

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.

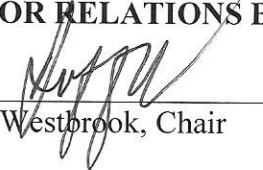
**ORDER DENYING MOTION TO DISQUALIFY EXECUTIVE DIRECTOR**

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 Disqualify Thomas Griego* filed on March 31, 2016, and *Amended Motion to Disqualify Thomas Griego*, filed on April 5, 2016 (collectively “Motions”). Prior to the meeting, Executive Director and Board Hearing Officer, Thomas Griego, submitted a written response to the Motions. The Board, having reviewed the pleadings and being sufficiently advised, finds there is no evidence requiring Director Griego’s disqualification under 11.21.1.13 NMAC. Thus, by a unanimous 3–0 vote in the affirmative, the Board finds that the Motion is not well taken and should be denied.

**IT IS HEREBY ORDERED** that Luna County’s Motions are **DENIED**.

Date: 5-13-16

PUBLIC EMPLOYEE  
LABOR RELATIONS BOARD

  
\_\_\_\_\_  
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

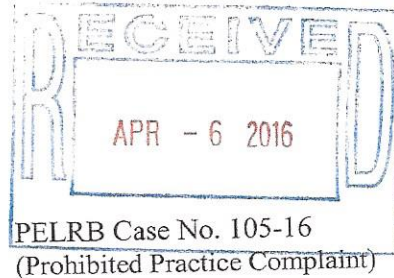
ANDREW GILMORE,

Complainants.

v.

LUNA COUNTY

Respondent.



**AMENDED MOTION TO DISQUALIFY THOMAS GRIEGO**

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, the Notice scheduling the presentation of the Complainant's Request for Pre-Adjudication Injunctive Relief was sent to the Luna County Manager and the representative for the Complainant.
2. The Notice was not sent to counsel for the Respondent, despite the fact that the Complainant's Prohibited Practice Complaint lists the undersigned as counsel for Respondent in the body of the Complaint.
3. By way of explanation for the failure to provide the Notice to counsel for the Respondent the Executive Director stated:

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.

*See email from Executive Director dated March 21, 2016*, attached hereto as Exhibit A. This contention is interesting in that it required the Executive Director to elect not to send the undersigned the appropriate notice despite the fact that the Complaint at issue specifically listed her as counsel for the Respondent.

4. Counsel for the Respondent did not learn of the hearing in this matter scheduled for March 25, 2016, until March 21, 2016. *See email to Executive Director dated March 21, 2016*, attached hereto as Exhibit A.

5. On March 21, 2016, counsel for the Respondent informed the Executive Director that she could not attend the scheduled hearing because March 25, 2016, is in fact Good Friday. *Id.* Counsel for the Respondent asked whether a formal motion to vacate the proceeding would be required. *Id.* In addition, the Luna County Commission closed Luna County for business on March 25, 2016.

6. In response to this correspondence, the Executive Director stated the following:

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.

*Id.*

7. Based on this statement, Mr. Griego sought to force the County of Luna to take his suggested course of conduct due to its counsel's unavailability.

8. Next, counsel for the Respondent requested a religious accommodation with regard to the hearing scheduled for March 25, 2016. *Id.*

9. In a response sent by email on March 23, 2016, at 4:16, Mr. Griego stated as follows:

My request for the County's disciplinary proceedings to be held in abeyance has nothing to do with your availability or unavailability. That request is made, as stated in my letter of March 10, 2016, pursuant to NMAC 11.21.3.21 and would have been made in any case. Good Friday is not a State or Federal Holiday and as you say you are a practicing Catholic, as am I, you surely know that the appropriate period of time to observe silence at home, for devotional reading and private prayer is between the hours of noon and 3 o'clock in the afternoon. Any personal devotion you may have beyond that is just that – personal devotion for which I do not believe I must make an accommodation. That said, unavailable is unavailable and I do not wish to prejudice your client's position by compelling the County to attend a hearing without benefit of counsel since you are so adamant that you will not attend, even by telephone. Accordingly, I will inform the Board at the meeting this Friday of the circumstances and have instead scheduled a Special Board Meeting for the sole purpose of hearing the union's request for pre-adjudication injunction for 9:30 a.m. on Friday, April 1, 2016 so that the matter will not be heard on the 25<sup>th</sup> as you requested. Please understand that I am scheduling this Special Board meeting on April 1<sup>st</sup> because of your unavailability on March 25<sup>th</sup> regardless of the reason and not because I recognize any obligation to make a religious accommodation.

Thomas J. Griego  
Executive Director, PELRB

Thus, Mr. Griego refused the reasonable request for a religious accommodation and provided unsolicited advice on how to practice the Catholic faith. Notably, the website for the New Mexico Public Employee Labor Relations Board indicates that "The Labor Relations board offices will be closed from 12:00 pm - 5:00 pm on Friday, March 25, 2016." Moreover, Mr. Griego referred to his letter of March 10, 2016, correspondence which he knew he failed to provide counsel for the Respondent.

10. Based on the foregoing, Mr. Griego has intentionally failed to provide the

undersigned with relevant notices and correspondence that he sent directly to the Respondent. In addition, Mr. Griego failed to grant a reasonable request for a religious accommodation in violation of the New Mexico Human Rights Act, NMSA 1978, § 28-1-1 et seq. Based on Mr. Griego's conduct and statements, he demonstrated a bias against the undersigned.

11. The original Motion to Disqualify Mr. Griego was filed by facsimile on March 31, 2016, at 2:28 p.m. *See Facsimile Confirmation*, attached hereto as Exhibit B. At both the undersigned and the Respondent as that he be prohibited from participating in any matter concerning the undersigned or the Respondent. Approximately an hour and a half later, Mr. Griego had a letter served on counsel for the undersigned 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 C. 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.

12. In response to this correspondence, counsel for the Respondent stated the following:

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 D. No response to this correspondence has been provided.

#### POINTS AND AUTHORITIES

The United States Supreme Court has interpreted the Establishment Clause to allow, and sometimes to require, the accommodation of religious practices: "This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." *Hobbie v. Unemployment Appeals Comm'n*

*of Fla.*, 480 U.S. 136, 144-45, 107 S. Ct. 1046, 94 L. Ed. 2d 190 (1987). Moreover, "in commanding neutrality the Religious Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice." *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 705, 114 S. Ct. 2481, 129 L. Ed. 2d 546 (1994). Moreover, the Religious Freedom Restoration Act provides that governments should not substantially burden religious exercise without compelling justification. *See* 42 U.S.C. § 2000bb. No showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation," *Sherbert v. Verner*, 374 U.S. 398, 406-07, 83 S. Ct. 1790, 1795 (1963), *quoting Thomas v. Collins*, 323 U.S. 516, 530 (1944). In the present case, the notice of the hearing was sent on March 9, 2016. The hearing was scheduled for March 25, 2016, sixteen days later. The Executive Director argued that the hearing cannot be rescheduled because 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." Waiting sixteen days to conduct the hearing can hardly be considered "immediately." Moreover, the Board's convenience cannot be considered a compelling justification to substantially burden religious exercise. Delaying the hearing a few days and holding it at the next opportunity the Board is available was a reasonable request under the circumstances.

In a similar case, *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 233, 13 A.3d 1227, 1229 (2011), the plaintiff, an Orthodox Jew, sought a continuance or suspension of his trial because a 2-day Jewish holiday fell during the scheduled 10-day trial. *Id.*

The plaintiff's religion barred him and his attorney from conducting business on those two days. *Id.* The trial court denied the plaintiff's motions, and, as a result, the plaintiff and his counsel were absent for two days of the trial. *Id.* The appellate court found that the trial court abused its discretion in denying the plaintiff's requests. *Id.* It was determined that the trial court's articulated rationales failed to reasonably accommodate the plaintiff's right to engage in religious conduct and to meaningfully participate in his trial. *Id.* Instead of granting the request, Mr. Griego rescheduled the hearing for April 1, 2016, and then inappropriately took it upon himself to provide unsolicited advice on how to practice the Catholic faith.

This conduct violates both federal law and the New Mexico Human Rights Act. "Public accommodation" is defined in the NMHRA as "any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private." Section 28-1-2(H). *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 6, 309 P.3d 53, 59. The NMHRA seeks to promote the equal rights of people within certain specified classes by protecting them against discriminatory treatment. *See Juneau v. Intel Corp.*, 2006 NMSC 2, ¶ 14, 139 N.M. 12, 127 P.3d 548 ("The NMHRA protects against discriminatory treatment . . ."). To accomplish this goal, the NMHRA makes it unlawful for "any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap." Section 28-1-7(F). *Id.* In the present case, Mr. Griego failed to provide a reasonable religious accommodation despite the fact that his own office was closing a noon on



Good Friday. In addition, he then provided direction on how the undersigned should practice her faith. Counsel for the Respondent submits that this is yet an additional violation of the New Mexico Human Rights Act. Moreover, when the Respondent filed a Motion to Disqualify Mr. Griego, due to his inappropriate behavior, he immediately retaliated against the Respondent and its counsel by entering a default judgment. To establish a prima facie case of retaliation, the complaining party must show that (1) she engaged in protected activity, (2) she was subject to adverse action subsequent to, or contemporaneous with the protected activity, and (3) a causal connection exists between the protected activity and the adverse action. *See Juneau v. Intel Corp.*, 2006-NMSC-002, ¶ 11, 139 N.M. 12, 16, 127 P.3d 548, 552.

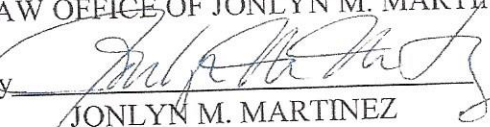
#### CONCLUSION

Based on the foregoing, the Respondent requests that Mr. Griego be disqualified from participating in this matter and any matters in which the Respondent is a party. In addition, Mr. Griego should be disqualified from presiding over any matter involving the undersigned.

Respectfully submitted,

LAW OFFICE OF JONLYN M. MARTINEZ, LLC

By

  
JONLYN M. MARTINEZ

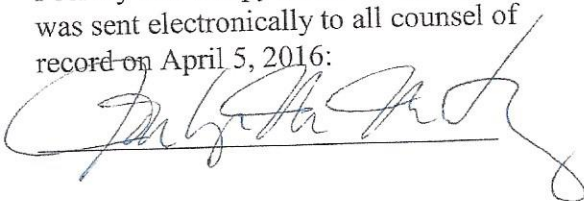
Attorneys for Respondent

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:



**Jonlyn Martinez**

**From:** Griego, Tom, PELRB <Tom.Griego@state.nm.us>  
**Sent:** Tuesday, March 22, 2016 4:33 PM  
**To:** Jonlyn Martinez  
**Cc:** Allison Keelin; Stephen Curtice; shane@youtzvaldez.com; Abousleman, Matthew, PELRB  
**Subject:** RE: AFSCME Council 18 v. Luna County

Ms. Martinez:

My request for the County's disciplinary proceedings to be held in abeyance has nothing to do with your availability or unavailability. That request is made, as stated in my letter of March 10, 2016, pursuant to NMAC 11.21.3.21 and would have been made in any case. Good Friday is not a State or Federal Holiday and as you say you are a practicing Catholic, as am I, you surely know that the appropriate period of time to observe silence at home, for devotional reading and private prayer is between the hours of noon and 3 o'clock in the afternoon. Any personal devotion you may have beyond that is just that – personal devotion for which I do not believe I must make an accommodation. That said, unavailable is unavailable and I do not wish to prejudice your client's position by compelling the County to attend a hearing without benefit of counsel since you are so adamant that you will not attend, even by telephone. Accordingly, I will inform the Board at the meeting this Friday of the circumstances and have instead scheduled a Special Board Meeting for the sole purpose of hearing the union's request for pre- adjudication injunction for 9:30 a.m. on Friday, April 1, 2016 so that the matter will not be heard on the 25<sup>th</sup> as you requested. Please understand that I am scheduling this Special Board meeting on April 1<sup>st</sup> because of your unavailability on March 25<sup>th</sup> regardless of the reason and not because I recognize any obligation to make a religious accommodation.

Thomas J. Griego  
Executive Director, PELRB

**From:** Jonlyn Martinez [mailto:jonlyn@jmartinezlaw.net]  
**Sent:** Monday, March 21, 2016 6:05 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,

I am a practicing Catholic and I am asking for a religious accommodation. Your statement that you will allow me to participate by telephone is not an adequate accommodation. In addition, it is inappropriate to request that my client take a particular course of conduct due to my unavailability in this regard. If you believe a formal motion is necessary, please let me know.

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.

**From:** Griego, Tom, PELRB [<mailto:Tom.Griego@state.nm.us>]  
**Sent:** Monday, March 21, 2016 2:53 PM  
**To:** Jonlyn Martinez <[jonlyn@jmartinezlawn.net](mailto:jonlyn@jmartinezlawn.net)>  
**Cc:** Allison Keelin <[allison@youtzvaldez.com](mailto:allison@youtzvaldez.com)>; Stephen Curtice <[stephen@youtzvaldez.com](mailto:stephen@youtzvaldez.com)>; [shane@youtzvaldez.com](mailto:shane@youtzvaldez.com);  
Abousleman, Matthew, PELRB <[MatthewJ.Abousleman@state.nm.us](mailto:MatthewJ.Abousleman@state.nm.us)>  
**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

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**From:** Jonlyn Martinez [<mailto:jonlyn@jmartinezlawn.net>]  
**Sent:** Monday, March 21, 2016 2:35 PM  
**To:** Griego, Tom, PELRB  
**Cc:** Allison Keelin; Stephen Curtice; [shane@youtzvaldez.com](mailto: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)

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## TRANSACTION REPORT

THU/31/MAR/2016 02:50 PM

FAX (TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
01	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 1805  
Albuquerque, NM 87108Street Address  
105 14<sup>th</sup> Street SW  
Albuquerque, NM 87102

## FACSIMILE COVER SHEET

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

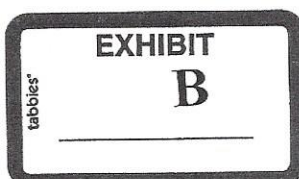
TO: Thomas Griego FAX: (505) 831-8820  
Executive Director  
NMPELRB

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



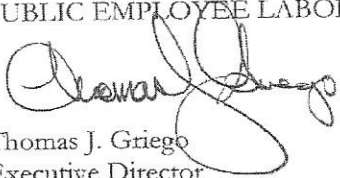
Letter re: Answer in PELRB 105-16  
March 31, 2016  
Page 2

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", written over the printed name and title.

Thomas J. Griego  
Executive Director

**Jonlyn Martinez**

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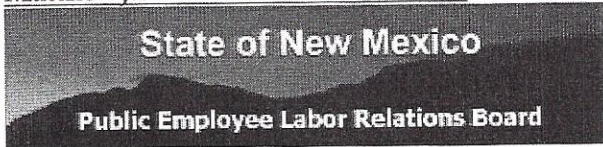
**From:** Abousleman, Matthew, PELRB <MatthewJ.Abousleman@state.nm.us>  
**Sent:** Thursday, March 31, 2016 3:57 PM  
**To:** Jonlyn Martinez; james@youtzvaldez.com  
**Cc:** Allison Keelin (allison@youtzvaldez.com)  
**Subject:** PELRB 105-16  
**Attachments:** 105-16 Ltr re Default.pdf

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.





**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)