# 2014 ANNUAL REPORT

# State of New Mexico

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# Public Employee Labor Relations Board

# NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

# 2013

# ANNUAL REPORT

Albuquerque, New Mexico
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This report was prepared by the staff of the New Mexico Public Employee Labor Relations Board under its authority to "conduct studies on problems pertaining to employee-employer relations" found in NMSA §10-7E-9(2) and to keep the Board members informed regarding the results and trends surrounding its business. By publication of this report the Board seeks to provide a public service disseminating general information concerning its functioning and its role in New Mexico's public employee labor relations.

# STATE OF NEW MEXICO
# PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Board Offices:
2929 Coors Blvd. N.W. Suite 303
Albuquerque, New Mexico 87120
Telephone: (505) 831-5422



http://www.pelrb.state.nm.us

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# INTRODUCTION

When its first statewide public employee collective bargaining law was enacted in 1992, NMSA §§ 10-7D-1 *et seq*. (PEBA I), New Mexico had already experienced decades of public sector collective bargaining, primarily at local levels. After PEBA I expired in 1999 due to its "sunset clause," the Legislature enacted a second and very similar act, NMSA §§ 10-7E-1 *et seq*. (PEBA II), in 2003. In the interim years between the two Acts a number of public employers continued to permit collective bargaining under their own ordinances or resolutions, some of which predated PEBA I and some of which were created and approved under PEBA I.

As a consequence of this history, New Mexico's PEBA contains a number of provisions designed to protect pre-existing local boards, bargaining units, bargaining representatives and collective bargaining agreements (CBAs). The creation of new local boards is also authorized.

This report explains the role of the New Mexico Public Employee Labor Relations Board (PELRB) in enforcing the rights of public employees to organize and collectively bargain or to refrain from forming, joining or assisting a union and in ensuring the right of local public employers to set up new local boards or to continue operating under grandfathered local ordinances. The PELRB also has the responsibility of ensuring that grandfathered local ordinances or those created in that interim period between PEBA I and PEBA II that are substantially changed after January 1, 2003 meet certain enumerated substantive requirements and that they do not except from coverage public employees who are covered under PEBA II. Several cases decided during the reporting year address the parameters of the Board's jurisdiction in light of local public employee collective bargaining ordinances or resolutions and this continues to be a developing area of public policy.

The PELRB encourages the peaceful resolution of public employee collective bargaining disputes thereby promoting its statutory objective of "promoting harmonious and cooperative relationships between public employers and public employees" while simultaneously protecting the public interest by ensuring "the orderly operation and functioning of the state and its political subdivisions".

The Board's adjudicatory function serves a critical purpose of resolving allegations of discrimination or retaliation because of an employee's involvement in union activities or because a public employee signed or filed an affidavit, a petition, a grievance or gave information or testimony in a PELRB sanctioned proceeding. A union that violates the PEBA by discriminating against a public employee with regard to union membership because of race, color, religion, creed, age, sex or national origin or because of the employee's non-membership in, or opposition to the union. A good deal of the issues requiring adjudication involve the obligation of both public employers and unions representing public employees to "bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties" and

questions concerning an employer's interference with or coercion of a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act. *See*, NMSA §§10-7E-17(A)(1), 19(B), (C) and (F) and § 20(C).

**Representation Cases**

Under the PEBA, employees may organize in units represented by labor organizations of their own choosing for the purpose of bargaining collectively with their employers concerning wages, hours and other terms and conditions of employment. One of the Board's major functions is to determine the appropriateness of these collective bargaining units based on guidelines established in PEBA and relevant case law. The Board also determines whether the employees in an appropriate bargaining unit wish to be represented by a particular labor organization. This is principally done through secret ballot elections supervised by the Board. Employee representatives seeking to represent a bargaining unit file a petition with the Board that must be supported by at least 30 percent of the employees in the unit.

Units may be certified without conducting elections if an employer does not question either the appropriateness of the unit or the majority status of a petitioning labor organization and agrees with the petition to certify the proposed unit.

Once certified, a labor organization is the exclusive bargaining agent for the employees in the bargaining unit. As exclusive representative, the union owes a duty to fairly and adequately represent the interests of employees in the bargaining unit members, whether or not they are members of the organizing union. PEBA §15(A).

Just as employees may petition the Board for recognition of a collective bargaining representative, they may also seek decertification of a previously recognized representative. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if 30 percent of the public employees in the bargaining unit file a petition for a decertification election. PEBA , §19. Decertification elections are held in a manner substantially the same as that for certification.

The Board's rules provide a procedure for parties to petition the Board for amendment of certification to reflect changes such as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. (NMAC 11.21.2.35). The Board has also established procedures to clarify the composition of an existing bargaining unit where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented by the same labor organization, (NMAC 11.21.2.37) and for the accretion of unit employees who do not belong to an existing bargaining unit, but who share a community of interest with the employees in the existing unit. (NMAC 11.21.2.38)

The accretion procedure is frequently used to allocate newly created positions to appropriate bargaining units or to merge two or more existing units.

## Approval of Local Boards

Any public employer other than the state that wishes to create a local public employee labor relations board shall file an application for approval of such a local board with the PELRB. *See*, NMSA §10-7E-10. Once created by ordinance, resolution or charter, and once approved by the PELRB, a local board assumes the duties and responsibilities of the PELRB and shall follow all procedures and provisions of the Public Employee Bargaining Act unless otherwise approved by the Board.

The PELRB has prepared and published templates for the creation of resolutions, ordinances or charter amendments (provided at www.state.nm.us/pelrb) designed to ensure compliance with the PEBA's requirements for approval of local boards. A public employer may propose variances from the templates pursuant to section 11.21.5.10 NMAC if the unique facts and circumstances of the relevant local public employer are deemed by the Board to be reasonable and necessary to effectuate the purposes of the Act. (NMAC 11.21.5.9)

Upon receipt of an application for approval seeking variance from the board approved templates, the director holds a status conference with the local public employer or its representative and any identified interested labor organizations, to determine the issues and set a hearing date. Upon setting a rule-making hearing, the director shall issue notice of the hearing and in the event that the board determines that such variance is warranted, and the resolution, ordinance or charter amendment otherwise conforms to the requirements of the Act and these rules, it shall authorize the director to proceed with processing the application. (NMAC 11.21.5.10)

## Prohibited Labor Practice Cases

The Board enforces and protects the rights guaranteed both public employers and employees under PEBA through the investigation and adjudication of charges of prohibited labor practice charges (PPC). The board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies. (NMSA §10-7E-9)

After initial screening and investigation of a PPC but before conducting a hearing on the merits of any claim the Board's Director will facilitate settlement discussions in order to further the Board's preference for peaceful resolution of disputes thereby promoting its statutory objective of "promoting harmonious and cooperative relationships between public employers and public employees". During the reporting period 32 cases (which figure includes some cases filed in the preceding reporting period but resolved in 2013) were settled or successfully mediated prior to conducting a full evidentiary hearing. This

means that approximately 45% of the cases filed with the PELRB are settled without completing a full evidentiary hearing.

If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. The hearing examiner has discretion to examine witnesses, call witnesses, or call for the introduction of documents (NMAC 11.21.3.16) after which the hearing examiner issues his or her report and recommended decision.

A party may obtain Board review of the report and recommended decision by filing a notice of appeal within ten (10) days following service of the hearing officer's report, whereupon the Board will either determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The Board's Decision may adopt, modify, or reverse the hearing examiner's recommendations or take other action it may deem appropriate such as remanding the matter to the hearing examiner for further findings or conclusions. Even when no appeal to the Board is taken the hearing examiner's decision is transmitted to the board which may *pro forma* adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent.
(NMAC 11.21.3.19) The Board is empowered to remedy PPC's through the imposition of appropriate administrative remedies (PEBA §9) which the Board has interpreted to include reinstatement of employees discharged in violation of the Act, with or without back pay, and pre-adjudication injunctive relief. The Board has authority to petition the courts for enforcement of such orders. *See,* NMSA §23.

**Impasse Resolution Cases**

The Board has limited powers related to bargaining impasses between employers and employees under the Act, acting primarily as a monitor and facilitator of mediation and arbitration performed by other entities. Similar but distinct procedures apply to the State and its employees and employees of other political subdivisions of the state or special districts under the PEBA. Although both procedures call for mediation of bargaining impasses under the auspices of the Federal Mediation and Conciliation Service impasse procedures followed by the state and exclusive representatives for state employees are employed within a specific time frame:

(1) If an impasse occurs by October 1, during negotiations required to have begun in June of any particular bargaining year, either party may request mediation services from the Board. The Board does not provide those mediation services itself but a mediator from the Federal Mediation and Conciliation Service is assigned by the board unless the parties agree to another mediator;
(2) The mediator provides services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until November 1, whichever occurs first;
(3) If the impasse continues after November 1, the matter is referred to arbitration under the auspices of the FMCS. The arbitrator's decision shall be limited to a selection of one of

the two parties' complete, last, best offers and is "final and binding" as that term is understood under Section 17 of the PEBA and the Uniform Arbitration Act [44-7A-1 NMSA 1978].

The impasse procedure followed by all other public employers and exclusive representatives is similar in that, if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations and unless the parties agree on a mediator one from the FMCS is assigned. The specific time frame for requesting bargaining, declaring impasse and proceeding to arbitration applicable to the state as an employer are not applicable to public employers other than the state. If impasse continues after a thirty-day mediation period, either party may request arbitration from the FMCS. As under the process followed by the State as an employer the arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offers and is "final and binding" as that term is understood under Section 17 of the PEBA and the Uniform Arbitration Act [44-7A-1 NMSA 1978].

For the most part, the PELRB has successfully completed and closed all filings within 180 days of filing. There is a statistical anomaly resulting from two cases – one pending since 2010 and another since 2011- that account for the Board not being able to claim 100% of its cases within 180 days. The delays in those two cases may be attributed to an unusual and extensive pre-hearing motion practice and the period of time coincides with that during which the Board was without an Executive Director. If one considers only those cases filed in 2013, 100% of the cases were disposed of within 180 days and the average time taken to close a case was 142 days. Table A.

**Rulemaking Activity**

The PELRB is empowered by NMSA §10-7E-9(A) to promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for the designation of appropriate bargaining units, the selection, certification and decertification of exclusive representatives and for the filing of, hearing on and determination of complaints of prohibited practices. The Board has enacted such rules and over time the need to amend those rules may arise either to correct apparent errors or simply to adjust procedures to better serve the Board's mission or to comport with changes in the substantive law.

In early 2013 the Board amended its rule 11.21.2 NMAC, Section 8 dealing with commencement of a representation case to correct grammatical and spelling errors. The amendment became effective on June 14, 2013.

The Board has undertaken further amendment to its rules, opening for discussion and research, amendment of NMAC 11.21.5.12 concerning procedures, timeframes and deadlines for the formation of local boards. (*See*, Board Minutes of March 19, 2013.) Further action on this amendment is being held in abeyance pending further development

of the case law concerning the Board's jurisdiction and until a more comprehensive study of other needed rule changes may be undertaken.

## 2013 Operations Summary

In 2013 there were 37 cases filed; 19 representation cases (including one petition for decertification), 14 Prohibited Labor Practice cases and 3 petitions filed for approval of local boards. The category with the largest number of cases, representation petitions, comprised 51% of the Board's caseload followed by PPC's at 38% of cases filed. The total number of cases filed remained constant compared with the preceding year but a shift in the type of cases being filed is apparent. Representation petitions constituted only 32% of the total in 2012 and PPC's were 51% of the total. (Compare Tables B and C).

Public school districts and the various counties around the State were the largest source of filings in 2013 constituting 32% and 43% respectively of all cases filed. This contrasts with the preceding year in which unions representing employees or individuals employed by the State or its agencies were the source of 38% of all filings in 2012 followed by counties at 19% and school districts at 16%.

As might be expected given the shift away from the State to school districts and counties as the primary source of filings, labor organizations representing school district employees comprise the most frequent petitioners accounting for 25% of the total filings. (8 by NEA-NM and 2 by AFT-NM). AFSCME, Council 18, as it historically has been given the number of employees it represents, remained among the most frequent filers during 2013 having filed 8 petitions followed by the New Mexico Coalition of Public Safety Officers that filed 7 petitions and Teamsters, Local 492 having filed 5 petitions. Table D.

There were 6 elections conducted in 2013, four of which were conducted well within 180 days of the filing. The average time from filing to certification in those cases was 120 days. Of the two elections that took more than 180 days to complete, one was completed in 196 days and the other took 283 days to complete.

Along with the statistical data on cases filed and those concluded within the reporting year summaries of final orders issued by the Board and relevant court decisions are contained in this report. Excluded from the Summary of Board Orders are those of a routine nature such as approval of the Director's certification of bargaining units or approval of consent election agreements, etc. Concluded cases are those that have been closed prior to a hearing and final order together with those closed after the entry of a final Board Order but does not include those pending on appeal or deferred to arbitration and pending. The court case summaries are informational only and should not be relied upon for legal research.

# SUMMARY OF BOARD ORDERS

1-PELRB-2013
AFSCME, COUNCIL 18 v. STATE OF NEW MEXICO (January 23, 2013).

The Union alleged that the State violated the PEBA's §17 by failing to bargain in good faith with regard to a state-wide furlough plan.

The PELRB held that furloughs are an exercise of management's reserved rights under Article 18 Section 1(7) of the parties' CBA, which reserves to management the right to relieve an employee from duties because of lack of work or other legitimate reason, or under Section 1(4) to determine the size and composition of the work force, or under Section 1 (8) to determine methods, means, and personnel by which the Employer's operations are to be conducted. Therefore, the State was not obligated to bargain further over the furloughs as requested pursuant to Article 18 Section 2 (9) of the CBA or otherwise under PEBA.

The Board emphasized that its conclusion should not be read to mean that "effects bargaining" is forever foreclosed, even as to furloughs if the union in a future case can identify an effect not already covered by the CBA, for although both the Management Rights Clause and Article 31 afford the Employer wide latitude to implement a furlough, there is no indication that this flexibility reserved to management to change the workforce automatically included a corresponding right to evade all bargaining over the impact of those changes, or that the parties fully discussed at the time they entered into their CBA the specifics of any such plan.

2-PELRB-2013
AFSCME COUNCIL 18, v. NM CORRECTIONS DEPARTMENT (January 23, 2013).

The Union's petition for recognition of a bargaining unit composed of Corrections Officers employed by the State's Corrections Department included those holding the rank of lieutenant.

Lieutenants employed by the State's Corrections Department were deemed by the PELRB not to be "supervisors" excluded from bargaining as that term is defined by PEBA §4(U).

The evidence supports conclusions that the lieutenants' merely participate in an occasional employee evaluation program, that they perform merely routine, incidental or clerical duties, and that they only occasionally assume supervisory or directory roles. Establishing any one of the foregoing establishes that they are not supervisors as that term is used by PEBA.

This Decision has been appealed to the District Court as *New Mexico Corrections Dep't v. AFSCME and the PELRB,* No. D-202-CV-2013-09120.

4-PELRB-2013
AFSCME, COUNCIL 18 v. NEW MEXICO REGULATION AND LICENSING DEPARTMENT
(February 21, 2013).

The Union put forward a particular person working out of the Village Moriarty to fill a vacant Union Steward slot designated by the parties for Albuquerque, approximately 39 miles away. The Department refused to recognize the appointment and disciplined the employee for acting in the capacity of and claiming the rights of a union steward. Summary Judgment was granted in favor of the Union. The Board held that the appointment of stewards is an internal union business matter and unless modified by contract the union is free to appoint whomever it will to serve in that capacity. The parties' CBA is unambiguous that the union reserved the right to appoint it stewards without reference to any correlation between a steward's assigned workstation and the slots designated in the parties' steward agreement. A quarterly updated list of union officer's names and contact information does not control who may be a steward. Rather, it is an informational compilation of those who are already authorized by the union to act on its behalf.

5-PELRB-2013
AFSCME, COUNCIL 18 v. NEW MEXICO REGULATION AND LICENSING DEPARTMENT
(February 21, 2013)

While the recommended decision by the Hearing Officer in 4-PELRB- 2013 was awaiting review by The PELRB, RLD again disciplined the same union steward for representing an employee in a grievance, imposing a one day suspension without pay. The Department acknowledged receiving the decision finding that it had committed PPC's but justified its disregard of the recommended decision with the argument that because the PELRB had not yet adopted the recommendation it is not binding on RLD.

Summary Judgment was granted in favor of the Union. The PELRB held the RLD's "unreasonable persistence" in punishing union officials who disagree with its construction of the CBA, constitutes "inherently destructive conduct" because it has caused and is likely to continue to cause confusion as to who is the proper steward to contact to administer the CBA in the Albuquerque area.

Both this case and 4-PELRB-2013 were appealed to District Court and a settlement was mediated under the auspices of the Court's settlement facilitation program. The terms of that settlement were not disclosed to the PELRB.

10-PELRB-2013
AFSCME, COUNCIL 18 v. NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT
(May 15, 2013).

In connection with a union official's attendance at a pre-disciplinary meeting on behalf of a union employee CYFD generated an e-mail message in which an opinion was expressed that "CYFD… is not subject to Weingarten under the NLRA. Weingarten and the NLRA do

not apply to the public sector employees." *See, NLRB v. J. Weingarten, Inc*., 420 U.S. 251 (1975). After the Union filed a PPC alleging that the Department interfered in its representational rights, CYFD defended the charge in part by denying that the PELRB had previously determined that *Weingarten* rights apply to employees under the PEBA. By agreement the Board determined the preliminary issue of whether *Weingarten* protections apply to cases before the PELRB before proceeding to the merits of the case. In a split ruling (Vice-Chair Bingham dissenting) the Board adopted the Hearing Officer's Recommended Decision that Weingarten-type rights exist under PEBA based on prior PELRB cases, some of which are binding precedent, including one involving the same Respondent, CYFD.

In those cases the Board found that Section 5 of PEBA provides "basically the same rights" as Section 7 of the NLRA. Any differences in text "appear to be directed to streamlining the language utilized in the NLRA, rather than limiting or narrowing the enunciated rights."

This case was appealed to the District Court by the CYFD as D-202-CV-2013-05070 and is now pending.

17-PELRB-13
SOCORRO CONSOLIDATED SCHOOL DISTRICT v. SOCORRO SCHOOL EMPLOYEES' ASSOCIATION (SSEA), LOCAL 3878 (May 6, 2013)

The Board upheld the Executive Director's summary dismissal of the School District's petition seeking a secret ballot election to determine majority status of the exclusive bargaining representative because it was based solely on a decline in authorized payroll deductions for dues that had been held in an earlier case, *NEA v. Española Valley Schools*, in 34-PELRB-2012, not to constitute numerical proof of lack of majority support. Furthermore, the Board amended its earlier Order in 34-PELRB-2012 to eliminate a unit clarification proceeding as a means for determining majority support.

21-PELRB-13
NEA-NM v. WEST LAS VEGAS SCHOOL DISTRICT (August 19, 2013).

While the parties were at impasse in their contract negotiations, the Union filed a PPC alleging bad faith bargaining and requested a pre-adjudication injunction because of the District's announced intent to unilaterally impose a schedule change not agreed to by the union. In a split decision the Board voted 2-1 (Member Shaffner dissenting) to grant the injunction. In so doing, the PELRB affirmed that it has jurisdiction to grant pre-adjudication injunctive relief based on PEBA's §23(A) and §18(D) (Evergreen provision) requires existing contracts to remain in effect until a successor contract is negotiated. The injunction was appealed to District Court as case No. D-412-CV-2013-00347 and eventually a universal settlement was achieved at the scheduled merits hearing.

27-PELRB-13
CENTRAL CONSOLIDATED SCHOOL ASSOCIATION v. CENTRAL CONSOLIDATED SCHOOL DISTRICT (October 11, 2013).

The Union alleged that the School District violated NMSA §10-7E-19(F), (G) and (H) by refusing to review grievances appealed to the school board pursuant to Step 4 of their negotiated grievance procedure. The union additionally alleged further violations arising out of the District having given three bargaining unit employees additional work and paid them an additional "foreman" stipend without bargaining those changes, by intentionally discriminating against three internal candidates on the basis of union activities or association during their competition with an outside candidate for a vacant Maintenance Foreman position in January of 2013, by the conduct of the District's agent during a Labor-Management Team meeting and by the School Board President having posted negative comments about the union and its leadership on his Facebook page.

The PELRB held that the District committed prohibited labor practices pursuant to PEBA §19 (G) and (H) by refusing to review grievances appealed to the school board pursuant to Step 4 of their negotiated grievance procedure found in Article 14 of the CBA. The PELRB also found that the District violated §17(A)(1) when the District gave three bargaining unit employees additional work and paid them an additional "foreman" stipend without bargaining those changes with the union and therefore committed a prohibited labor practice pursuant to PEBA §19(C), (F) and (G) but found there to be insufficient evidence to support a conclusion that the District's conduct violated PEBA §19(B) prohibiting interference with, restraint or coercion of a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act. Similarly, the Board found there to be insufficient evidence to show that the employer intentionally discriminated against three internal candidates on the basis of union activities or association in connection with their competition with an outside candidate for a vacant Maintenance Foreman position or that the conduct of its agent during a Labor-Management Team meeting and the School Board President's Facebook postings rose to the level of a PPC.

This Order has been appealed by the School District to the Second Judicial District Court as case No. D-202-CV-2013-08758 and is now pending.

28-PELRB-2013
CWA LOCAL 7076 v. NEW MEXICO PUBLIC EDUCATION DEP'T. (December 13, 2013).

Following remand from the District Court for further findings and a decision consistent with the Court reversal on the issue of waiver the Board voted 3-0 to adopt as its own the Hearing Officer's Supplemental Findings and Amended Recommended Decision. A synopsis of the Court's remand is included in the Court Decisions section that follows. In summary, the Board held that its earlier dismissal of NMPED's Counterclaim was not remanded, that Articles 14 and 5 of the parties' CBA, do not constitute a waiver of the union's right to bargain the effects of a changed working condition and that the union did not waive bargaining by inactivity. Neither was its holding that the PED committed a prohibited labor practice by intentionally withholding from the union information relevant to enforcing or monitoring compliance with the CBA or otherwise impairing the Union and its President in fulfilling her statutory duty to represent all employees in the bargaining unit.
The PELRB held that the effects of the RIF identified by the union in this case were covered by the parties' CBA.

As of this writing the deadline for further appeal has not yet passed.

## SUMMARY OF COURT DECISIONS

D-202-CV-2012-02239 - AFSCME, LOCAL 1888 v. CITY OF ALBUQUERQUE, (03-02-2012).

Although the District Court case was rendered in 2012 it is now pending in the New Mexico Court of Appeals, No. 32,917. This case involves nine consolidated appeals from the PELRB that pose the same preliminary question: Whether the PELRB has jurisdiction, concurrent or otherwise, that would allow it to remand PPC's back to the City Labor Board, a Board grandfathered under PEBA. The City appealed the issue of remand on the basis that if the PELRB is without jurisdiction to hear the PPC's then it had no power to remand the PPC's back to the City Labor Board. The unions argued that PELRB has concurrent jurisdiction with the City Labor Board, specifically when the City Board is not functioning so that PPC's may be filed in both and remand is appropriate. The Court (J. T. Baca) agreed with the City, relying on the principle set forth in *Deming Firefighters* and re-affirmed in *City of Albuquerque v. Montoya*, 2012-NMSC-007, _N.M. _, 247 P.3d 108, where the grandfather clause applies, PEBA does not apply and the PELRB does not have jurisdiction. Therefore, while the PPC's were properly dismissed, the PELRB was without jurisdiction remand them to the local board for further proceedings since they did not originate at the local board and make their way via appeal or removal to the State Board.

D-101-CV-2012-02176 - AFSCME, COUNCIL 18 v. HSD, (6-14-2013).

The PELRB found that the HSD committed a prohibited labor practice when it unilaterally and without bargaining to impasse removed security guards from six of its field offices. HSD appealed that decision to the District Court on the grounds that the change was a reserved management right and the union had waived bargaining through its CBA.

The First Judicial District Court (J. Ortiz) upheld the decision of the PELRB. The Court found that the presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining. Here, there was evidence of a unilateral change in terms and conditions of employment without bargaining. HSD relied upon the management rights and scheduling clauses in its CBA as a waiver of the union's right to bargain but the Court referring to another section of the same CBA that required HSD to negotiate in good faith prior to making any changes in terms and conditions of employment related to "reasonable standards and rules for employees' safety" found that HSD did not meet its burden of showing a clear and unmistakable waiver of the union's right to bargain those issues.

D-202-CV-2012-11595 - CWA LOCAL 7076 v. NM PUBLIC EDUCATION DEPARTMENT (02-08-2013)

The Union appealed from the Board's finding that although the State had a duty to bargain the effects of a RIF it failed to make a timely demand for bargaining and therefore waived

its right to bargain before implementation. The Second Judicial District Court (J. Brickhouse) reversed the Board on the issue of waiver reasoning that while the union was informed that the Department was seeking a RIF, it was never informed whether the RIF would definitely affect employees covered by the CBA. Therefore, there was insufficient evidence to support a conclusion that the employer provided meaningful and timely notice. Because sufficient notice was not received until the Department presented its RIF plan to the State Personnel Board on June 10, 2013, it timely requested bargaining when it submitted its demand on June 17. Because the RIF was not effective until July 1, there was still time to bargain. The Court remanded the matter to the Board for further findings concerning whether the effects of the RIF that the union sought to negotiate were otherwise already covered under the parties' contract.

The Hearing Officer issued supplemental findings of fact and conclusions of law to the effect that the State had no further obligation to bargain because all identified issued were reserved to management's discretion under the parties' current CBA. That decision was adopted by the Board in December 2013 and the deadline for further appeal does not pass until after the writing of this report.

D-202-CV-2013-01920 - AFSCME COUNCIL 18 v. NM CORRECTIONS DEPARTMENT, (02-22-2013).

The Corrections Department appealed from the PELRB Decision that Correctional Officers employed by the Department and holding the rank of Lieutenant are not "supervisors" as that term is defined in PEBA §4(U) and are therefore not excepted from coverage of the Act. The appeal is pending as of this writing.

D-202-CV-2013-05070 - CYFD v. AFSCME, COUNCIL 18 (02-22-2013).

On June 17, 2013 the Department appealed an interlocutory Order of the PELRB that the right to union representation during investigatory interviews guaranteed to private sector employees under federal labor law is also afforded to public employees covered under New Mexico's Public Employee Bargaining Act. *See*, PELRB Order No. 10-PELRB-2013.
The District Court (J. Nash) found the issue presented was not ripe and dismissed the appeal on October 24, 2013.

# Table A

| | | |
|---|---|---|
| Percent compliance with statutes, with particular attention to due process, equal protection, the Public Employee Bargaining Act and Board rules. | 100% | By establishing routine procedures to ensure compliance with the Act and rules and by using a centralized calendaring system, staff seeks to ensure compliance with all applicable law and regulations. There are no incidents of self-reported violations of rules or deadlines. Beyond self-reporting, staff relied upon formal or informal complaints submitted in pleadings or other documented complaints, or received in the Public Comment portion of the Board's agenda. In the reporting period the Board has not received any complaints from practitioners before the Board or from the general public that the Board has committed any Open Meetings Act violations, or denied procedural due process, either through delay or the manner of conducting its hearings or elections. |
| Percent of decisions overturned on appeal | 50% | Only 3 cases on appeal have been decided during the reporting period so the sample is not statistically significant. Of the three cases one involving Northern New Mexico Community College, unequivocally upheld the Board. The other, involving the City of Albuquerque, did not disturb the Board's basic decision to decline to jurisdiction but set aside the Board's remand of issues to the local board once it determined that it would not have jurisdiction. The third case reversed a summary dismissal and ordered a hearing on the merits. Therefore staff has weighted the percentage attributed to the Northern New Mexico Community College case to reflect that the Board was overturned on a point collateral to the main issue in the case. |
| Percent of cases resolved through agreement, mediation or arbitration prior to hearing | 34% | Of the 32 cases filed in the reporting period 11 were settled or successfully mediated prior to conducting a full evidentiary hearing. |
| Percent of cases resolved through agreement, mediation or arbitration post-hearing | 0% | None of the cases that proceeded to a full hearing settled after the Board's Order was entered. There were 14 Board Decisions and Orders on appeal before the various Courts (9 of which were consolidated for purposes of hearing them before the Board) and none of which settled prior to being heard on appeal. One case settled after a hearing and appeal following remand from the District Court |
| Percent of prohibited practice complaints, not settled or withdrawn, decided within 180 days of filing. | 71% | There 2 cases, one involving the City of Raton pending since 2010 and the other, involving Northern New Mexico Community College pending since 2011 that account for the failure to process 100% of filed PPC's within 180 days. The delay in those cases may be attributed to an extensive motion practice. If one considers only those cases filed in FY13, 100% of those 32 cases were decided within 180 days. Taking into account the two referenced cases pending for more than a year, the average time taken by the Board to decide a PPC is 142 days. |
| Percent of determinations of approval of local labor relations boards within 100 days of request to approval | N/A | There were no petitions for approval of local boards filed during the reporting period. |
| Percent of petitions for bargaining unit recognition processed within 180 days of filing | 83% | A total of 12 petitions for recognition were processed by the Board during the reporting period. 10 of those were completed, including conducting the election and certifying the unit, within 180 days. The average time in which the Board processed Representation Petitions was 169 days. |

# ALL CASES FILED WITH THE PELRB 2013

## Table B

| Type of Employer or Respondent | Type of Cases | | | | | TOTAL |
|---|---|---|---|---|---|---|
| | PPCs | Representation Petitions | Decertification Petitions | Related to Approval of Local Board | Impasse | |
| State | | | | | | |
| State Agency | 4 | | | | | 4 |
| County | 1 | 13 | | 2 | | 16 |
| Municipality | | 2 | | | | 2 |
| Public School | 8 | 2 | 1 | 1 | | 12 |
| Higher Education | | | | | | |
| Medical Facility | | | | | 1 | 1 |
| Other | 1 | 1 | | | | 2 |
| Court | | | | | | |
| Union | | | | | | |
| Individual | | | | | | |
| Local Labor Board | | | | | | |
| TOTAL | 14 | 18 | 1 | 3 | 1 | 37 |

# Table C

**2012**

| Type of Employer or Respondent | Type of Cases | | | | | TOTAL |
|---|---|---|---|---|---|---|
| | PPCs | Representation Petitions | Petitions for Decertification | Related to Approval of Local Board | Impasse | |
| State | 1 | | | | | 1 |
| State Agency | 13 | 1 | | | | 14 |
| County | 4 | 3 | | | | 7 |
| Municipality | 2 | | | | | 2 |
| Public School | 1 | 5 | | | | 6 |
| Higher Education | | 1 | | | | 1 |
| Medical Facility | | | | | | |
| Other | | 2 | | 1 | 1 | 4 |
| Court | | | | | | |
| Union | 1 | | 1 | | | 2 |
| Individual | | | | | | |
| Local Labor Board | | | | | | |
| TOTAL | 22 | 12 | 1 | 1 | 1 | 37 |

# Table D

**2013**

| Type of Union or Petitioner | Type of Cases | | | | | TOTAL |
|---|---|---|---|---|---|---|
| | PPCs | Representation Petitions | Petitions for Decertification | Related to Approval of Local Board | Impasse | |
| AFSCME Council 18 | 4 | 4 | | | | 8 |
| AFT-NM | | 1 | | | | 1 |
| Carpenters Industrial Council | | | | | 1 | 1 |
| FOP | | 1 | | | | 1 |
| NEA-NM | 7 | 1 | | | | 8 |
| NMCPSO | | 7 | | | | 7 |
| Teamsters Local 492 | 1 | 4 | | | | 5 |
| County | | | | | | |
| Individual | 2 | | | 2 | | 4 |
| School District | | | 1 | 1 | | 2 |
| | | | | | | |
| | | | | | | |
| TOTAL | 14 | 18 | 1 | 3 | 1 | 37 |

# Table E

**2013**

| | | |
|---|---|---|
| **Total PPC's Filed** | | **14** |
| **Sustained (In whole or in part)** | | **1** |
| By Hearing Examiner (w/o Board review) | | |
| After Board Review | 1 | |
| After Review by Court | | |
| **Dismissed – no violation found** | | |
| By Hearing Examiner (w/o Board review) | | |
| After Board Review | | |
| After Review by Court | | |
| **Summarily Dismissed** | | **2** |
| Dismissed after preliminary review (NMAC 11.21.3.12) | | |
| Dismissed after Motion | | |
| Deferred to Agency | | |
| Deferred to Arbitration | 1 | |
| Dismissed on collateral estoppel grounds | | |
| Remanded to local board | 1 | |
| **Withdrawn and/or Settled** | | **6** |
| Withdrawn upon receipt of notice of facial inadequacy | | |
| Withdrawn in favor of alternate venue | | |
| Withdrawn as moot | | |
| Settled prior to hearing | 6 | |
| **Pending** | | **5** |
| Being processed at the PELRB | 4 | |
| Stayed or deferred for various reasons | | |
| Matter is before the courts | 1 | |
| **TOTAL PPC's CARRIED OVER FROM 2012** | 32 | |

# Table F
# JUDICIAL APPEALS 2009-2013[1]
## STATISTICS*

| | | |
|---|---|---|
| **TOTAL PELRB DECISIONS APPEALED**[1] | | **19** |
| Appeals pending | 4 | |
| Appeals withdrawn | 0 | |
| Appeals dismissed for lack of prosecution | 0 | |
| Appeals dismissed on jurisdictional or venue grounds | 1 | |
| Decisions affirmed | 2 | |
| Decisions reversed | 2* | |
| Decisions affirmed in part, reversed in part | 0 | |
| FINAL BOARD DECISIONS NOT APPEALED FURTHER | | **11** |
| BOARD DECISIONS FOR WHICH TIME TO APPEAL HAS NOT YET RUN | | |

[1] Statistics compiled as of 12/31/13

* The nine consolidated City of Albuquerque case are counted as a single appellate decision.