



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
Minutes of Board Meeting held Wednesday, January 6, 2021
at 9:00 a.m. via web conference. Marianne Bowers, presiding.

1. **Call to Order.** Chair Marianne Bowers called the meeting to order at 9:10 a.m. Members Mark Myers and Nan Nash were also present, so that a quorum was established.
2. **Approval of Agenda.** Member Nash moved to approve the agenda. Vice-Chair Myers seconded the motion, and the agenda was unanimously approved upon a roll call vote.
3. **Approval of December 1, 2020 Meeting Minutes.** The Chair invited comments on the December 1, 2020 meeting minutes. Dina Holcomb identified a typo where the phrase “perpetual bargaining” should be “virtual bargaining”. Ms. Holcomb also suggested inserting a reference to the case number (106-20) to that portion of the minutes after the Board returned to open session so that it is clear in which case their directives relate. The Board agreed that these changes were warranted. The Executive Director stated that he also wished to capitalize the first letter of each word (excepting prepositions) in the heading to Item 7. Chair Bowers moved to approve the minutes of the December 1, 2020 meeting with the suggested changes; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote.
4. **Approval of December 23, 2020 Special Meeting Minutes.** There were no comments from those attending. Member Nash moved to approve the minutes; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote.
5. **Public Comments.** The Chair invited the public to comment on matters that were not agenda items. Dina Holcomb requested the Board post the documents provided to the Board members prior to the meeting on the PELRB website. The Executive Director stated that his preferred practice is to provide materials to interested parties upon request but would certainly do whatever the Board directs and that any directive should consider confidentiality issues. Greg Maxie stated that he had never had any issues obtaining any documents he wanted and that PELRB staff has always been very responsive to his requests. Vice-Chair Myers stated he agreed with the Director that providing documents on request is sufficient. Member Nash stated she would like more time to consider the matter, but that in any case there should be a “line item” regarding confidentiality. Chair Bowers stated that the Board may take up the matter again in a future meeting. She then invited further public comments; there were none.
6. **Draft Position Statement re: Virtual Bargaining.** The Chair read the proposed statement into the record:

“The PELRB recognizes that the duty to “meet and confer” in good faith under § 17(A) of the PEBA may be violated when a party unreasonably and without justification insists upon bargaining by mail or email, or that proposals be submitted in writing despite the other party’s request for personal meetings. The “traditional” method of bargaining with teams of negotiators from employers and exclusive representatives meeting and conferring face-to-face may not be practical during a public health crisis where the parties are subject to public health directives that do

not allow for large gatherings. When traditional methods of negotiation are not feasible, parties may agree to alternatives that can facilitate negotiations while maintaining compliance with public health directives and the confidentiality of the process. The PELRB encourages parties to negotiations to keep any operative public health directives in mind when drafting ground rules, and to utilize alternative methods of negotiation when necessary to comply with public health directives. Whether any specific conduct by a party regarding its method of bargaining constitutes a breach of the duty to bargain in good faith will be considered on a case-by-case basis.”

The Chair then invited comment on the proposed statement from the Board. They had none. Chair Bowers moved to approve the statement and direct staff to post it on the PELRB website and in the Practice Manual. After the motion was seconded by the Vice-Chair, the Chair invited discussion from those present.

The Executive Director stated that Katie Thwait's had just requested a copy of the statement and she might have some comments. The Chair then asked Ms. Thwait's if she wished to comment and she stated that she had just received a copy from the administrative assistant via email and requested a few minutes to review the statement. The Executive Director then informed the Board that Ms. Holcomb had requested a copy earlier and that she might have comments. After being invited to speak by the Chair, Ms. Holcomb suggested not using “meet and confer” in the first sentence because that is a term of art in labor relations; a better word choice would be “duty to bargain” as that is the verbiage used in the PEBA. The Executive Director stated he would have no objection to changing “meet and confer” to “bargain” but explained that because the issue concerns face-to-face bargaining his choice of the phrase “meet and confer” was intended to express that notion. Stephen Curtice stated that he was inclined to agree with Ms. Holcomb that “meet and confer” might be misconstrued because parties sometimes see the duty to “meet and confer” as a different obligation than the duty to bargain in good faith contained in the PEBA. The Executive Director suggested that changing “meet and confer” to simply “meet” might alleviate the concerns raised by Ms. Holcomb and Mr. Curtice while still implicating face-to-face meetings.

The Chair then asked the other members of the Board for comment. Member Nash stated that she agreed that “meet and confer” is a term of art and that the substitution of “meet” was an acceptable alternative. Vice-Chair Myers stated that he had no objection to substituting “meet” for “meet and confer” because the statement elaborates on what that means and states that any alleged violations will be handled on a case-by-case basis.

The Chair then asked if there were any further comments from those in attendance. The Executive Director stated that he would like to hear from Ms. Holcomb and Mr. Curtice their thoughts on the substitution of “meet” for “meet and confer” and whether or not that would alleviate their concerns. Before soliciting their opinions, the Chair recognized Mr. Maxie, who raised his hand to speak. Mr. Maxie stated that he agreed that “meet” was a better word choice because parties sometimes need to meet for reasons other than bargaining, such as mediation, with which his union has had difficulty in the recent past. The Chair then asked Mr. Curtice his thoughts on substituting “meet.” He stated that it certainly addresses the concern over the use of a term of art and also the main issue of how to meet when meeting is problematic due to public

health concerns. The Chair asked for Ms. Holcomb's thoughts on the matter, to which she replied that the substitution of "meet" was acceptable to her.

The Chair returned to Ms. Thwait's and she stated that she had no objection to substituting "meet" for "meet and confer" but was concerned that the first sentence might be construed as meaning any request for written proposals violated the PEBA. A discussion ensued.

The Chair then called on Mr. Curtice who suggested adding "only" to the sentence before "in writing" would alleviate Ms. Thwait's concerns. Director Griego was amenable to that revision. Ms. Holcomb suggested removing the phrase "or that proposals be submitted in writing" entirely as that idea is already contained in the phrase "bargaining by mail or email." The Executive Director expressed his approval of Ms. Holcomb's suggestion. Ms. Thwait's also stated her approval of the suggestion. The Chair then moved to modify her previous motion to include the change from "meet and confer" to "meet" and the deletion of "or that proposals be submitted in writing" in the first sentence of the statement. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

7. **Review of Forms 19A and 19B.** Chair Bowers stated her opinion that the forms were simple aids for the submissions required of local boards and that there was no need for discussion. After asking for their opinions Vice-Chair Myers agreed with the Chair, as did member Nash. Ms. Holcomb raised her hand to speak. After being recognized by the Chair, Ms. Holcomb stated that she felt that in section 3 of the form the subject of the sentence should be the local board, not the employer and that the reference to the should be to Parts 1-3, not Parts 1-4 as Part 4 had been repealed. The Executive Director stated he felt these changes were acceptable to PELRB staff. Chair Bowers moved to approve the forms with the suggested changes; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote.
8. **Results of Representation Election In Re: *NMPRLEA and NMEMNRD*; PELRB 301-20.** William Brancard presented NMEMNRD's two objections, one of which he characterized as mathematical, the other as statutory. After Mr. Brancard's presentation he requested that the Board deny certification of the election results. Adrian Terry, counsel for the union, responded to the objections and encouraged the Board to certify the union as exclusive representative. After obtaining the agreement of the other Board members that a closed session was unnecessary in this case, Chair Bowers moved to affirm the results of the election and certify New Mexico Park Ranger's Law Enforcement Association as the exclusive representative for the unit described in the Notice of Election and Consent Election Agreement. Member Nash seconded the motion and the Chair invited discussion from the other members of the Board. The Executive Director noted for the record that the Board had also received his Report on the Objections, summarized that report and asked that the Board take his report into consideration during their deliberations. Vice-Chair Myers and member Nash stated they had no further comment on the case. The Motion was then put to a roll call vote and passed unanimously.
9. **Hearing Officer's Reports and Recommended Decisions.**
 - a. ***AFSCME v. Santa Fe*; PELRB 106-20 (Motion to Disqualify Board).** Chair Bowers invited Christopher Ryan, counsel for the City, to present his arguments in support of his Motion to Disqualify Board. After concluding his argument, the Chair invited Stephen Curtice, counsel for AFSCME, to respond. After Mr. Curtice's argument, Mr.

Ryan confirmed in response to Chair Bowers question, that he told the Board at the December 1 meeting of the PELRB in relation to this case that he was resting on his written brief as submitted. Chair Bowers announced that she did not believe a closed session was necessary for deliberation and the other Board members agreed. The Chair Stated that she did not believe the motion had merit, that she is not biased in this case, that she does not believe that the City's due process rights were violated, and that she was inclined to deny the motion. She then asked the other members of the Board for their thoughts on the motion. Vice-Chair Myers stated he agreed with the Chair and that he held no bias toward either of the parties. Member Nash stated she did not believe the motion should be granted. Had Mr. Ryan requested more time at the December meeting, the Board would have considered his request. Member Nash concluded her comments by stating that in regard to bias or prejudice, this motion was similar to a motion to reconsider, which she had experience with as a trial judge, and that she did not see any bias or prejudice in this case. The Chair then moved to deny the motion. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

- b. ***AFSCME v. Santa Fe*; PELRB 106-20 (Consideration of additional oral argument)**. After introducing the matter, the Chair invited discussion among the Board about whether to hear now oral argument from Mr. Ryan not made at the December 1, 2020 meeting on requested Board review of the Hearing Officer's Report and Recommended Decision in this case. Vice-Chair Myers said that he was initially inclined to hear the City's oral argument, based on his belief that the parties had agreed that doing so would cure any possible due process concerns arising out of whether Mr. Ryan had adequate notice that this case was being heard on December 1, 2021. After learning from Mr. Ryan's argument before the Board today that no such agreement had been reached, he did not want to jeopardize the Board's previous actions and was no longer inclined to allow argument. Member Nash asked Mr. Curtice if his client objects to the Board hearing the City's Oral Argument. Mr. Curtice stated that he did not want any "procedural hiccups" to affect his client's ability to enforce any order the Board might issue so he had no objection to the City presenting oral argument. Ms. Nash stated that she agreed with Mr. Curtice and was inclined to allow Mr. Ryan to present his argument. The Chair stated that she also did not wish to jeopardize any future decisions in the case, and in light of the union's not objecting was inclined to allow the oral argument. Vice-Chair Myers agreed after confirming with Mr. Ryan that the parties had waived the requirement that the Board act within 60-days of the issuance of the Hearing Officer's Report. Mr. Ryan then delivered his oral argument. After a brief discussion, at 10:40 a.m. the Chair moved to go into closed executive session pursuant to NMSA § 10-15-1(H)(3) to deliberate the matter; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote.

At 10:58 a.m. Chair Bowers moved to return to open session and stated that pursuant to NMSA § 10-15-1(I)(1) and § 10-15-1(J) the only matter discussed in the closed session was PELRB 106-20; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote. The Chair asserted that the Board is proceeding according to a waiver of the 60-day time limit in which the Board must issue its decision and asked Mr. Ryan if the City would agree to try and work out the amount of damages with the union, to which Mr. Ryan replied that the City would. The Chair then reasserted her motion from the December meeting, modify the Hearing Officer's Report and Recommended Decision to find that the City's failure to provide the length of Notice called for in the parties' CBA constituted a prohibited labor practice and to find sufficient evidence existed to calculate the relief requested by the Complainant and to direct the parties to confer in an attempt to reach agreement on the amount of damages to be paid and remanded that calculation to the Hearing Officer in the event the parties were unable to agree. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

- c. **AFSCME and City of Las Vegas; PELRB 305-20.** The Executive Director explained that staff corrected errors in the Hearing Officer's citations to the record as directed by the Board at the December 1, 2020 meeting. He informed the Board that counsel for both parties were present should they wish to hear from them. Both counsel, Ms. Holcomb for the employer, and Mr. Curtice for the union, stated that they would rely on the arguments presented at the previous meeting. Vice-Chair Myers moved to affirm and adopt the Hearing Officer's Report and Recommended decision. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- d. **PFUSE Local 4285 v. Peñasco ISD; PELRB 108-20.** After introducing the matter, the Chair invited Ms. Holcomb, counsel for the employer, to present her argument. At the close of her argument Ms. Holcomb stated that some representatives of the employer attending the meeting wanted to comment on the matter during the public comment period but did not because the Board limited public comment to matters not otherwise on the agenda and expressed concerns for their first amendment rights. Mr. Curtice, counsel for the union, objected to the Board considering any evidence after the close of the hearing on the merits including any unsworn testimony not presented to the Hearing Officer's for his Report. The Chair then asked the opinion of the Board's counsel, Lori Chavez. Ms. Chavez stated that Public Comments are restricted to comments that the public wants to bring to the Board's attention that are not agenda items, unless that is the Board's preference; she also stated that in a case such as this where the Board is deliberating a controversy, such commentary would be testimony and they would not want to receive testimony in a case through the Public Comments. Ms. Bowers said that she was not inclined to allow any comments from the public about this case unless the other Board members were differently inclined. Both Mr. Myers and Ms. Nash stated that they did not wish to hear public comment on this case. The Chair then invited Mr. Curtice to present his argument. After hearing Mr. Curtice's argument and allowing Ms. Holcomb to reply, the Chair moved to go into closed executive session pursuant to NMSA § 10-15-1(H)(3) to deliberate the matter; Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote at 11:34 a.m.

At 11:43 a.m. Chair Bowers moved to return to open session and stated that pursuant to NMSA § 10-15-1(I)(1) and § 10-15-1(J) the only matter discussed in the closed session was PELRB 108-20; member Nash seconded the motion and the motion carried unanimously by roll call vote. The Chair invited a motion; Member Nash moved to affirm and adopt the Hearing Officer's Report and Recommended Decision; Chair Bowers seconded the motion and the motion carried unanimously by roll call vote.

10. **Review of Local Ordinances Submitted Under NMSA § 10-7E-10.** The Chair noted that the Board had reviewed the timely submitted applications and received a memorandum with recommendations from PELRB staff. She recognized that there were several attendees present that were interested in these applications but that the Board would not be conducting hearings or accepting comments from the public on the variances at this time. The Executive Director reminded the Board that the matter before them at this hearing was not whether or not the ordinances and resolution submitted meet the requirements set out in the PEBA, except in the cases of local boards that had adopted the model ordinance or resolution without revision and the staff was able to determine with reasonable certainty that the local board had not ceased to exist due to vacancies on the board. All other submissions await scheduling of a hearing before the Director. The Chair then proceeded with the agenda items as follows:

- a. *City of Deming*; PELRB 204-20. Chair Bowers moved to approve the ordinance. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- b. *San Juan College*; PELRB 205-20. Chair Bowers moved to approve the resolution. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- c. *CNM*; PELRB 206-20. Chair Bowers moved to approve the resolution. Member Nash seconded the motion and the motion carried unanimously by roll call vote. (NOTE: approval was withdrawn by subsequent motion, see below).
- d. *Doña Ana County*; PELRB 207-20. Chair Bowers moved to approve the ordinance. Member Nash seconded the motion and the motion carried unanimously by roll call vote. (NOTE: approval was withdrawn by subsequent motion, see below).
- e. *Alamogordo Schools*; PELRB 208-20. Chair Bowers introduced the item, stated that the staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- f. *Silver City*; PELRB 209-20. Chair Bowers introduced the item, stated that the staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- g. *Sandoval County*; PELRB 210-20. Chair Bowers moved to approve the ordinance. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- h. *Roswell*; PELRB 211-20. The Chair introduced the item and stated that the Board staff recommended approval the ordinance if the Board finds the affidavit of the City Clerk sufficiently establishes that this is an existing board making the application. She stated that the Board should err on the side of caution and moved to refer the matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

- i. *Hobbs*; PELRB 212-20. The Chair introduced the item, stated that the Board staff recommended approval of the ordinance and moved to approve the ordinance. The Executive Director informed the Board that the staff recommendation had been changed to a recommendation for a hearing because the City had been approved based on an older template. Member Nash seconded the motion and the motion carried unanimously by roll call vote. The Chair then withdrew her prior motion and moved to refer the matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- j. *Los Alamos County*; PELRB 213-20. Chair Bowers introduced the item, stated that the staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- k. *Albuquerque Public Schools*; PELRB 214-20. Chair Bowers moved to approve the resolution. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- l. *Aztec Schools*; PELRB 215-20. The Chair introduced the item and stated that the Board staff recommended approval of the resolution if the Board finds the affidavit of the Superintendent sufficiently establishes that this is an existing board making the application. She stated that the Board should err on the side of caution and moved to refer the matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- m. *NMSU*; PELRB 216-20. Chair Bowers moved to approve the resolution. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- n. *City of Raton*; PELRB 217-20. The Chair introduced the item and stated that the Board staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- o. *City of Las Cruces*; PELRB 218-20. The Chair introduced the item and stated that the Board staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- p. *Zuni Public Schools*; PELRB 219-20. The Chair introduced the item and stated that the Board had received a recommendation to refer this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.
- q. *City of Albuquerque*; PELRB 220-20. The Chair introduced the item and stated that the Board staff recommended referring this matter to a hearing and moved to refer this matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

Before moving on to the next agenda item, the Board entertained an inquiry from Katie Thwaites, counsel for Los Alamos County, who had questions regarding the Board's concerns about vacancies on local boards and the form of the hearings that are to take place. The Chair asked the Executive Director to address the matter. Mr. Griego stated that he would be conducting status and scheduling conferences prior to the hearings and asked those present representing entities whose applications had been referred to hearings to contact the PELRB office to schedule those conferences. With regard to the vacancies, he stated that only extant local boards can properly file an application and because a local board could cease to exist due to vacancy, it

was a threshold issue that would be considered at a hearing; in the case of Los Alamos County, their ordinance had variations from the model, so the hearing in that case would involve more than an inquiry into vacancies on the board.

The Chair then recognized Ms. Holcomb who stated that she represented both the employer and the local board in several of these cases, but the employer had been contacted directly and asked that all communications with either the employer or the local board be directed to her.

The Executive Director explained to the applicants that the referral to a hearing on variances does not mean that the variances will be denied; it is only an acknowledgment by the Board that there are variations from the model in their proposed ordinances and resolutions and the determination of whether or not the variations are acceptable will be made at the hearing. Member Nash asked the Executive Director if the Board would receive another set of recommendations after the hearings had been conducted to which he replied in the affirmative and stated that the PEBA required the Board to make a determination on each application by February 15, 2021.

The Chair recognized Joel Villarrael, staff representative from AFSCME, stated that he had concerns about the existence of the Doña Ana County local board as he believed the board has had a vacancy since September 2020. The Executive Director stated that staff inquiries had indicated there had been no vacancies. The Chair then moved to withdraw the Board's prior approval of the ordinance in *Doña Ana County*; PELRB 207-20 and refer the matter to a hearing. Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote. The Chair then recognized Efren Cortez, counsel for the City of Hobbs, who asked about obtaining a copy of the revised model ordinance and staff pledged to provide him with a copy immediately following the meeting.

The Chair recognized Katie Thwaites, who informed the Board that links to the Board's rules on both the State's website and lexis were nonfunctional.

The Chair recognized Stephen Curtice who stated that one of his clients expressed concerns regarding the approval of the resolution for CNM, but he had no specific information to impart to the board at this time and inquired whether objections to approval could be raised in the future. The Executive Director expressed doubt that such objections could be raised in the future. Counsel for the Board advised the Board to err on the side of caution if there were questions about the propriety of approving the resolution. The Chair asked Mr. Curtice if he was requesting that the Board withdraw its prior approval and he stated that he was. Member Nash stated that due to the number of cases that had just been referred to hearings, she would require that any issues be formally raised within five days. The Chair asked Mr. Curtice if he could comply with that timeline and responded that he would. The Chair recognized Thomas Manning, counsel for CNM, who stated that he would like to know the source of the objections. The Chair stated that this was not the right time to debate the issue. The Chair then moved to withdraw the Board's prior approval of the ordinance in *CNM*; PELRB 206-20 and refer the matter to a hearing. Member Nash seconded the motion and the motion carried unanimously by roll call vote.

11. Director's Reports

- a. *Appeal to District Court: Goodenough v. CYFD*; PELRB 106-19. Counsel for the

Board stated that the statements of issues and replies thereto had all been filed in D-101-CV-2020-01743 and the case was ready for review by the Court. She was unsure whether the Court would want oral argument, but she expected the review to be completed within the next two months.

- b. ***Audit report.*** The Executive Director stated that they had received permission to publish the audit report from the State Auditor and it would be posted on the PELRB website in the near future.
- c. ***BAR.*** The Executive Director informed the Board that a Budget Adjustment Request had been submitted to move money from one budget category to another to avoid a shortfall.

12. **Set Next Meeting Date and Adjournment.** After a brief discussion the next meeting was set for February 9, 2021 at 9:00 a.m. Vice-Chair Myers moved to adjourn; member Nash seconded the motion and the motion carried unanimously by roll call vote at 12:31 p.m.