

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, NEW MEXICO  
COUNCIL 18, AFL-CIO,

and

ANDREW GILMORE,

Complainants,

v.

PELRB No. 105-16

LUNA COUNTY,

Respondent.

**ORDER GRANTING MOTION TO SET ASIDE DEFAULT**

**THIS MATTER** comes before the Public Employee Labor Relations Board (“Board”) at a regular meeting on May 3, 2016, to consider Luna County’s *Motion to Set Aside Determination of Default* (“Motion”), filed on April 6, 2016. Counsel for both Luna County and AFSCME were present at the meeting and presented brief oral arguments supporting their respective positions.

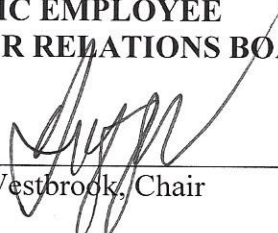
The Board, having reviewed the Motion and being sufficiently advised, finds that the determination of default should be set aside due to Luna County’s excusable neglect. Thus, by a unanimous 3–0 vote in the affirmative, the Board finds that the Motion is well taken and should be granted.

**IT IS HEREBY ORDERED** that Luna County’s Motion is **GRANTED**.

**PUBLIC EMPLOYEE  
LABOR RELATIONS BOARD**

Date:

5-13-16

  
\_\_\_\_\_  
Duff Westbrook, Chair

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY  
and MUNICIPAL EMPLOYEES, NEW MEXICO  
COUNCIL 18, AFL-CIO,

and

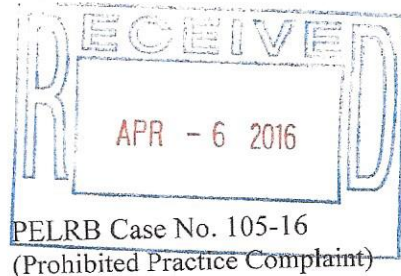
ANDREW GILMORE,

Complainants.

v.

LUNA COUNTY

Respondent.



04-06-16P01:14 RCVD

**MOTION TO SET ASIDE DETERMINATION OF DEFAULT**

COMES NOW, Respondent, Jonlyn M. Martinez, and hereby moves this Board for an Order disqualifying Thomas Griego from participating in this matter. As grounds for this Motion, the Respondent states the following:

1. On March 9, 2016, Mr. Griego mailed a conformed copy of the Complainants' PPC in this matter to Luna County. *See Notice and PPC sent from Mr. Griego on March 9, 2016*, attached hereto as Exhibit A. Mr. Griego intentionally refused to mail the conformed copy of the PPC and the Notice of hearing to counsel for the Respondent despite the fact that she is listed as the Respondent's Representative in the PPC. *See paragraph 2 of PPC*, attached hereto as Exhibit A. Luna County did not receive the PPC until March 10, 2016, and Luna County did not provide the undersigned with a copy of it until March 21, 2016 because it believed that its counsel had properly been served on its behalf. *See Exhibit A.*

2. Mr. Griego acknowledged that he intentionally failed to provide counsel for the Respondent with a copy of the PPC and the Notice of Hearing. *See email from Mr. Griego*, attached hereto as Exhibit B. He stated that “PELRB 105-16 is a new filing and it would not have been proper for me to assume that because you represented the County in an earlier proceeding that you represent them in this one as well.” *Id.* This contention is disingenuous in light of the fact that the undersigned is specifically listed as the Respondent’s Representative in the PPC at issue. *See Exhibit A.*

3. Luna County and its counsel filed a Motion to Disqualify Mr. Griego by facsimile on March 31, 2016, at 2:28 p.m. *See Facsimile Confirmation*, attached hereto as Exhibit C. Approximately an hour and a half later, Mr. Griego had a letter served on counsel for Luna County indicating that he was entering default judgment against her client due to a purported deficient filing of the County’s Answer to a Prohibited Practice Complaint. *See email and correspondence from Griego*, attached hereto as Exhibit D. Mr. Griego’s correspondence can only be characterized as an effort to retaliate against counsel for the Respondent and the Respondent due to the submission of the Motion to disqualify him in this matter.

4. In response to this correspondence, counsel for the Respondent submitted the following in a letter emailed to Mr. Griego:

As you are aware, you did not mail a conformed copy of the Complainants’ PPC in this matter to Luna County until March 9, 2016. You intentionally refused to mail it to my office despite the fact that I am listed as the Respondent’s Representative in the PPC. Luna County did not receive the PPC until March 10, 2016, and I did not receive a conformed copy of it until March 21, 2016.

The PELRB Rules provide:

1.21.1.8 COMPUTATION OF TIME: When these rules state a specific number of days in which some action must or may be taken after a given event, the date of the given event is not counted in computing the time, and the last day of the period is deemed to end at close of business on that day. Saturday's, Sundays and state recognized legal holidays observed in New Mexico shall not be counted when computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday observed in New Mexico, then the last day for taking the action shall be the following business day. [11.21.1.8 NMAC - N, 3-15-04]

11.21.3.10 FILING OF ANSWER: A. Within fifteen (15) days after service of a complaint, the respondent shall file with the director and serve upon the complainant its answer admitting, denying or explaining each allegation of the complaint. For purposes of this rule, the term "allegation" shall mean any statement of fact or assertion of law contained in a complaint. No particular form is required either to state allegations or to answer them. B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the director, hearing examiner or board may find the allegation to be true.

As set forth above, the PPC was served on Luna County on March 10, 2016. Applying the Computation of Time Rule to this matter reveals that fifteen (days) after service is March 31, 2016. The Answer to the PPC was hand-delivered to your office on March 31, 2016. Therefore, it is timely. Further, in light of your decision to exclude my office from service of the PPC, the date of service of the PPC on the Respondent's Representative (as listed in the Complaint) was actually March 21, 2016, making the hand-delivery of the Answer to the PPC Complaint seven (7) days early.

Please advise as to whether you will withdraw the determination of default or whether a formal motion in this regard will be required.

*See letter dated March 31, 2016*, attached hereto as Exhibit E. No response to this correspondence has been provided.

### POINTS AND AUTHORITIES

"Default judgments are disfavored by the law, as are litigants who attempt to take advantage of an opponent's surprise, mistake, neglect, or inadvertence." *State ex rel. N.M. State Police Dep't v. One 1984 Pontiac 6000*, 1990-NMCA-085, ¶ 7, 111 N.M. 85, 87, 801 P.2d 667, 669, quoting *Daniels Ins. Agency, Inc. v. Jordan*, 102 N.M. 162, 164, 692 P.2d 1311, 1313

(1984) (citation omitted). A party who has appeared in an action is entitled to written notice of an application for default judgment at least three days before the hearing on the application. R. 1-055(B). Where notice is required by Rule 1-055(B) but is not given, the default judgment must be set aside as a matter of law. *Id.*, citing *Rodriguez v. Conant*, 105 N.M. 746, 737 P.2d 527 (1987); *Mayfield v. Sparton Southwest, Inc.*, 81 N.M. 681, 472 P.2d 646 (1970).

In the present case, Mr. Griego waited ten (10) days, and until after the date he calculated Luna County would be in default, to inform its counsel that the email counsel for the Respondent sent him containing Luna County's Answer to the PPC was insufficient to constitute proper filing of the Answer with the New Mexico Public Employees Labor Relations Board. *See Exhibit D*. Thus, Mr. Griego, for the benefit of Complainants, attempted to take advantage of counsel for the Respondent's mistake. He intentionally failed to serve counsel with the PPC and Mr. Griego's application of the rules in this matter is incorrect. Therefore, the Respondent requests that this Board set aside Mr. Griego's determination of default judgment in this matter.

#### CONCLUSION

Based on the foregoing, the Respondent requests that the determination of default judgment be set aside.

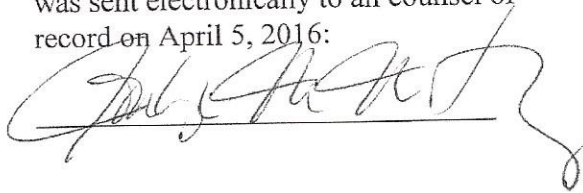
Respectfully submitted,

LAW OFFICE OF JONLYN M. MARTINEZ, LLC

By 

JONLYN M. MARTINEZ  
Attorneys for Respondent  
P.O. Box 1805  
Albuquerque, NM 87103-1805  
(505) 247-9488

I certify that a copy of the foregoing  
was sent electronically to all counsel of  
record on April 5, 2016:

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "John J. ...".



STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SUSANA MARTINEZ  
Governor

Duff Westbrook, Chair  
Roger E. "Bart" Bartosiewicz, Vice-Chair  
John Bledsoe, Member

2929 Coors Blvd. N.W. Suite 303  
Albuquerque, NM 87120  
(505) 831-5422  
(505) 831-8820 (Fax)

THOMAS J. GRIEGO  
Executive Director

March 9, 2016

Youtz & Valdez, P.C.  
900 Gold Avenue S.W.  
Albuquerque, New Mexico 87102  
Attn: Shane Youtz

County of Luna  
700 S. Silver Ave.  
P.O. Box 551  
Deming, New Mexico 88030  
Attn: Charles "Tink" Jackson,  
County Manager

Re: *AFSCME, Council 18 and Andrew Gilmore v. Luna County; PELRB 105-16*

Dear Messrs. Jackson and Youtz:

The Request for Pre-Adjudication Injunctive Relief has been scheduled for presentation to the Board at its March meeting. Accordingly, please take notice as follows:

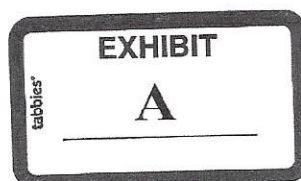
**NOTICE**

A meeting of the Public Employee Labor Relations Board will be held on **Friday, March 25, 2016** at **9:30 a.m.** at the PELRB offices, 2929 Coors Blvd. N.W., Suite 303, Albuquerque, New Mexico 87120. A copy of the Board's Agenda is posted on the Board's website at [www.pelrb.state.nm.us](http://www.pelrb.state.nm.us).

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Matthew J. Abousleman  
Operations Manager



STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY  
and MUNICIPAL EMPLOYEES, NEW MEXICO  
COUNCIL 18, AFL-CIO,

and

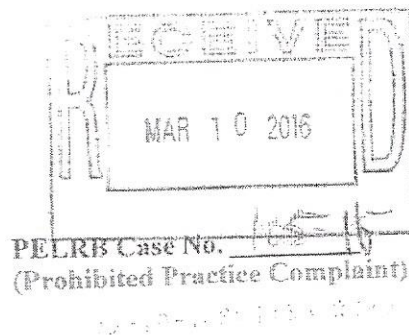
ANDREW GILMORE,

Complainants,

v.

LUNA COUNTY,

Respondent.



PROHIBITED PRACTICE COMPLAINT AND  
REQUEST FOR INJUNCTIVE RELIEF

COMES NOW Complainants, American Federation of State, County and Municipal Employees, New Mexico, Council 18, AFL-CIO ("AFSCME") and Andrew Gilmore, and file this Prohibited Practice Complaint, and as grounds therefore state as follows. As detailed below, Respondent's violations and threat to terminate Andy Gilmore's employment for providing relevant and necessary information for the representation hearing create an imminent and urgent threat of harm. Accordingly, Petitioners ask for injunctive relief under NMSA 1978, § 10-7E-23(A) (2003), and request that the Executive Director, in response to the imminent and urgent threat to Mr. Gilmore's livelihood, enjoin the County from going through with the proposed termination announced on March 8, 2016, while this Complaint is processed.

1. The Contact information for Petitioner is:

AFSCME Council 18  
1202 Pennsylvania Street NE  
Albuquerque, NM 87110

Youtz & Valdez, P.C.  
900 Gold Ave. SW  
Albuquerque, NM 87102



Tel. (505) 266-2505  
Fax: (505) 266-2404  
*Petitioner*

Tel. (505) 244-1200  
Fax (505) 244-9700  
*Petitioner's Representative*

2. The Contact information for Luna County is:

Charles "Tink" Jackson  
County Manager  
Courthouse  
700 S. Silver Ave.,  
P.O. Box 551  
Deming, NM 88030  
(575) 546-0494  
[charles\\_jackson@lunacountynm.us](mailto:charles_jackson@lunacountynm.us)

Jonlyn M. Martinez  
Law Office of Jonlyn M. Martinez, LLC  
P.O. Box 1805  
Albuquerque, NM 87103-1805  
(505) 247-9488  
(505) 247-9566 (fax)  
[jonlyn@jmartinezlaw.net](mailto:jonlyn@jmartinezlaw.net)

3. AFSCME is a "labor organization" as that term is defined in Section 4(L) of PEBA (NMSA 1978, § 10-7E-4(L) (2003)).
4. Andrew Gilmore is a "public employee" as that term is defined in Section 4(R) of the PEBA.
5. Respondent is a "public employer" as that term is defined in Section 4(S) of PEBA.
6. The PELRB has subject matter jurisdiction over this dispute, and personal jurisdiction over the parties.
7. AFSCME filed a Petition for Certification, given PELRB Case No. 310-15. Respondent initially claimed that the sergeants and lieutenants, sought to be included in the bargaining unit, should be excluded. Accordingly, a representation hearing was held on February 22, 2016.
8. At that hearing, Complainant Andrew Gilmore sat at counsel table as the designated representative and was one of the three witnesses who testified on that day.

9. Pursuant to the Scheduling Order in PELRB Case No. 310-15, the undersigned provided AFSCME's portion of the Stipulated Pre-Hearing Order to counsel for the County on February 5, 2016.

10. That document identified post orders as a potential exhibit to be used at the hearing; counsel for Respondent voiced no objection to the use of the post orders following this February 5, 2015, disclosure.

11. Pursuant to the Scheduling Order in PELRB Case No. 310-15, counsel for Respondent provided the undersigned with the County's portion of the Pre-Hearing Order on February 12, 2016; again, the County voiced no objection to the use or introduction of the post orders at that time, and indeed identified that it might introduce "Any and all records and documents produced by Petitioner."

12. Pursuant to the Scheduling Order in PELRB Case No. 310-15, the undersigned provided the County with copies of the exhibits AFSCME intended to introduce on February 15, 2016; again, the County voiced no objection to the use or introduction of the post orders at that time.

13. Counsel for Respondent submitted the Pre-Hearing Order to the PELRB on February 15, 2016, again without raising any concerns or objections regarding the use of the post orders that the Pre-Hearing Order identified might be introduced by *either* party.

14. At the beginning of the February 22, 2016, hearing, the County *stipulated* to the admission of all of the exhibits identified by the Pre-Hearing Order, again without raising any concerns about the admission of the post orders or their use in a public hearing.

15. The post orders themselves do not identify that they are confidential or not to be released for use in a PELRB hearing where, as the County conceded at the February 22, 2016,

hearing, they are clearly relevant to the PELRB's statutory duty to determine appropriate bargaining units. It is only the 327-page 2015 SOPs that indicate that they are confidential and not to be released to an "unauthorized" person.

16. Despite not once objecting to their introduction during the pre-hearing process, despite stipulating to their admission at the hearing, and despite the fact that the post orders themselves are not marked confidential, the County aggressively cross-examined Andy Gilmore regarding how they came to be used in the hearing. Following that examination, counsel for Respondent indicated that there could be an investigation begun regarding the "security leak" that the County was equally complicit in.

17. During his testimony at the hearing, Andy Gilmore was asked whether he provided the document to "counsel." In the room were two representatives of Council 18. Andy was confused as to what the attorney for the County meant, as he (like most non-attorneys) does not normally refer to an attorney as "counsel." In fact, he did not provide the document to Council 18, but rather provided it to the undersigned, after the undersigned disclosed it to the attorney for the County as a potential exhibit without objection.

18. During his sixteen years of employment with Respondent, Andy Gilmore had little prior disciplinary record. As he testified at the hearing, prior administrators did not understand the post orders to be confidential, which is why they are not marked confidential. Based on that long experience, and the fact that the documents are not marked confidential, Andy Gilmore did not understand that it would be improper to provide them to the undersigned for use in the hearing, for which they are clearly relevant and necessary information.

19. Shortly after the February 22, 2016, hearing at which Andy Gilmore testified, the County placed him and other members of his shift under investigation for potential discipline.

have removed him from his typical duties, and placed him in the maintenance unit. While on the maintenance unit, he was assigned to pull weeds, but was not provided with gloves or other necessary protective equipment.

20. On March 8, 2016, the County provided Andy Gilmore of notice of its intent to terminate his employment for providing the post orders for use at the hearing, despite the County's stipulation that they were admissible and relevant to those proceedings.

21. These actions were taken in retaliation for Andy Gilmore's assistance to AFSCME, for his testimony at the hearing, and for providing necessary information and testimony for the PELRB to determine the appropriate bargaining unit in that case.

22. The undersigned declares that the information contained herein is true correct to the best of his knowledge and belief

23. By the foregoing, Respondent has violated the following sections of PEBA within the past six months:

a. Section 19(A) (NMSA 1978, § 10-7E-19(A) (2003) (making it a prohibited practice to "discriminate against a public employee with regards to terms and conditions of employment because of the employee's membership in a labor organization");

b. Section 19(B) (making it a prohibited practice to "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the [PEBA]");

c. Section 19(D) (making it a prohibited practice to "discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization);

d. Section 19(E) (making it a prohibited practice to "discharge or otherwise discriminate against a public employee because he has ... given information or testimony

pursuant to the provisions of the [PEBA] or because a public employee is forming, joining or choosing to be represented by a labor organization”).

24. Respondent's actions not only affect Andy Gilmore's employment, but they will inevitably chill other public employees from providing information to the PELRB that is relevant and necessary for the PELRB's statutory duties. This is an unacceptable affront to the authority and role the Legislature has assigned the PELRB.

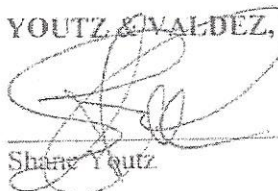
25. Respondent's violations and threat to terminate Andy Gilmore's employment for providing relevant and necessary information for the representation hearing create an imminent and urgent threat of harm. Accordingly, Petitioners ask for injunctive relief under NMSA 1978, § 10-7E-23(A) (2003), and request that the Executive Director, in response to the imminent and urgent threat to Mr. Gilmore's livelihood, enjoin the County from going through with the proposed termination announced on March 8, 2016, while this Complaint is processed.

**WHEREFORE**, Complainants respectfully request that the PELRB: (1) enjoin Respondent from following through with the threatened termination of Andrew Gilmore's employment announced on March 8, 2016; (2) declare that Respondent has violated the foregoing provisions of the PEBA; (3) order Respondent to cease and desist for these violations of PEBA; (4) order Respondent to make Andrew Gilmore whole; (5) order Respondent to post and email a notice appropriate under the circumstances; and (6) any other relief the PELRB finds just and equitable under the circumstances.

Dated: March 8, 2016

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.

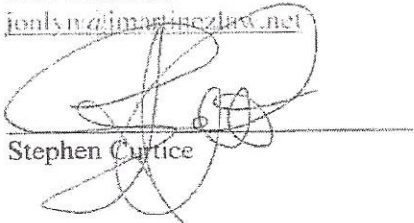
  
Shane Youtz

Stephen Curtice  
James Montalbano  
900 Gold Avenue S.W.  
Albuquerque, NM 87102  
(505) 244-1200 – Telephone  
*Counsel for Complainants*

I HEREBY CERTIFY that a true  
and correct copy of the foregoing  
pleading was served on all parties  
to this action pursuant to 11.21.2.9  
NMAC this 8<sup>th</sup> day of March, 2016.

Charles "Tink" Jackson  
County Manager  
Courthouse  
700 S. Silver Ave.,  
P.O. Box 551  
Deming, NM 88030  
[charles\\_jackson@lunacountynm.us](mailto:charles_jackson@lunacountynm.us)

Jonlyn M. Martinez  
Law Office of Jonlyn M. Martinez, LLC  
P.O. Box 1805  
[jonlyn@jmartinezlaw.net](mailto:jonlyn@jmartinezlaw.net)



Stephen Curtice

## Jonlyn Martinez

---

**From:** Griego, Tom, PELRB <Tom.Griego@state.nm.us>  
**Sent:** Monday, March 21, 2016 2:53 PM  
**To:** Jonlyn Martinez  
**Cc:** Allison Keelin; Stephen Curtice; shane@youtzvaldez.com; Abousleman, Matthew, PELRB  
**Subject:** RE: AFSCME Council 18 v. Luna County

Dear parties:

PELRB 105-16 is a new filing and it would not have been proper for me to assume that because you represented the County in an earlier proceeding that you represent them in this one as well. The request for a prehearing injunction is of an emergent nature that must be heard immediately. The earliest convenient time for the Board to do that is at its next meeting, this Friday. If it is not heard then, it cannot be heard until next month. Please note that pursuant to our rules I have requested that the County abate the disciplinary proceeding pending resolution of the PPC, which would render the injunction unnecessary in my opinion, but so far, it has not agreed to do so. You may appear via telephone, if that will help; otherwise I can only suggest that you formally move the Board to postpone hearing the request for injunction and I will present your motion at the March 25 Board meeting. Please let me know how you prefer to proceed.

Thomas J. Griego  
Executive Director, PELRB

---

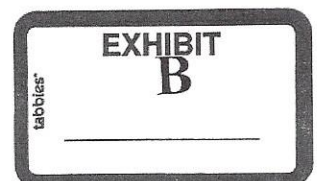
**From:** Jonlyn Martinez [mailto:jonlyn@jmartinezlaw.net]  
**Sent:** Monday, March 21, 2016 2:35 PM  
**To:** Griego, Tom, PELRB  
**Cc:** Allison Keelin; Stephen Curtice; shane@youtzvaldez.com; Abousleman, Matthew, PELRB  
**Subject:** RE: AFSCME Council 18 v. Luna County

Dear Mr. Griego,

Attached please find the Respondent's Answer to the Petitioner's Prohibited Practice Complaint. Also, I am also in receipt of the attached Notice of Hearing which I just received from my client today. This Notice of Hearing was not provided to me by your office despite the fact that the Complaint was served on my office and I am counsel of record in the underlying proceeding. Please be advised that I am not available on Friday, March 25, 2016, as it is Good Friday. Please let me know whether a formal motion to vacate this scheduled hearing is required. Also, please send my office all Notices from your agency related to Luna County. Also, please be advised that your Report and Recommended Decision was sent to my paralegal and was not sent to me on Friday, March 18, 2016. This is my email address. Please have your agency use this address for correspondence with me in this matter.

Thank you

**Jonlyn M. Martinez**  
Law Office of Jonlyn M. Martinez, LLC  
P.O. Box 1805  
Albuquerque, NM 87103-1805  
(505) 247-9488  
(505) 247-9566 (fax)



**This document and any documents attached hereto may contain privileged information. If you have received this transmission in error, please call the telephone number above and either destroy these documents or return them by U.S. mail to the mailing address above.**

## TRANSACTION REPORT

THU/31/MAR/2016 02:50 PM

FAX (TX)

| # | DATE   | START T. | RECEIVER | COM. TIME | PAGE | TYPE/NOTE | FILE     |
|---|--------|----------|----------|-----------|------|-----------|----------|
| 1 | 31/MAR | 02:28PM  | 8318820  | 0:17:46   | 28   | OK        | ECM 1221 |

## LAW OFFICE OF JONLYN M. MARTINEZ, LLC

Attorney &amp; Counselor at Law

JONLYN M. MARTINEZ

Telephone  
(505) 247-9488Fax  
(505) 247-9566Mailing Address  
P.O. Box 1605  
Albuquerque, NM 87103Street Address  
105 14<sup>th</sup> Street SW  
Albuquerque, NM 87102

## FACSIMILE COVER SHEET

DATE: March 31, 2016 CLIENT/CASE NO: 06-024

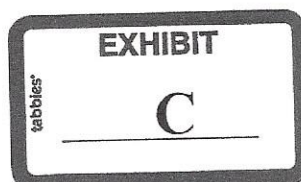
TO: Thomas Griego FAX: (505) 831-8820  
Executive Director  
NMPELRB

FROM: Lauren Barteau, Legal Assistant PH: (505) 247-9488  
for Jonlyn M. Martinez, Esq. FAX: (505) 247-9566

RE: AFSCME Council 18 and Luna County; PELRB 105-16

PAGES (including cover sheet): 28

MESSAGE: Enclosed for filing, please find Luna County's Motion To  
Disqualify Thomas Griego and Board Chair Duff  
Westbrook. Thank you.



This document and the documents that follow may contain privileged information. If you have received this transmission in error, please call the telephone number above and either destroy these documents





STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SUSANA MARTINEZ  
Governor

Duff Westbrook, Chair  
Roger E. "Bart" Bartosiewicz, Vice-Chair  
John Bledsoe, Member

2929 Coors Blvd. N.W. Suite 303  
Albuquerque, NM 87120  
(505) 831-5422  
(505) 831-8820 (Fax)

THOMAS J. GRIEGO  
Executive Director

March 31, 2016

Youtz & Valdez, P.C.  
900 Gold Avenue S.W.  
Albuquerque, New Mexico 87102  
Attn: James Montalbano

Law Office of Jonlyn M. Martinez, LLC  
P.O. Box 1805  
Albuquerque, New Mexico 87102  
Attn: Jonlyn Martinez

Re: *AFSCME, Council 18 and Andrew Gilmore v. Luna County, PELRB 105-16 --  
Determination by Default*

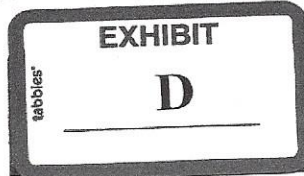
Dear counsel:

I received an e-mail from Counsel for the County on March 21, 2016 regarding this case. Attached to the e-mail is a purported Answer to the PPC. I have not received a copy of that Answer in any other form, such as telefaxed transmission, mail or hand-delivery and no request for an extension of time to file the Answer has been filed.

An electronic transmission, such as described does not constitute a proper filing under our rules. NMAC 11.21.1.10 provides in pertinent part:

"To file a document with the director or the board, the document may be either hand-delivered to the board's office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government interagency mail. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director. A document will be deemed filed when it is received by the director. Documents sent to the board via facsimile ("fax") transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent."

Accordingly, in order to comply with the 15-workdays response period, found in NMAC 11.21.3.10 and referenced in my initial letter to the parties, I must have received a properly filed Answer no later than March 28, 2016. Because no Answer has been filed in accordance with our rules I am compelled by NMAC 11.21.3.11 to issue this determination of violation by default, based upon the



Letter re: Answer in PELRB 105-16

March 31, 2016

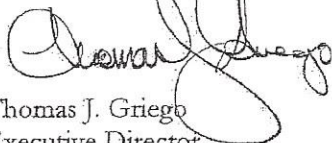
Page 2

allegations of the complaint and evidence submitted in support of the complaint.

This Default Determination will be placed on the Agenda for review by the Board at its next regularly scheduled meeting at 9:30 a.m. on Tuesday May 5, 2016.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

A handwritten signature in black ink, appearing to read "Thomas J. Griego". The signature is written in a cursive style with a large, looping flourish at the end.

Thomas J. Griego  
Executive Director

**Jonlyn Martinez**

---

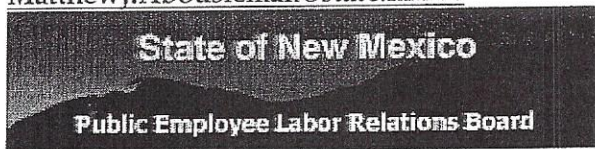
**From:** Abousleman, Matthew, PELRB <MatthewJ.Abousleman@state.nm.us>  
**Sent:** Thursday, March 31, 2016 3:57 PM  
**To:** Jonlyn Martinez; james@youtzvaldez.com  
**Cc:** Allison Keelin (allison@youtzvaldez.com)  
**Subject:** PELRB 105-16  
**Attachments:** 105-16 Ltr re Default.pdf

Dear counsel,

Attached you will find a copy of correspondence which was mailed today.

Matt

Matthew J. Abousleman  
Operations Manager  
New Mexico Public Employee  
Labor Relations Board  
2929 Coors NW, Ste. 303  
Albuquerque, NM 87120  
505.831.5422  
505.831.8820 (Fax)  
[MatthewJ.Abousleman@state.nm.us](mailto:MatthewJ.Abousleman@state.nm.us)



# LAW OFFICE OF JONLYN M. MARTINEZ, LLC

Attorney & Counselor at Law

JONLYN M. MARTINEZ

Telephone  
(505) 247-9488

Email  
jonlyn@jmartinezlaw.net

Mailing Address  
P.O. Box 1805  
Albuquerque, NM 87103

Street Address  
105 14<sup>th</sup> Street SW  
Albuquerque, NM 87102

March 31, 2016

Via Electronic Mail & U.S. Mail

Thomas J. Griego  
Executive Director  
NM Public Employee Relations Board  
2929 Coors Blvd. NW, Suite #303  
Albuquerque, NM 87120

Re: *AFSCME, Council 18 and Luna County*  
PELRB 105-16

Dear Director Griego:

As you are aware, you did not mail a conformed copy of the Complainants' PPC in this matter to Luna County until March 9, 2016. You intentionally refused to mail it to my office despite the fact that I am listed as the Respondent's Representative in the PPC. Luna County did not receive the PPC until March 10, 2016, and I did not receive a conformed copy of it until March 21, 2016.

The PELRB Rules provide:

1.21.1.8 COMPUTATION OF TIME: When these rules state a specific number of days in which some action must or may be taken after a given event, the date of the given event is not counted in computing the time, and the last day of the period is deemed to end at close of business on that day. Saturday's, Sundays and state recognized legal holidays observed in New Mexico shall not be counted when computing the time. When the last day of the period falls on a Saturday, Sunday or legal holiday observed in New Mexico, then the last day for taking the action shall be the following business day.  
[11.21.1.8 NMAC - N, 3-15-04]

11.21.3.10 FILING OF ANSWER: A. Within fifteen (15) days after service of a complaint, the respondent shall file with the director and serve upon the complainant its answer admitting, denying or explaining each allegation of the complaint. For purposes of this rule, the term "allegation" shall mean any statement of fact or assertion of law contained in a complaint. No particular form is required either to state allegations or to answer them. B. If a respondent in its answer admits or fails to deny an allegation of the complaint, the director, hearing examiner or board may find the allegation to be true.

EXHIBIT

E

Law Office of Jonlyn M. Martinez, LLC

As set forth above, the PPC was served on Luna County on March 10, 2016. Applying the Computation of Time Rule to this matter reveals that fifteen (days) after service is March 31, 2016. The Answer to the PPC was hand-delivered to your office on March 31, 2016. Therefore, it is timely. Further, in light of your decision to exclude my office from service of the PPC, the date of service of the PPC on the Respondent's Representative (as listed in the Complaint) was actually March 21, 2016, making the hand-delivery of the Answer to the PPC Complaint seven (7) days early.

Please advise as to whether you will withdraw the determination of default or whether a formal motion in this regard will be required.

Thank you for your attention to this matter.

Very truly yours,

LAW OFFICE OF JONLYN M. MARTINEZ, LLC

By: /s/ Jonlyn M. Martinez  
JONLYN M. MARTINEZ

cc: Shane Youtz (via email)  
Stephen Curtice (via email)