

2016 ANNUAL REPORT

New Mexico Public Employee Labor Relations Board

SUSANA MARTINEZ
Governor



THOMAS J. GRIEGO
Executive Director

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

NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

2016
ANNUAL REPORT

Albuquerque, New Mexico
January 2017

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

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

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

Thomas J. Griego, Executive Director
Matthew Abousleman, Administrative Assistant
Jennifer Salazar, Legal Counsel

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

Table of Contents

Table of Contents

Introduction	1
Representation Cases	1
Approval of Local Boards.....	2
Prohibited Labor Practice Cases	3
Impasse Resolution Cases	4
Rulemaking Activity	4
2016 Operations Summary.....	5
Summary of Board Orders	9
Summary of Court Decisions	15
Table A.....	16
Table B	17
Table C	18
Table D.....	19
Table E	20

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 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 rate at which cases brought to the Board are settled reflects the Board’s favoring resolution of public employee collective bargaining disputes ahead of litigation where possible.

The Board’s adjudicatory function serves the critical purpose of resolving allegations of discrimination or retaliation because of an employee’s involvement in union activities or refusing such activities, 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, domination or interference in the formation, existence or administration of a labor organization and refusing to bargain collectively in good faith. The Board also adjudicates claims that either labor or management have refused or failed to comply with the Public Employee Bargaining Act or board rule; or have refused or failed to comply with a collective bargaining agreement.

The data compiled by the Board during this reporting period indicate that most of the issues requiring adjudication involve the obligation 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 those 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. See 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.

Please refer to the Operations Summary herein for details on the representation issues brought to the Board for resolution during the 2016 reporting period.

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)

By reference to the Operations Summary herein the reader will see that there was one petition for approval of a local board filed by Luna County (PELRB No. 201-16) brought to the Board during the 2016 reporting period.

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".

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). The Board has authority to petition the courts for enforcement of such orders. *See*, NMSA §23.

Please refer to the Operations Summary herein for details on the prohibited labor practices brought to the Board for resolution during the 2016 reporting period.

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].

The Board's role in the impasse procedure is limited to monitoring the parties' progress through mediation and arbitration to the extent the parties self-report that progress. It takes no active role in that process.

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.

The Board has undertaken amendment to NMAC 11.21.1.8 of its rules regarding computation of time: to correct a minor punctuation error and to permit additional time after service by mail for a party to act in response. The results of this rulemaking activity will appear in the next annual report.

2016 Operations Summary

In 2016 there were 34 proceedings filed; a slight decrease from the 39 proceedings filed in the preceding reporting period and down for the second year in a row from the 46 proceedings filed in the 2014 reporting period. Of those, 10 were representation cases (including one petition for decertification) compared with 8 filed in the preceding reporting period, and one filed by Luna County was for approval of a local labor board. 28 PPCs were filed in 2016 compared to 29 the year prior. The nearly 30% decrease in the total filings over a two-year period while experiencing a small increase in the number of representation petitions suggests that 2016 was a period of relative labor peace and that union resources were allocated more to organizing than in litigation before the Board.

Of the 11 representation petitions filed during the reporting period, seven sought initial certification of new bargaining units:

- a. *J. Paul Taylor Academy Licensed Employees & J. Paul Taylor Academy* (Las Cruces); PELRB No. 301-16
- b. *NEA – Clayton & Clayton Municipal Schools*; PELRB No. 302-16
- c. *AFSCME, Council 18 & Luna County*; PELRB No. 304-16
- d. *AFSCME, Council 18 & Rio Arriba County*; PELRB No. 306-16
- e. *United Mine Workers & Socorro County*; PELRB No. 307-16
- f. *Roswell Professional Fire Fighters Association & City of Roswell*; PELRB No. 310-16
- g. *Santa Fe Community College - American Ass'n of University Professors & Santa Fe Community College*; PELRB No. 311-16

All but five resulted in the creation of new bargaining units after elections. Three of those have not yet proceeded to an election and two were summarily dismissed for procedural errors.

Similarly, the lone decertification petition, *Antoine Whitfield & AFSCME, Council 18*; PELRB 303-16 (San Miguel County), was summarily dismissed for inadequate basis.

Three of the 11 representation proceedings were accretion petitions:

- a. *AFSCME, Council 18 & N.M. Dept. of Health*; PELRB No. 305-16
- b. *AFSCME, Council 18, Local 3103 & San Miguel County*; PELRB No. 308-16
- c. *Santa Fe County Firefighters Ass'n & Santa Fe County*; PELRB No. 309-16

In *AFSCME, Council 18 & N.M. Dept. of Health*; the Union petitioned for the accretion of Home Health Aide Supervisors and Psychiatric Technician Supervisors into an existing unit of Home Health Aide workers. The employer objects to the accretion on the grounds that the positions do not share an “overwhelming community of interest” and are exempt from bargaining either as “supervisors” and/or because they are “managers” as those terms are defined by the PEBA. As of this report, the issues have not yet been adjudicated.

The Union in *AFSCME, Council 18, Local 3103 & San Miguel County*; PELRB No. 308-16 sought to accrete the rank of Lieutenant into the existing Detention Officers’ bargaining unit. The Employer contested accretion on the ground that the union had waived the right to accrete Lieutenants at the time the unit was originally recognized in 2010. As of this report, the issues have not yet been adjudicated.

The *Santa Fe County Firefighters* case sought to accrete the rank of Captain into the existing Firefighters bargaining unit. The Employer objects to the accretion on the grounds that the positions do not share an “overwhelming community of interest” and are exempt from bargaining either as “supervisors” and/or because they are “managers” as those terms are defined by the PEBA. As of this report, the issues have not yet been adjudicated.

23 of the 34 cases filed during the reporting period were Prohibited Labor Practice Complaints (PPCs) compared to 29 PPCs filed in 2015. This represents a slight decrease in the number of PPCs filed and, as noted in the discussion of the representation cases *supra*, may be attributable to a period of relative labor peace, particularly in light of the fact that only five of the PPCs were resolved after a hearing on the merits. (Two were deferred to arbitration, three were withdrawn in favor of a new revised filing and three were summarily dismissed). As in prior years the more PPCs are settled without the necessity of a hearing on the merits (see Table D) compared to those heard. In 2016 ten of the 23 PPCs filed were settled.

Of the five cases resolved by a decision of the Hearing Officer or the Board after a merits hearing, four involved Luna County; three as the Employer/Respondent and one as the Complainant:

- a. *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16 (alleging interference with formation or administration of the bargaining unit and anti-union discrimination).
- b. *AFSCME, Council 18 v. Luna County*; PELRB 108-16 (alleging interference with formation or administration of the bargaining unit and anti-union discrimination).
- c. *Luna County v. AFSCME, Council 18*; PELRB 112-16 (alleging interference with a bargaining unit employees employment and failure to abide by the PEBA).
- d. *AFSCME, Council 18 v. Luna County*; PELRB 121-16 (Failure to bargain in good faith).

The fifth PPC that proceeded to a hearing on the merits was *New Mexico Coalition of Public Safety Officers v. City of Rio Rancho*; PELRB 113-16 (alleging interference with formation or administration of the bargaining unit and anti-union discrimination). All of the hearings resulted in decisions in favor of the unions.

There were no petitions requesting approval of local boards or ordinances filed in the reporting period.

The high settlement rate helps the PELRB meet its performance measure of resolving filed PPCs within 180 days. For obvious reasons, cases that settle typically do so early in the process although there are exceptions when cases settle after a hearing has convened. The combined average for resolution of all filed PPCs was 86 days – well under the 180 days goal. Removing settled cases from the calculation and considering only those cases proceeding to a hearing on the merits yields a result that those cases were resolved at the PELRB level within an average of 129 days – again, well within the 180 days performance measure. See Table A.

As in the preceding reporting period, school districts, municipalities and counties throughout the State were the largest source of filings in 2016 constituting a combined 94% of all cases filed. As might be expected, labor organizations representing city, county and school district employees comprise the most frequent petitioners. AFSCME, Council 18 or its affiliates, as it historically has been given the number of employees it represents, remained the most frequent filer during 2016 filing nine PPCs and five representation petitions (41% of the total filings); followed by NEA-NM or its affiliates filing four PPCs and two representation petitions (18%), NMCPSO and its affiliates filed four PPCs and IAFF filed one representation petition. Management representatives filed one PPC during the reporting period, that filed by Luna County against AFSCME already discussed *supra*. Individuals acting on behalf of themselves without the assistance of a collective bargaining representative filed two PPCs and one representation petition (a decertification petition) all of which were summarily dismissed for procedural defects. Filing by individual petitioners constituted less than 1% of the total filings. See Tables B and C.

There were five elections conducted in 2016, all of which resulted in unions winning majority support:

- a. *J. Paul Taylor Academy Licensed Employees and J. Paul Taylor Academy* (Las Cruces); PELRB 301-16.
- b. *NEA Clayton and Clayton Municipal Schools*; PELRB 302-16
- c. *AFSCME and Luna County*; PELRB 304-16
- d. *AFSCME and Rio Arriba County*; PELRB 306-16
- e. *American Ass'n of University Professors, Santa Fe Community College Chapter and Santa Fe Community College*; PELRB 311-16.

Two petitions for certification, *United Mine Workers and Socorro County*; PELRB 307-16 and *Roswell Professional Fire Fighters Association and City of Roswell*; PELRB 310-16 did not proceed to an election but were summarily dismissed for procedural defects.

The lone decertification petition filed during the reporting period did not proceed to an election as it was summarily dismissed. See *Antoine Whitfield & AFSCME, Council 18*; PELRB 303-16.

The PELRB completed all representation proceedings during the reporting period within 180 days of filing. For Representation proceedings the average time from case opening to closure was 146 days; an increase over the average 98 days in the prior reporting period, but still within the Board's approved performance measures. See Table A. There are three cases among the 11 representation cases filed in 2016 that account for the increased average time for resolution:

- a. *NEA Clayton and Clayton Municipal Schools*; PELRB 302-16
- b. *AFSCME and N.M. Dep't. of Health*; PELRB 305-16
- c. *United Mine Workers and Socorro County*; PELRB 307-16

In each case there was extensive motion practice and requests to hold matters in abeyance until underlying issues could be litigated. For example, certification of the bargaining unit in PELRB 305-16 was delayed until resolution of issues tried in the PPC filed as *AFSCME v. N.M. Dep't. of Health*; PELRB 122-16.

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-2016

AFSCME COUNCIL 18 v. THE BOARD of COUNTY COMMISSIONERS OF SANTA FE COUNTY (March 13, 2016). (PELRB No. 107-16).

The PELRB adopted the Hearing Officer's determination that the union did not meet its burden of proof to establish that the County of Santa Fe violated Sections 19(A), (B),(C) and (H) of the PEBA by using PIPs and letters of caution. However, the Board reversed the Hearing Officer's conclusion regarding Section 19(F) of the PEBA because by its own terms the PIP in question constituted disciplinary action and thus, the County failed to bargain in good faith over that issue.

2-PELRB-2016

AFSCME COUNCIL 18 AND THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY (March 14, 2016). (PELRB No. 305-15).

The PELRB ratified the Executive Director's approval of the Union's petition to accrete Housing Unit Lieutenants into an existing bargaining unit comprising Detention Center Officers.

3-PELRB-2016

AFSCME, COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (April 11, 2016). (PELRB No. 105-16).

The Board found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County, (PELRB No's. 304-16 and 310-15) and directed those matters shall proceed with Executive Director Griego continuing to serve in his designated role.

4-PELRB-2016

AFSCME, COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (April 11, 2016). (PELRB No. 105-16).

A Motion by AFSCME and Gilmore for immediate injunctive relief was denied.

5-PELRB-2016

AFSCME COUNCIL 18 and NEW MEXICO HUMAN SERVICES DEPARTMENT (April 11, 2016). (PELRB No. 309-15).

After a holding a special meeting to consider the Human Service Department's Request Interlocutory Appeal of Hearing Officer's Recommended Decision on its Motion to Dismiss for Lack of Jurisdiction, the Board found that the Motion was not well-taken and therefore it was denied.

6-PELRB-2016

AFSCME COUNCIL 18 and SANTA FE COUNTY (May 11, 2016). (PELRB 128-15).

Santa Fe County appealed to the Board from its Hearing Examiner's grant of summary judgment in favor of AFSCME and denial of the County's cross motion for summary judgment, which concluded that the County violated the PEBA Sections 17(A)(1) and (C) and PEBA §19(F) (refusing to bargain collectively in good faith with the exclusive representative) when it refused to provide the Union with home addresses of bargaining unit members requested in connection with a dues increase). The PELRB affirmed the Hearing Examiner 2-0 (Board Member Westbrook recusing himself).

7-PELRB-2016

AFSCME COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (May 13, 2016). (PELRB No. 105-16).

The PELRB set aside default against Luna County for excusable neglect.

8-PELRB-2016

AFSCME COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (May 13, 2016). (PELRB No. 105-16).

The County's Motion to Disqualify the Executive Director from hearing this case was denied by the PELRB, which found there to be no evidence requiring disqualification under NMAC 11.21.1.13.

9-PELRB-2016

AFSCME, COUNCIL 18 v. LUNA COUNTY (May 13, 2016). (PELRB No. 310-15).

The PELRB adopted its Hearing Examiner's determination that Detention Center Lieutenants at the County's Deming Detention Facility were properly within the bargaining unit comprising Detention Center Officers. The Board adopted the hearing Examiner's conclusion that because the lieutenants share a community of interest with the employees in the bargaining unit and because they did not meet the statutory definitions of management, confidential or supervisory employees under the PEBA, they may be appropriately included within the bargaining unit.

10-PELRB-2016

AFSCME COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (July 13, 2016). (PELRB No. 105-16).

After a second Motion to Disqualify was filed in this case the Board again found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County, (PELRB No's. 304-16 and 310-15) and directed those matters to proceed with Executive Director Griego continuing to serve in his designated role.

11-PELRB-2016

AFSCME, COUNCIL 18 and CHRIS VERDUZCO v. LUNA COUNTY (July 13, 2016). (PELRB No. 105-16).

The Board found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County,

(PELRB No's. 304-16 and 310-15) and directed those matters shall proceed with Executive Director Griego continuing to serve in his designated role.

12-PELRB-2016

LUNA COUNTY v. AFSCME, COUNCIL 18 (July 13, 2014). (PELRB No. 112-16).

The Board found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County, (PELRB No's. 304-16 and 310-15) and directed those matters shall proceed with Executive Director Griego continuing to serve in his designated role.

13-PELRB-2016

AFSCME, COUNCIL 18 v. LUNA COUNTY (July 13, 2016). (PELRB No. 310-15).

After the Board affirmed the Hearing Officer's decision in 9-PELRB-2016 the County again moved to disqualify the Director serving as election supervisor on the basis of that decision. The Board found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County, (PELRB No's. 304-16 and 310-15) and directed those matters shall proceed with Executive Director Griego continuing to serve in his designated role.

14-PELRB-2016

AFSCME, COUNCIL 18 and LUNA COUNTY SHERIFF'S DEPARTMENT (July 13, 2016). (PELRB No. 304-16).

The Board found no grounds for disqualification of the Board's Executive Director designated as the Hearing Officer and Election Supervisor in the pending matters concerning Luna County, (PELRB No's. 304-16 and 310-15) and directed those matters shall proceed with Executive Director Griego continuing to serve in his designated role.

15-PELRB-2016

BENJAMIN C. WOLFE v. ALBUQUERQUE PUBLIC SCHOOLS & KAREN RUDYS (August 9, 2016). (PELRB 119-16).

The PELRB ratified the Executive Director's Summary Dismissal of Complainant's Prohibited Practices Complaint for lack of jurisdiction based on APS having its own local labor board by resolution.

16-PELRB-2016

AFSCME COUNCIL 18 v. CITY OF ESPAÑOLA (August 9, 2016). (PELRB No. 124-15).

With one exception the Board adopted as its Order the Hearing Examiner's findings and conclusions that the Complainant failed to make a *prima facie case* with regard to alleged violations of the PEBA § 19 (A), (B) (D) or (E), and, having failed to rebut reasonable business reasons for management's actions and without meeting its burden of proof by a preponderance of the evidence to substantiate its claimed violations of the PEBA §§ 19(C), (G) and (H), the Complaint was dismissed. The single exception was with regard to the Hearing Officer's reliance on the U.S.

Supreme Court case of *Connick v. Meyers*. Instead, by application of the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979), the Board obtained the same result.

17-PELRB-2016

AFSCME COUNCIL 18 and ANDREW GILMORE v. LUNA COUNTY (August 9, 2016), (PELRB No. 105-16).

Upon a 2-0 vote at the Board's August 9, 2016 meeting (Chair Westbrook having recused himself in all cases involving Luna County) the Board adopted as its Order the Hearing Officer's Report and Recommended Decision, including its Findings, Conclusions and rationale, without modification. Luna County was ordered to cease and desist from violations of the PEBA §§19 (A), (B), (D) and (E) as found by the Hearing Officer and to post notice of the violations. Furthermore the Board ordered Luna County to immediately reinstate Andrew Gilmore to his former position with all back pay and benefits including but not limited to PERA contributions, seniority rights and leave accruals.

18-PELRB-2016

AFSCME, COUNCIL 18 and RIO ARRIBA COUNTY (August 16, 2016). (PELRB 306-16).

The PELRB ratified the Ballot Talley submitted by the Election Supervisor and directed that a Certification of Representation issue certifying that AFSCME, Council 18 is recognized as the exclusive bargaining representative for non-probationary Detention Officers and Detention Officer Supervisors working at the Rio Arriba Adult Detention Facility in Tierra Amarilla.

19-PELRB-2016

AFSCME COUNCIL 18 and CHRIS VERDUZCO v. LUNA COUNTY (September 26, 2016). (PELRB 108-16).

The PELRB adopted the Hearing Examiner's Findings, Conclusions and rationale, with regard to his decision in favor of the Complainants' claims that Luna County discriminated against Mr. Verduzco with regard to terms and conditions of his employment because of his membership in a labor organization in violation of the PEBA § 19(A), that it interfered with, restrained or coerced him in the exercise of his rights violation of § 19(B); discriminated against him in regard to hiring, tenure or a term or condition of employment in order to discourage membership in a labor organization in violation of § 19(D); and discharged or otherwise discriminated against him because he has given information or testimony pursuant to the provisions of the Act or because he formed, joined or chose to be represented by a labor organization in violation of § 19(E). The Board Ordered Luna County to cease and desist from those violations, to re-instate Verduzco to his probationary position of Sergeant for the remainder of his probationary period and thereafter unless removed for other legitimate reasons and make him whole by payment of back pay and benefits until the ordered reinstatement is accomplished. The Board reserved jurisdiction to determine the amount to be paid to Verduzco in the event the parties did not agree to a sum certain necessary to make him whole. Luna County was ordered to post and email notice of the violations for a period of 90 days at all places where public notices are commonly posted.

The Board further ordered that for its failure to cooperate in exchanging exhibits and witness lists, entry of a prehearing order and for its default at the Merits Hearing in this matter and not in the way of a sanction or punitive damages, costs of the merits hearing were assessed against Luna County and/or its counsel.

20-PELRB-2016

AFSCME COUNCIL 18 v. THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY (October 17, 2016). (PELRB 128-15).

Santa Fe County appealed from a Hearing Examiner's Report and Recommended Decision Regarding Damages entered August 15, 2016. The Board found that its rules NMAC 11.21.1.27 (Appeal or Review by the Board), NMAC 11.21.2.22 (Board Review of Hearing Examiner Reports and Director Decisions), NMAC 11.21.3.13 (Appeal to Board of Director's Dismissal) and NMAC 11.21.3.19 (Appeal to Board of Hearing Examiner's Recommendation), construed together, permit the filing of a cross-appeal within 10 days of an appeal being filed.

The Board struck the Hearing Examiner's Findings of Fact as either duplicative of prior findings or as otherwise unnecessary while adopting his conclusions of law to the effect that the Board is without authority to award consequential damages such as were requested by the Union in this case.

21-PELRB-2016

AFSCME, COUNCIL 18 and NEW MEXICO HUMAN SERVICES DEPARTMENT (October 17, 2016). (PELRB 309-15).

The Human Services Department appealed to the PELRB from the Hearing Officer's Recommended decision of August 4, 2016 in which he recommended that the Board affirm its subject matter and personal jurisdiction and re-affirm the Board's prior findings of AFSCME's Majority Support in the unit in question. He further recommended that the Board find that the Department's Lawyers and Attorneys at issue are not supervisory, managerial or confidential employees as defined by the PEBA, that it clarify the unit by affirming that it always included those positions.

At the hearing before the Board, counsel for HSD raised by oral motion two preliminary issues: First, a renewed request that Mr. Westbrook recuse himself and, second; that the Board strike the Union's Response to the Department's appeal because it relied upon documents not submitted into evidence on the record below. Mr. Westbrook declined to recuse himself for reasons stated on the record. With regard to the oral Motion to Strike the Union's Response to the Appeal the Board ruled 3-0 to table the Department's appeal and the Union's cross-appeal until the Board's next regularly scheduled meeting in order to permit the parties to research and submit written briefs on the issues raised by the oral motion. A briefing deadline was set.

22-PELRB-2016

AFSCME, COUNCIL 18 and CHRIS VERDUZCO v. LUNA COUNTY (October 17, 2016). (PELRB 108-16).

The PELRB tabled its review of the Hearing Examiner's Recommended Decision in order to provide the County time to prepare and present its appeal.

23-PELRB-2016

AFSCME COUNCIL 18 and NEW MEXICO HUMAN SERVICES DEPARTMENT (November 8, 2016). (PELRB 309-15).

On appeal by the Human Services Department previously tabled to permit research and briefing, (see 21-PELRB-2016, *supra*) the Board found that it had jurisdiction over the parties and subject matter concerning the unit clarification but did not have jurisdiction to determine violations of the New Mexico Open Meetings Act, NMSA 1978, 10-15-1 *et seq.* The Board further found that under the facts of this case a Petition for Clarification is not the proper procedure for resolving the current dispute between the parties and HSD was time-barred from objecting to the decisions made in PELRB cases *In re: AFSCME & State of New Mexico*, PELRB No. 357-04; *In re: AFSCME and HSD*, PELRB No. 336-043; and *In re: AFSCME and HSD*, PELRB No. 312-09. Therefore, the Board granted HSD's Motion to Strike exhibits attached to the Union's Response but only as to exhibits not included or referenced in the Hearing Officer's Report and Recommended Decision or relied upon by the Hearing Officer when making his decision. The Board adopted the Hearing Officer's Report and his Findings therein, except that there was a change in circumstance to the bargaining unit.

24-PELRB-2016

NEA-CLAYTON and CLAYTON PUBLIC SCHOOLS (November 8, 2016). (PELRB No. 302-16).

The PELRB ratified the Executive Director's certification of the bargaining unit following an election.

25-PELRB-2016

UNITED MINE WORKERS OF AMERICA and SOCORRO COUNTY (November 8, 2016). (PELRB No. 307-16).

A Consent Election Agreement was approved and the Executive Director was ordered to proceed with an election.

26-PELRB-2016

AFSCME COUNCIL 18 and CHRIS VERDUZCO v. LUNA COUNTY (November 8, 2016). (PELRB No. 108-16).

After appeal to the PELRB from the Hearing Officer's Report and Recommended Decision entered August 26, 2016, the issue of costs assessed against the County was reserved for further hearing. See 19-PELRB-2016, *supra*. The Board assessed costs against the County in the amount of \$16.00.

27-PELRB-2016

IN RE: LUNA COUNTY LOCAL BARGAINING ORDINANCE #54 AMENDED (October 17, 2016). (PELRB No. 201-16).

The PELRB approved the application of Luna County for a local board and remanded to the local board any proceedings that may have been held in abeyance pending approval.

28-PELRB-2016

OPEN MEETINGS ACT RESOLUTION (March 25, 2016).

PELRB passed its annual resolution setting forth procedures to comply with the Open Meetings Act, Section 10-15-1 *et seq.* (NMSA 1978).

SUMMARY OF COURT DECISIONS

D-619-CV-2016-00170 – BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LUNA v. AFSCME, COUNCIL 18, AFL-CIO, THE NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD and ANDY GILMORE. A petition for a TRO, Preliminary Injunction and a Writ of Prohibition seeking to stay enforcement of the PELRB's Order in 19-PELRB-2016 was filed on May 25, 2016. An Amended Petition was filed on June 3, 2016 alleging as its basis that the hearing was biased against the County. On November 7, 2017 the parties stipulated to dismissal of this appeal after the Court denied the requested injunctive relief.

D-619-CV-2016-00238 – LUNA COUNTY, the LUNA COUNTY DETENTION CENTER and THE LUNA COUNTY SHERIFF'S DEPARTMENT v. THE NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD. On July 21, 2016 Luna County appealed to the Sixth Judicial District Court, the PELRB Orders denying its Motions to Disqualify the Executive Director as Hearing Officer in its cases. See Board Orders 10-PELRB-2016, 11-PELRB-2016, 12-PELRB-2016, 13-PELRB-2016, 14-PELRB-2016. On August 10, 2016 the County filed a Motion in the appellate case to stay the Executive Director from hearing any matter involving Luna County on the grounds of a Second Amended Motion to Disqualify him as Hearing Officer. On November 4, 2016 the County withdrew this appeal.

D-619-CV-2016-00247– LUNA COUNTY, the LUNA COUNTY DETENTION CENTER and THE LUNA COUNTY SHERIFF'S DEPARTMENT v. THE NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD. Luna County filed a Motion in the 6th Judicial District Court requested an Order staying collective bargaining as ordered by the PELRB in 13-PELRB-2016 and 14-PELRB-2016. The County filed an Amended Appeal of those Board Orders in this appeal on August 9, 2018. The County withdrew this Appeal on November 4, 2016.

D-619-CV-2016-00271 – LUNA COUNTY and THE LUNA COUNTY DETENTION CENTER v. NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD, AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, NEW MEXICO COUNCIL 18, AFL-CIO and ANDY GILMORE. Luna County appealed to the 6th Judicial District Court on August 15, 2016 from the Board's Orders in 3-PELRB-2016 4-PELRB-2016, 7-PELRB-2016, 8-PELRB-2016, 9-PELRB-2016, 10-PELRB-2016, 11-PELRB-2016, 12-PELRB-2016, 13-PELRB-2016, 14-PELRB-2016 and 17-PELRB-2016. The County withdrew this Appeal on November 4, 2016.

TABLE A

**Public Employee Labor Relations Board
Performance Measures Summary**

37900

Purpose/Measure		FY15 Actual	FY16 Actual	FY17 Budget	FY18 Request	FY18 Recomm
P738	Public Employees Labor Relations Board					
	The purpose of the public employee labor relations board is to assure all state and local public body employees have the right to organize and bargain collectively with their employers or to refrain from such.					
Outcome	Percent compliance with statutes, with particular attention to due process, equal protection, the Public Employee Bargaining Act and board rules	100%	100%	100%		
Outcome	Percent of decisions overturned on appeal	0%	0%	1%		
Outcome	Percent of cases resolved through agreement, mediation or arbitration					
Outcome	Percent of cases resolved through agreement, mediation or arbitration prior to hearing	85%	70%	50%		
Output	Percent of determinations of approval of local labor relations boards within one hundred days of request for approval	100%	100%	100%		
Output	Percent of prohibited practice complaints decided within 180 days of filing					
Output	Percent of bargaining unit recognition petitions processed within one hundred eighty days of filing	100%	78%	95%		
Output	Percent of prohibited practice complaints, not settled or withdrawn, decided within one hundred eighty days of filing	100%	60%	80%		

ALL CASES FILED WITH THE PELRB 2016

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	3	1				4
County	8	5	1	1		15
Municipality	3	1				4
Public School	8	2				10
Higher Education		1				1
Medical Facility						
Other						
Court						
Union	1					1
Individual						
Local Labor Board						
TOTAL	23	10	1	1		35

*Cases involving both a State Agency and the State qua State are counted here

ALL CASES FILED WITH THE PELRB SORTED BY PETITIONER

Table C

2016

Type of Union or Petitioner	Type of Cases				TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Related to Approval of Local Board	
AFSCME Council 18	9	4			13
JPTA		1			1
UMW		1			1
Silver Con. Ed. Ass'n	2				2
Valencia Co. SOA	1				1
NMCPSO	3				3
NEA-NM	1				1
NEA-Clayton	3	1			4
NEA-Espanola	1				1
SF Co. FF Assoc.		1			1
Roswell FF Assoc.		1			1
SFCC-AAUP		1			1
County	1			1	2
Individual	2		1		3
School District					
TOTAL	23	10	1	1	35

PPC OUTCOME ANALYSIS

Table E

2016

Total PPC's Filed		23
Sustained (In whole or in part)		2
By Hearing Examiner (w/o Board review)		
After Board Review	2	
After Review by Court		
Dismissed – no violation found		2
By Hearing Examiner (w/o Board review)	2	
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	2	
Dismissed on collateral estoppel grounds		
Remanded to local board		
Withdrawn and/or Settled		17
Withdrawn upon receipt of notice of facial inadequacy		
Withdrawn in favor of alternate venue		
Withdrawn as moot		
Settled prior to hearing	17	
Pending		21
Being processed at the PELRB	18	
Stayed or deferred for various reasons		
Matter is before the courts	3	
TOTAL PPC's CARRIED OVER FROM 2015		21

JUDICIAL APPEALS

Table F

JUDICIAL APPEALS 2009-2016 STATISTICS

TOTAL PELRB DECISIONS APPEALED		4
Appeals pending	1	
Appeals withdrawn	4	
Appeals dismissed for lack of prosecution	0	
Appeals dismissed on jurisdictional or venue grounds	0	
Decisions affirmed	0	
Decisions reversed	0	
Decisions affirmed in part, reversed in part	0	
FINAL BOARD DECISIONS NOT APPEALED FURTHER		27
BOARD DECISIONS FOR WHICH TIME TO APPEAL HAS NOT YET RUN		