts and circumstances it claims required an extension of the deadline in its responses to his grievances at each level. While that may be the best practice going forward, I do not consider it reasonable, in the absence of a contractual requirement that it do so, to hold it to have breached such a requirement now when their position prior to this report and recommended decision has been that it did not violate the 45 day limitation because it did not begin to run until completion of the investigation. I further conclude that basic concepts of notice will be satisfied if and when the Employer is compelled to defend its actions in a challenge to the discipline before an arbitrator or tribunal such as this one.

Gallegos argues in the alternative that CYFD has failed to prove the investigation undertaken against Mr. Gallegos was complicated, requiring more than the 45 day limit. CYFD's witness, Ms. Mares, testified there was no need to consult an in-house "agency expert", only Mr. Gallegos was interviewed, the misconduct consisted of violations of the CYFD Code of Conduct, and CYFD's assigned investigator was experienced. Complexity of the investigation in this case is arguable and in any event it is not the only kind of fact or circumstance that might warrant extension of the 45-day timeframe. Gallegos' argument overlooks all of the other evidence that would support a conclusion that special circumstances exit. For example, Tisha Maes, Employee Relations Bureau Supervisor, testified that documentation of the disciplinary checklist was complicated in its attachments and this delayed its referral to the Employee Relations Bureau. The Bureau was short-staffed at the point when the disciplinary checklist was received which delayed the issuance of the NFA. The assigned investigator, Ms. Bartucca, submitted her resignation during the course of the investigation. The Fact Finding Report was completed by Ms. Bartucca prior to her departure but she left before preparing the Notice of Contemplated Action to be issued.

Anyone who has had to deal with replacing staff knows the problems that can arise interrupting what otherwise might be a smooth and orderly process. In this case, it took almost two weeks to reassign Ms. Bartucca's caseload, other reports and paperwork that then had to be submitted to the Deputy Director to make decisions on disposition.

CYFD submitted an arbitration case that speaks to the issue of extraordinary circumstances. In *Communication Workers of America and New Mexico Department of Health*; FMCS No. 131012-50390-1, Arbitrator Lynne M. Gomez, construing Article 8, Section 3 found that under the facts of that case the Department could not initiate disciplinary action prior to the Board's determination of the status of appellant's license. "Requiring the Department to issue discipline within the forty-five (45) calendar day period, despite the pendency of the Board's investigation, could be deemed retaliatory and would have a chilling effect on an employee's right to file a complaint." Furthermore, part of the delay was attributable to the Appellant, by the filing of her Complaint and there was no undue delay in issuing discipline once the Board dismissed the Appellant's Complaint. The Department learned of the dismissal a few days later, and issued the Appellant the NCA approximately two weeks later. For those reasons, the Arbitrator concluded that the discipline was timely despite having been taken after the 45-day time limit.

While the circumstances in this case are not the same as those in the FMCS case above, the lesson that I take from that decision is that the phrase "unless facts and circumstances exist which require a longer period of time" should be liberally construed. Whether sufficient circumstances exist in any given case to justify an Employer exceeding the 45-day limit and for how long is best determined on a case-by-case basis. Accordingly, it is my recommended decision that CYFD has met its burden of proof with regard to whether extraordinary facts and circumstances exist in this case requiring longer than the 45-

day timeframe in Article 24, Section 3 to impose discipline in this case and that the NCA and NFA in this case were timely issued under the circumstances.

DECISION:

The PELRB has jurisdiction over this case and all issues therein. Gallegos' withdrawal of his appeal to the SPB does not constitute a failure to exhaust administrative remedies, nor did his election to appeal the denial of his grievance to the SPB in lieu of arbitration constitute a waiver of his right to bring a PPC on the same facts. Withdrawal of Gallegos' SPB appeal did not render this PPC moot nor does our exercise of jurisdiction conflict with the State Personnel Act. The 45-day period in Article 24, Section 3 operates as a ceiling within which an investigation must be completed and discipline initiated unless special circumstances warrant a greater period of time. The 45 days begins to run from the time a complaint is first levelled against an employee. The Employer is deemed to have acquired "knowledge of the employee's misconduct for which the disciplinary action is imposed" from that event. Furthermore, the exception to the 45-day timeframe based on an outside agency or division is involved in the investigation does not apply here because the investigation was conducted by CYFD's Employee Relations Bureau, which is not "an outside agency or division" within the meaning of Article 24, Section 3. CYFD has established facts and circumstances that require a period of time longer than the 45-day timeframe in Article 24, Section 3 to impose discipline in this case.

CYFD's challenge to the right of an individual employee to bring a PPC, as contrasted with his bargaining representative, is without merit. The coverage and protections of the Act extend to "public employees" NMSA (1978) § 10-7E-2. The Board clearly defines the term "Complainant" in a PPC as "...an *individual*, organization, or public employer, that has filed a prohibited practices complaint. NMAC 11.21.1.7 (5) (Emphasis added.). In any

PPC a party may represent his, her, or itself, or be represented by counsel or other representative. See NMAC 11.21.1.11 Representation of a Party. Finally, NMAC 11.21.3.8 provides that whenever a prohibited practices case is initiated by an individual employee alleging a violation of Sections 19(F), 19(H), 20(C), or 20 (D) of the Act, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct.

It would make little sense to adopt a policy of allowing only the bargaining representative to bring PPC's as long as our statutory scheme requires that representative to represent all employees in a given bargaining unit regardless of whether or not they are members of the representative union. Some employees may be steadfastly opposed to union membership as is their right under PEBA. It makes little sense to require them to be represented by an advocate to whom they are hostile.

WHEREFORE, it is my recommended decision that the PPC be **DISMISSED** on the ground that there was no violation of the contract.

REQUEST FOR REVIEW:

Pursuant to PELRB Rule 11.21.3.19, any party may file a request for Board review within 10 business days after service of this Report. The request for review shall state the specific portion of the Report to which exception is taken and the factual and legal basis for such exception. The request may not rely on any arguments not previously raised before the undersigned. The request must be served on all other parties. Within ten business days after service of a request for review, any other party may file and serve on all parties a response to the request for review.

Issued Wednesday, January 28, 2015.

Thomas J. Griego
Hearing Officer
Public Employee Labor Relations Board
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Albuquerque, New Mexico 87120