

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEES LABOR RELATIONS BOARD**

**AMERICAN FEDERATION OF TEACHERS  
And INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS  
(IAMAW), AFL-CIO,**

**Complainant,**

**v.**

**PELRB No. 112-22**

**UNIVERSITY OF NEW MEXICO SANDOVAL  
REGIONAL MEDICAL CENTER,**

**Respondent.**

**ORDER**

**THIS MATTER** came before the Public Employee Labor Relations Board (hereinafter the “Board”) at its open meeting on November 19, 2022 upon the appeal of University of New Mexico Sandoval Regional Medical Center (“Respondent”) from the Hearing Officer’s Report and Recommended Decision dated September 28, 2022. The Board heard oral argument on the matter and carefully reviewed the Recommended Decision, the request for review, and the response thereto. Pursuant to the Public Employee Bargaining Act (the “PEBA”), NMSA 1978, Sections 10-7E-1 to -25 (2003, as amended through 2020), and being otherwise sufficiently advised, the Board voted 3-0 to adopt the Recommended Decision and findings therein.

**THEREFORE,** the Hearing Officer’s Report and Recommended Decision dated September 30, 2022 is hereby **ADOPTED**. Respondent is therefore ordered to cease and desist from violating the PEBA as found therein, acknowledge the violations found therein by posting notice to its employees of the violations in a manner by which its employees customarily receive notice from Respondent in

## 29-PELRB-2022

a form agreeable to Complainant for a period of not less than sixty (60) days, and comply in the future with all applicable provisions of the PEBA.

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

  
\_\_\_\_\_  
HON. NAN NASH, BOARD CHAIR

*28 November 2022*  
\_\_\_\_\_  
DATE

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**In re:**

**AMERICAN FEDERATION OF TEACHERS  
and INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS  
(IAMAW), AFL-CIO,**

**Complainant,**

**v.**

**PELRB No. 112-22**

**UNIVERSITY OF NEW MEXICO SANDOVAL  
REGIONAL MEDICAL CENTER,**

**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 the merits of Complainants' Prohibited Practices Complaint filed on June 10, 2022. The Complaint alleged that after AFT and IAMAW (collectively referred to as the "Union") notified the Respondent ("SRMC" or the "Hospital") that it had not given the Board and the Union all information required NMAC 11.21.2.12 (B) upon the filing of *IAMAW & UNM Sandoval Regional Medical Center*, PELRB 303-22 and that Respondent's legal counsel declined to provide the bargaining unit information on June 10, 2022 but eventually provided the list with required contact information on July 26, 2022. By so doing the Unions' PPC alleges that the Respondent has violated the PEBA.

The Union bears the burden of proving its allegations by a preponderance of the evidence. See NMAC 11.21.1.22(B); NMAC 11.21.3.16(A). In lieu of an evidentiary hearing, the parties agreed to submit this case on the following stipulations and agreed to make legal arguments in the form of Closing Briefs. According to the Parties' stipulations, the issues for determination are whether Respondent violated PEBA by declining to provide the Union with the list of bargaining unit

employees in the proposed unit in PELRB Case No. 303-22, along with their contact information and, if so, what is the proper remedy.

The parties filed their Closing Briefs on September 21, 2022. Both were duly considered along with the pleadings and other documentary submissions in the record.

The following operative facts are stipulated by the parties:

**FINDINGS OF FACT:**

1. On May 18, 2022, IAMAW filed the Petition for Certification given PELRB Case No. 303-22.
2. On May 19, 2022, in PELRB Case No. 303-22, PELRB Executive Director Thomas J. Griego sent the letter to the Parties attached as Exhibit 1 to the Joint Stipulations.
3. On June 3, 2022, SRMC Submitted its Position Statement in PELRB Case No. 303 - 22. Attached as Exhibit 2 to the Joint Stipulations is a true and correct copy of the Position Statement and the employee list that accompanied that filing.
4. On June 7, 2022, Ryan Carrillo sent an email to various UNM SRMC officials regarding the list and what he perceived to be deficiencies. On June 10, 2022, Linda Vanzi, on behalf of UNM SRMC, submitted a response. True and correct copies of those two emails are as Exhibit 3 to the Joint Stipulations.
5. Also on June 7, 2022, in PELRB Case No. 303-22, PELRB Executive Director Griego sent the letter to counsel for the Parties that is as Exhibit 4 to the Joint Stipulations.
6. On June 13, 2022, in PELRB Case No. 303-22, Linda Vanzi, on behalf of UNM SRMC sent the letter attached as Exhibit 5 to the Joint Stipulations to PELRB Executive Director Griego.

7. On June 14, 2022, in PELRB Case No. 303-22, PELRB Executive Director sent the letter attached as Exhibit 6 to the Joint Stipulations to Linda Vanzi.
8. On June 16, 2022, Linda Vanzi sent the letter as Exhibit 7 to the Joint Stipulations to PELRB Executive Director Griego, along with the accompanying modified employee list.
9. At the Board's July 12, 2022, meeting, the Board heard SRMC's objections to providing information sought by the Executive Director on June 7, 2022. By a vote of 3-0, and announced orally at that meeting, the Board denied SRMC's objections. A true and correct copy of the Board's approved minutes from that meeting is attached as Exhibit 8 to the Joint Stipulations. A true and correct copy of the resulting written order, 16-PELRB-2022, is as Exhibit 9 to the Joint Stipulations.
10. On July 25, 2022, Linda Vanzi, on behalf of UNM SRMC, sent the email attached as Exhibit 10 to the Joint Stipulations, along with the IAMAW list attached thereto (the AFT list is not included in the Exhibit, but was attached to the original email). This list included, for the first time, employee contact information.
11. Because the Union contended that the lists failed to include disputed positions (i.e. the lead positions and the per diem employees), the parties exchanged a series of emails. A true and correct copy of that email chain is attached as Exhibit 11 to the Joint Stipulations.
12. On July 26, 2022, Samantha Hults, on behalf of UNM SRMC, sent the email at the top of the chain within Exhibit 11 along with the IAMAW list attached thereto (the AFT list is not included in the Exhibit, but was attached to the original email). That list included for the first time the individuals the Hospital contended were per diem

and supervisory. (This list included inadvertent errors which were subsequently corrected, and which are not relevant to this case).

13. On July 27, 2022, PELRB Executive Director Griego conducted the representation hearing in PELRB Case No. 303-22.

#### **REASONING AND CONCLUSIONS OF LAW:**

The Union filed its Petition seeking to be certified as the exclusive bargaining representative for a group of SRMC employees on May 18, 2022. On May 19, 2022, as is consistent with existing statutes, regulations and practice, I sent a letter to SRMC directing it to provide a list of employees “who would be in the bargaining unit as proposed” within 10 days of the letter. Pursuant to NMSA 1978 § 10-7E-14(A) (2020) and the Board’s rules, the employer’s obligation to provide the Director with a list of employees who would be in the bargaining unit as proposed, includes an obligation to provide contact information for those employees. This Board has previously determined that a public employer withholding such information violates the right of public employees under NMSA 1978 § 10-7E-5 (2020) to form, join or assist a union for purposes of collective bargaining. See *SSEA, Local #3878 v. Socorro Consolidated School District*, 05-PELRB-2007. It was not until July 25, 2022, that SRMC sent a list that included employee contact information for some of the positions the Union seeks to represent. That list did not include employees SRMC claimed should be excluded from the bargaining unit, contrary to the requirement that the list comprise employees who would be in the bargaining unit as proposed.

After additional union entreaties to supplement the list to include all of “the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately preceding the filing of the petition” pursuant to NMAC 11.21.2.12)(B), SRMC finally provided the information required on July 26, 2022, one day prior to

the representation hearing and more than two months after it was initially directed to provide that information.

SRMC defends its delay on the grounds that it declined to produce the requested information based on the law in effect at that the time SRMC asserted it; the Director did not rule on SRMC's legal arguments; the Board voted to amend regulations directly impacting the legal arguments asserted by SRMC without giving prior notice of that amendment; the Board applied that amendment retroactively, and before the amendment's August 9, 2022 effective date, in its July 12, 2022 decision denying SRMC's objections and ordering immediate compliance with the Director's request for employee contact information; and SRMC, having no right of immediate appeal, promptly complied. Therefore, SRMC cannot be held to have committed the prohibited practice alleged in PPC 112-22 because of its taking of a legal position that complied with the law as it existed at the time the documents were written, the events took place, or the legal position was asserted. *March v. State*, 1987-NMSC-020, ¶ 11; *Laurie R. v. New Mexico Human Servs. Dep't.*, 1988-NMCA-055, ¶ 22; *Wood v. State Educ. Ret. Bd.*, 2011-NMCA-020, ¶¶ 21-29; *State v. Perea*, 2001-NMSC-026, ¶¶ 3-6; *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 33.

**I. THE PREPONDERANCE OF THE EVIDENCE ESTABLISHED THAT SRMC VIOLATED PEBA BY DECLINING TO PROVIDE THE UNION WITH THE LIST OF BARGAINING UNIT EMPLOYEES IN THE PROPOSED UNIT IN PELRB CASE NO. 303-22, ALONG WITH THEIR CONTACT INFORMATION.**

NMSA 1978, § 10-7E-14(A) (2020) provides that “Upon acceptance of a valid petition, the board or a local board *shall require the public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit.*” (Emphasis added). It is an axiomatic rule of statutory construction that a legislature's use of the word “shall” in a statute indicates that the provision is mandatory. See, *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 22, 146

N.M. 24, 206 P.3d 135. (“It is widely accepted that when construing statutes, ‘shall’ indicates that the provision is mandatory, and we must assume that the Legislature intended the provision to be mandatory absent an clear [sic] indication to the contrary.”) Furthermore, statutory construction analysis typically begins by examining the words chosen by the Legislature and the plain meaning of those words. See *State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579. (“Under the plain meaning rule, when a statute’s language is clear and unambiguous, we will give effect to the language and refrain from further statutory interpretation.”)(Internal quotation marks and citation omitted). In addition to the plain meaning examination, “[w]e also consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect.” *Bishop v. Evangelical Good Samaritan Society*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361.

The plain language of Section 10-7E-14(A) applies here. There is no ambiguity in that language and no risk of an “absurd result” that might limit application of the plain meaning rule of statutory construction. See *Lewis v. Albuquerque Public Schools*, 2019-NMSC-2022 at ¶ 39 citing *State v. Nance*, 77 N.M. 39, 46, 419 P.2d 242, 247 (1966). Therefore, at all times material to this PPC, the PELRB is and was obligated under the statute upon acceptance of the petition to require SRMC, within 10 days, to not only identify all employees “in the *proposed* bargaining unit”(emphasis added), but also to provide their “names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers.” Necessarily, Section 10-7E-14(A) also imposes a requirement on SRMC to provide that information within that same 10-day period.

It is stipulated that SRMC did not identify and provide contact information for employees in the proposed unit within the designated time. That it was not obliged to do so because the union sought a card count pursuant to Section 10-7E-14(C) rather than an election, is an argument rejected by this Board in its Order 16-PELRB-2022, Exhibit 9 to the Parties’



stipulations. The Board's Order does not represent a retroactive application of the law to SRMC, but is instead, a statement of the law as it has always been understood by this Board, at least as far back as December of 2007 when the case cited in that Order, *SSEA, Local #3878 v. Socorro Consolidated School District*, 05-PELRB-2007, was decided.

As the Board recognized by its Order 16-PELRB-2022, there is no way for the PELRB to ascertain if the labor organization has demonstrated majority support but through the employer providing the employee list with the required contact information required by 14(A). If, following receipt of the employee list with contact information so that the validity of submitted cards may be checked in the event of an ambiguity, it turns out that the labor organization has authorization cards from more than 30% of the unit, but less than 50% of the unit, then the same Petition will result in an election rather than a card count. In other words, whether the Board proceeds by a card check or by an election, the required employee list with contact information is vital. Accordingly, any argument that because the PELRB's regulations had not been amended to comport with the 2020 change to Section 10-7E-14 until July 26, 2022, is without merit because that fact does not alter SRMC's obligation to comply with the plain language of Section 10-7E-14.<sup>1</sup>

**DECISION:** For the reasons set forth above, I conclude that the Union has proven by a preponderance of the evidence that SRMC violated NMSA 1978 § 10-7E-5(A)(2020), which guarantees public employees' rights to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by them without interference, restraint or coercion; NMSA 1978 § 10-7E-5(B)(2020), which guarantees public employees' rights to engage in concerted activities for mutual aid or benefit, and NMSA 1978 § 10-7E-14(A) requiring a public

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<sup>1</sup> This Board rejected a similar argument in *UE v. NMSU*, 12-PELRB-22 and *UE v. UNM*, 4-PELRB-2022 wherein the employer argued that no card check should occur because there was no rule governing card checks following the changes to Section 10-7E-14. The PELRB rejected that argument and ruled that Section 10-7E-14 is self-executing.

employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. Inasmuch as NMSA 1978 § 10-7E-5(19)(G) (2020) makes it a prohibited practice to “refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule” I conclude that the Respondent violated PEBA by declining to provide the Union with the list of bargaining unit employees in the proposed unit in PELRB Case No. 303-22, along with their contact information and, thereby committed a prohibited labor practice.

As a remedy, I adopt that proposed by the Union in its Closing Brief, i.e. that the SRMC be ordered to:

1. Cease and desist from violating the PEBA as set forth herein;
2. Acknowledge the violations as found herein by posting notice to its employees of the violations in a manner by which its employees customarily receive notice from the employer in a form agreeable to the Union for a period of no fewer than 60 days;
3. Comply in the future with all applicable provisions of the PEBA.

Issued, Wednesday, September 28, 2022.



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