

2017 ANNUAL REPORT

New Mexico Public Employee Labor Relations Board

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Governor



THOMAS J. GRIEGO
Executive Director

Duff Westbrook, Board Chair

Roger E. "Bart" Bartosiewicz, Vice-Chair

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NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

2017
ANNUAL REPORT

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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

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INTRODUCTION

Although a few New Mexico local governments permitted collective bargaining among their employees for decades previously, the New Mexico Legislature first authorized statewide public employee collective bargaining in 1992. See NMSA 1978 §§ 10-7D-1 *et seq.* (PEBA I). That first experience ended in 1999 by operation of a “sunset clause” written into PEBA. Four years later 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 local boards, bargaining units, bargaining representatives and collective bargaining agreements (CBAs) enacted prior to the enactment of PEBA II. PEBA II also provides for the creation of new local boards after its effective date.

This report explains the role of the New Mexico Public Employee Labor Relations Board (PELRB) in enforcing the rights of public employees and employers with regard to union organizing and engaging in collective bargaining under PEBA II, NMSA §§ 10-7E-1 *et seq.* or 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.

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). This report includes cases heard by the Board and those reviewed by the Courts interpreting the Act with regard to the Board’s adjudicatory function. More specifically, the Board is involved in the following matters:

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. 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 2017 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 were no petitions for approval of local boards filed during the 2017 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.

The data suggests that by a wide margin most PPCs settle – some after a hearing on the merits has begun. It is rare that a Complaint is determined summarily or by default, although there are instances of summary dismissals. Please refer to the Operations Summary herein for details on the prohibited labor practices brought to the Board for resolution during the 2017 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].

There was one impasse file being monitored during the reporting period – AFSCME, Local 923 & City of Española, PELRB cause No. 501-17.

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 began amendment to its rules, 11.21.1.8 to provide for additional time for filing and service by mail. That change was approved by the Board and completed during the reporting period so that when a party must act within a specified time after service and service is made by mail, three (3) days are added after the period would otherwise expire.

To provide for electronic service and filing, additional rulemaking was initiated in 2017 to NMAC 11.21.1.7 Definitions, 11.21.1.24 Service and 11.21.1.10 Filing With The Director or The Board. The results of that rulemaking will be reported in the next annual report.

2017 Operations Summary

In 2017 there were 36 proceedings filed; a decrease from the 46 proceedings filed in the preceding reporting period, but more consistent with prior years of 37 in 2015 and 32 in 2013 and 2014. Ten of the 36 cases initiated during the reporting period were representation cases. That number is consistent with the prior reporting period in which 8 representation cases were filed. But significantly lower than the 18 filed in 2016. More specifically, of the ten representation petitions filed during 2017, only two sought initial recognition of a new bargaining unit (NMCP SO & Colfax County; PELRB 301-17 and CWA & 3rd Judicial District Attorney's Office, PELRB 310-17. Two involved changing the name of an already recognized representative (Deming Education Association & Deming Schools, PELRB 305-17 and NMCP SO & City of Rio Rancho, PELRB 302-17). One filing was a "Disclaimer of Interest" in which the FOP disclaimed its interest in continuing to represent New Mexico Motor Transportation Employees Association. (PELRB 302-17). One Petition for recognition as an incumbent labor organization was filed – Deming Education Association & Deming Public Schools, PELRB 304-17, which required an evidentiary hearing both on the disputed incumbent status and on composition of the unit. The remaining four cases involved disputes over accretion or severance issues requiring three evidentiary hearings. One was resolved by agreement.

26 of the 36 proceedings filed during the reporting period were Prohibited Labor Practice Complaints (PPCs) compared to 23 PPCs filed in 2016. This does not represent a significant difference in the total number of PPCs filed. As in preceding years the majority of these cases were settled by the parties without the necessity of a hearing on the merits (See Table F).

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 98.8 days – up from 86 days in 2016 – but still within 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.

There were no petitions involving local board approval, consistent with 2016 in which there were no such petitions filed as well.

The shift away from recognition petitions to PPCs as constituting the majority of filings with the PELRB noted in 2016, continued in 2017. In 2016 PPCs represented 69% of the Board's caseload while representation petitions were 31% of the total. (Compare Tables B and C).

As in the preceding reporting period, school districts, counties and municipalities throughout the State were the largest source of filings in 2017. Municipalities accounted for 14 of the 36 total filings, while schools were involved in another eight, followed by counties with four, accounting for a combined total of 72% 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 filed ten PPCs (28% of the total filings, 40% of all PPCs); followed by the New Mexico Coalition of Public Safety Officers filing two PPCs and four representation petitions (16%) and NEA-NM or its affiliates filing two PPCs and two representation petitions (11%). IAFF Local 1687 filed one representation petition seeking to accrete the EMS Chief, Fire Marshall and Staff Development/Emergency Management Coordinator position into an existing Firefighters unit in the City of Carlsbad (See PELRB 308-17). IAFF Local 4737 and IAFF Local 4877 each filed a PPC (*IAFF Local 4877 v. Sunland Park*, PELRB 109-17, alleging bad-faith bargaining; and *IAFF Local 4877/RRFA v. City of Rio Rancho*, PELRB 111-17). Individuals acting on behalf of themselves without the assistance of a collective bargaining representative filed four PPCs. Three of those four were summarily dismissed for procedural defects. The fourth, *Michael Rance Hall v. Belen Public Schools*, PELRB 121-17 alleging discrimination for PEBA protected rights, was settled amicably. (See Tables B and C).

Rather unusually, there was only one election conducted in 2017, i.e. *In re: CWA and Third Judicial District Attorney's Office*, PELRB 310-17, which resulted in CWA winning majority support.

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. 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-2017

AFSCME COUNCIL 18 & NEW MEXICO HUMAN SERVICES DEPARTMENT (January 23, 2017). (PELRB No. 309-15).

Upon review of the parties' submissions and without hearing argument by counsel the Board found that the Board does not have jurisdiction to hear a Motion for Reconsideration of its prior Order (23-PELRB-2016) after the Union appealed the same case to the District Court.

2-PELRB-2017

AFSCME COUNCIL 18 & NEW MEXICO DEPARTMENT OF HEALTH (January 19, 2017). (PELRB 305-16).

The PELRB denied a Motion by the State of New Mexico, Department of Health requesting leave to file for Interlocutory Appeal of the Hearing Officer's December 11, 2016 Decision denying its Motion for Reconsideration of his August 12, 2016 Decision Denying the DOH's Alternative Motion to Dismiss or for Summary Judgment. The Board found that it has jurisdiction over the parties and subject matter and that DOH had not established sufficient grounds to prompt the Board in the proper exercise of its discretion to permit interlocutory appeal as requested.

3-PELRB-2017

UNITED MINE WORKERS OF AMERICA & SOCORRO COUNTY (January 19, 2017). (PELRB 307-16).

The PELRB affirmed the Election Supervisor's certification of election results in which UMW failed to win majority support for the following three bargaining units in Socorro County:

Unit A, Detention Center Employees;
Unit B, Sheriff's Department Employees; and,
Unit C, White and Blue Collar Workers.

4-PELRB-2017

SANTA FE COMMUNITY COLLEGE-AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS & SANTA FE COMMUNITY COLLEGE (May 2, 2017). (PELRB 311-16).

Director Griego provided the Board with certified results of an election held on March 29, 2017 in which a majority of non-chair and non-director faculty at Santa Fe Community College in which the employer raised issues concerning the inclusion of chairs and directors because they fall under the statutory definition of "management employee" as defined by NMSA 1978, Section 10-7E-4(O); and (2) whether the chairs and directors who do not fall under the statutory definition of "management employee" share a common interest with the bargaining unit for SFCC-AAUP professors as defined by 11.21.1.7(B)(16) so that they may be added to the bargaining unit as certified. Director Griego excluded challenged ballots submitted by Chairs and Directors from the election results submitted.

The Board found that the election results complied with 11.21.2.1 *et seq.* NMRA and SFCC-AAUP received majority support of non-chair and non-director professors. Therefore, certification of the bargaining unit was affirmed for non-chair and non-director professors. Because the Director found as a preliminary matter that some but not all Department Chairs and Directors fit the definition of a "management employee", the issue of which specific chairs and directors fall under the statutory definition was remanded back to Director Griego for determination. The Board also asked the Director to find whether the Chairs and Directors who do not fall under the statutory exclusion, share a common interest with the bargaining unit so that they may be added to the bargaining unit as now certified.

5-PELRB-2017

NEW MEXICO COALITION OF PUBLIC SAFETY OFFICERS & COLFAX COUNTY (May 2, 2017). (PELRB 301-17).

At its regularly scheduled meeting on April 25, 2017, Director Griego provided the Board with the results of a card count conducted March 15, 2017 confirming sufficient support for voluntary recognition of NMCP SO as the exclusive representative for a bargaining unit comprising non-probationary sworn and commissioned Sheriff's Department Deputies, Sergeants, Lieutenants and Captains employed by Colfax County. The Board ratified the results of the card count and authorized the Director to issue a Certification of Representation for the bargaining unit described above.

6-PELRB-2017

IAFF LOCAL 4366, SANTA FE FIRE FIGHTERS ASSOCIATION & SANTA FE COUNTY (May 2, 2017). (PELRB 309-16).

Upon stipulation of the parties to amend certification of the existing Fire Fighters bargaining unit bargaining unit, The PELRB affirmed the agreement to accrete non-probationary Shift Training Captains into the existing bargaining unit.

7-PELRB-2017

NEW MEXICO MOTOR TRANSPORTATION EMPLOYEES ASSOCIATION, FRATERNAL ORDER OF POLICE STATE OF NEW MEXICO & NEW MEXICO DEPARTMENT OF PUBLIC SAFETY (May 2, 2017). (PELRB 302-17).

The Fraternal Order of Police filed notice that it was disclaiming its interest in further representation of the New Mexico Motor Transportation Employees Association ("NMMTEA"). After "Notice to Employees" was posted in an area frequented by employees from February 17, 2017 to March 3, 2017 the Board ratified the disclaimer of interest and ordered Director Griego to enter the disclaimer of interest into the Board's record.

8-PELRB-2017

AMENDMENTS TO NMAC 11.21.1.10, 11.21.1.24 & 11.21.1.7 (May 2, 2017).

The Board adopted changes to its procedural rules for the purpose of permitting electronic filing and service of pleadings. Director Griego withdrew two proposed rule changes, i.e. NMAC 11.21.1.26 Form of Papers and NMAC 11.21.2.8 Commencement of Case. The changes made were to NMAC 11.21.1.10, Filing with the Director or the Board, to NMAC 11.21.1.24, Service, and to NMAC 11.21.1.7 Definitions.

9-PELRB-2017

NEA-DEMING & DEMING PUBIC SCHOOLS (August 15, 2017). (PELRB 304-17 and 305-17).

The PELRB considered two consolidated Petitions: (1) a Petition by NEA-Deming, for Recognition as an Incumbent Labor Organization (PELRB No. 304-17); and a second Petition seeking Amendment of Certification originally issued in 1994 recognizing "Deming Education Association" as the exclusive representative based on it changing its name to "NEA-Deming" (PELRB No. 305-17). The Board affirmed the Hearing Examiner's finding that there was continuity of representation between NEA-Deming and Deming Public Schools from 1994 when NEA-Deming was known as "Deming Education Association" and the present; and the conclusion granting the Petition for

Amendment of Certification based on Deming Education Association changing its name to “NEA-Deming”. The Board upheld and ratified the Hearing Examiner’s determination that continued recognition of the existing wall-to-wall bargaining unit is mandated by NMSA 1978 Section 10-7E-24(A) which allows bargaining units established prior to July 1, 1999 to continue to be recognized as appropriate bargaining units; and

10-PELRB-2017

NEW MEXICO COALITION OF PUBLIC SAFETY OFFICERS & SANTA FE COUNTY (October 3, 2017). (PELRB 118-17).

The New Mexico Coalition of Public Safety Officers (NMCP SO) appealed to the PELRB from the hearing officer’s partial dismissal of its PPC for facial inadequacy leaving alleged violations of § 19(H) for hearing. The Board upheld the Director’s August 10, 2017 Decisions and Ordered NMCP SO to amend its complaint and file the amended complaint with the Board within five (5) days.

11-PELRB-2017

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO & NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS (October 3, 2017). (PELRB 102-17).

The Department of Workforce Solutions appealed to the PELRB from the hearing officer’s partial dismissal of its PPC for facial inadequacy leaving alleged violations of §§ 19(H) and (F) for hearing. After hearing the Board upheld the Hearing Officer’s determination that the Department violated §§ 19(H) and (F).

12-PELRB-2017

OPEN MEETINGS ACT RESOLUTION (February 3, 2017).

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

13-PELRB-2017

AFSCME COUNCIL 18 & NEW MEXICO HUMAN SERVICES DEPARTMENT (November 16, 2017). (PELRB 305-16).

AFSCME Council 18 appealed Director Griego’s Recommended Decision finding that the state employees AFSCME sought to accrete into an existing bargaining unit (Home Health Aide Supervisors and Psychiatric Technician Supervisors) do not share an “overwhelming community of interest” with other union members and that those employees are supervisors and/or managers exempt from bargaining. The PELRB affirmed its Hearing Officer and adopted his findings and conclusions as its own and AFSCME appealed the Board’s decision to the District Court on December 18, 2017. The case remains on appeal during the reporting period.

14-PELRB-2017

CULLISION v. SANTA FE COUNTY (November 16, 2017). (PELRB 116-17).

The PELRB affirmed the Director's Dismissal of this PPC adopting his findings that the complaint was deficient because it failed to specify the provisions of the PEBA alleged to have been violated and that after notified of the deficiency, the Complainant did not amend the complaint within the time allotted.

15-PELRB-2017

STATE OF NEW MEXICO v. AFSCME and CWA (November 16, 2017). (PELRB 107-17).

October 20, 2017 Director Griego issued a letter decision dismissing the complaint on the ground that the parties are not at "statutory impasse" by operation of NMSA 1978, § 10-7E-18(A) (5). The question of whether the parties are at impasse was found to be a factual issue to be determined in two earlier filed PPCs - *AFSCME, Council 18 v. State of New Mexico*; PELRB 125-15 and *CWA, Local 7076 v. State of New Mexico*; PELRB 127-15. Both of those cases were stayed by agreement of the parties until the decision in this case. No objection or request for review was filed and so, the PELRB found that the parties are not at impasse as a matter of law. Therefore, the Board ratified Director Griego's decision dismissing the complaint and directing him to close the case without prejudice to the parties in the two referenced PPCs - *AFSCME, Council 18 v. State of New Mexico*; PELRB 125-15 and *CWA, Local 7076 v. State of New Mexico*; PELRB 127-15.

SUMMARY OF COURT DECISIONS

One court decisions relating to PELRB decisions were handed down during the current reporting period. There are currently four cases on appeal pending resolution summarized as follows:

- 1) *American Federation of State, County and Municipal Employees, Council 18, AFL-CIO, Appellee v. New Mexico Department of Workforce Solutions, Appellant*, D-202-CV-2017-07924. After the PELRB issued its Order and Decision 11-PELRB-2017 (October 3, 2017), *supra*, upholding the Hearing Officer's Findings and Conclusions that the Department did not violate §§ 19(F) and (H) with regard to employees being reclassified and denied pay increases, but that it did violate those sections when it increased performance measures without bargaining, both parties appealed to the District Court – the Department appealing the finding that increasing the performance measures was a PPC and the Union appealing the decision that the reclassification and refusal of pay increases was not a PPC. The Record on Appeal was filed by the Board on November 30, 2017. The matter remains pending on appeal during the reporting period.
- 2) *Board of Education for the Deming Public Schools, Appellant, v. National Education Association-Deming and State of New Mexico Public Employee Labor Relations Board, Appellees*, D-202-CV-2017-07924. On November 13, 2017 Deming Schools appealed from the Board's Certification of NEA-Deming as the exclusive representative for the group of employees at issue. See 12-PELRB-2017, *supra*.

Deming Schools raised two issues on appeal: First, whether the evidence supports a conclusion that NEA-Deming was the incumbent exclusive representative of a

- bargaining unit recognized by the PELRB in 1999. Second, whether the “wall-to-wall” unit recognized in 1999 is permitted under the new version of the Public Employee Bargaining Act enacted in 2003 (PEBA II). The School District argues that there is no collective bargaining agreement between the parties or other dispositive evidence provided by Appellee that it was the incumbent labor organization and acting as such at PEBA I’s sunset on June 30, 1999, such that it would be appropriate to allow for automatic recognition as an incumbent labor organization under the current PEBA II. Moreover, the School District maintains that the wall-to-wall unit proposed by NEA-Deming is not permitted under the PEBA II and Appellee has submitted no evidence that a wall-to-wall bargaining unit even existed on June 30, 1999. The Record on Appeal was filed by PELRB staff in the Second Judicial District Court December 1, 2017 and remains on appeal during the reporting period.
- 3) *Board of Education for the Deming Public Schools, Appellant, v. National Education Association-Deming and State of New Mexico Public Employee Labor Relations Board, Appellees*, D-202-CV-2017-06276. In the context of the Appeal pending as D-202-CV-2017-07924, *supra*, Deming Schools moved for a stay of all collective bargaining activities, which motion was denied for lack of jurisdiction in light of the pending appeal. The Schools appealed from the Board’s denial of that motion in this case on December 1, 2017. The case remains on appeal during the reporting period.
 - 4) *American Federation of State, County and Municipal Employees, New Mexico Council 18, AFL-CIO, Appellant, v. State of New Mexico, Department of Health, and New Mexico Public Employees Labor Relations Board, Appellees*; D-202-CV-2017-08953. This case involves the PELRB’s dismissal of AFSCME’s Petition for Clarification (Accretion) filed with regard to Home Health Aide Supervisors and Psychiatric Technician Supervisors employed by the DOH in its Los Lunas Community Services Program. See 2-PELRB-2017, *supra*. AFSCME appeals on the grounds that the PELRB erred in determining that the petitioned-for employees did not share a Community of Interest with the existing bargaining unit and that it erred in concluding that the subject employees are “Supervisors” and “Management Employees” as those terms are defined in the Public Employee Bargaining Act. This appeal was submitted to the Second Judicial District Court on December 12, 2017 and remains on appeal during the reporting period.
 - 1) The single case decided on appeal during the reporting period was *Albuquerque Public Schools Board of Education and Brad Winter Ph.D., Superintendent of Albuquerque Public Schools v. Adrian Alarcon*, No. A-1-CA-34843 consolidated with *Central Consolidated School District No. 22, v. Central Consolidated Education Association*, No. A-1-CA-34424 (November 30, 2017). The Court of Appeals upheld the District Court upholding the PELRB and will be reported on in the 2018 Annual Report inasmuch as the case will not be closed until 2018 after compliance with the Board’s Order is confirmed.

TABLE A

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

37900

| Purpose/Measure | | FY16 Actual | FY17 Actual | FY18 Budget | FY19 Request | FY19 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 of decisions overturned on appeal | 0% | 1% | 1% | 1% | |
| Outcome | Percent of determinations of approval of local labor relations boards, bargaining unit recognition petitions and prohibited practice complaints processed and completed within the applicable regulatory deadlines | | | 100% | 100% | |
| Outcome | Percent compliance with statutes, with particular attention to due process, equal protection, the Public Employee Bargaining Act and board rules | 100% | 100% | | | |
| Outcome | Percent of cases resolved through agreement, mediation or arbitration | | | | | |
| Outcome | Percent of cases resolved through agreement, mediation or arbitration prior to hearing | 70% | 50% | | | |
| Output | Percent of determinations of approval of local labor relations boards within one hundred days of request for approval | 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 | 78% | 100% | | | |
| Output | Percent of prohibited practice complaints, not settled or withdrawn, decided within one hundred eighty days of filing | 60% | | | | |

* - recommended for General Appropriation Act

ALL CASES FILED WITH THE PELRB SORTED BY EMPLOYER OR RESPONDENT

2017

Table B

| Type of Employer or Respondent | Type of Cases | | | | | TOTAL |
|--------------------------------|---------------|-------------------------|---------------------------|-------------------------|---------|-----------|
| | PPCs | Certification Petitions | Decertification Petitions | Approval of Local Board | Impasse | |
| State | 0* | | | | | 0 |
| State Agency | 6 | | 1** | | | 7 |
| County | 3 | 1 | | | | 4 |
| Municipality | 8 | 5 | | | 1 | 14 |
| Public School | 6 | 2 | | | | 8 |
| Higher Education | 1 | | | | | 1 |
| Medical Facility | | | | | | |
| Other | | 1 | | | | 1 |
| Court | | | | | | |
| Union | 1 | | | | | 1 |
| Individual | | | | | | |
| Local Labor Board | | | | | | |
| TOTAL | 25 | 9 | 1 | | | 36 |

*A single cases may be brought by or against both a State Agency and the State qua State and are counted in the agency in both the "Agency" and "State" columns so that the "TOTAL" column does not reflect cases filed as much as claims filed.

** Includes "Disclaimers of Interest" by unions.

ALL CASES FILED WITH THE PELRB SORTED BY PETITIONER

2017

Table C

| Petitioner | Type of Cases | | | | | TOTAL |
|----------------------------|---------------|-----------------------------|----------------------------------|--|----------|-----------|
| | PPCs | Representation Petitions | Petitions for Decertification | Related to Approval of Local Board | Impasse | |
| AFSCME Council 18 | 7 | | | | | 7 |
| AFSCME Local 3999 | 1 | | | | | 1 |
| AFSCME Local 923 | 1 | | | | | 1 |
| AFSCME Local 3999 | 1 | | | | | 1 |
| Central Con. Ed. Ass'n | 1 | | | | | 1 |
| CWA | | 1 | | | | 1 |
| FOP | | | 1 | | | 1 |
| NMCPSO | 2 | 4 | | | | 6 |
| NEA | 2 | 2 | | | | 4 |
| IAFF 4737 | 1 | | | | | 1 |
| IAFF Local 4877 | 1 | | | | | 1 |
| IAFF 1687 | | 1 | | | | 1 |
| Individual | 4 | | | | | 4 |
| RR Police & Disp. Ass'n | | 1 | | | | 1 |
| SFCC-AAUP | 1 | | | | | 1 |
| Sunland Park POA | 1 | | | | | 1 |
| State | 1 | | | | | 1 |
| UMWA | 1 | | | | | 1 |
| Española | | | | | 1 | 1 |
| TOTAL | 25 | 9 | 1 | | 1 | 36 |

PPC OUTCOME ANALYSIS

2017

Table D

| | | |
|---|----|-----------|
| Total PPC's Filed | | 25 |
| Sustained (In whole or in part) | | |
| By Default | | |
| By Hearing Examiner (w/o Bd. Review) | | |
| After Board Review | | |
| After Review by Court | | |
| Dismissed – no violation found | | |
| By Hearing Examiner (w/o Board review) | 1 | |
| After Board Review | | |
| After Review by Court | | |
| Summarily Dismissed | | |
| Dismissed after preliminary review (NMAC 11.21.3.12) | 1 | |
| Dismissed after Motion | 1 | |
| Deferred to Agency | | |
| Deferred to Arbitration | | |
| Dismissed on collateral estoppel grounds | | |
| Withdrawn and/or Settled | | |
| Withdrawn upon receipt of notice of facial inadequacy | 1 | |
| Withdrawn in favor of alternate venue | | |
| Withdrawn as moot | | |
| Withdrawn prior to Summary Dismissal | 1 | |
| Settled prior to hearing | 15 | |
| Settled after hearing | 1 | |
| Pending | | |
| Being processed at the PELRB | 4 | |
| Stayed or deferred for various reasons | | |
| Matter pending before the courts | | |
| TOTAL PPC's CARRIED OVER FROM 2016 | | 12 |

JUDICIAL APPEALS

2017

Table E

| | | |
|--|---|----|
| TOTAL PELRB DECISIONS APPEALED | | 4 |
| Appeals pending | 4 | |
| Appeals withdrawn | 0 | |
| 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 | 32 |
| FINAL BOARD DECISIONS NOT APPEALED FURTHER | | |
| BOARD DECISIONS FOR WHICH TIME TO APPEAL HAS NOT YET RUN | | 0 |