

2019 ANNUAL REPORT

New Mexico Public Employee Labor Relations Board

MICHELLE LUJAN GRISHAM
Governor



THOMAS J. GRIEGO
Executive Director

Duff Westbrook, Board Chair

Roger E. "Bart" Bartosiewicz, Vice-Chair

Jay Bledsoe, Board Member

INTRODUCTION

New Mexico is one among 37 states plus the District of Columbia that have enacted a statute authorizing some type of public employee collective bargaining. See NMSA § 10-7E-1, et seq. Of the states permitting statewide public employee bargaining, seven, including New Mexico, also permit local entities to form their own boards. Two of those also impose a population requirement so that only the largest of the local entities may exercise the local option. Therefore, New Mexico is somewhat unique in that its Public Employee Bargaining Act contains a number of provisions designed to protect local boards, bargaining units, bargaining representatives and collective bargaining agreements (CBAs) pre-existing the 2004 version of the Act and permitting local governments to opt out of state coverage by creation of their own local labor ordinances after enactment of the Act.

Review of local boards operations was undertaken in 2019 and activities related to that review constitutes a significant portion of the Board's workload during the reporting period.

Whether enforced by a local labor board or the New Mexico Public Employee Labor Relations Board (PELRB) this report explains this Board's role 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 or other recognized 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 disputes ahead of litigation. For example, during this reporting year, only one of the six PPCs initiated during 2019 was summarily dismissed. Of the remaining five, three (60%), were resolved by agreement. Two remain pending and will be heard in the next reporting period. This settlement rate compares favorably with prior years:

50% of the total PPCs filed in 2018 were settled prior to hearing; 62% in 2017; and 82% in 2016.

The Board's adjudicatory function serves the critical purpose of resolving those disputes that could not be settled amicably. Historically, the claims most often requiring adjudication are those involving alleged discrimination or retaliation for union activities, or 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 local boards created pursuant to § 10 of the Act. 13 cases were opened as part of a broader effort begun in April of 2019 to update contact information for those local labor boards recognized pursuant to § 10 of the PEBA. Final resolution of those Orders to Show Cause will be determined in 2020.

After the local labor board issues, Prohibited Practice Charges constituted the most commonly filed actions. Five out of six cases were claims against State agencies. (The sixth was against a special district). Most of the filed cases (five out of six) involved alleged failures to bargain mandatory subjects or other impairment of bargaining rights. The majority of the remaining representation cases were unit designation proceeding with one exception in which a union disclaimed its interest representing a bargaining unit. Further information about these cases can be found in the Operations Summary, *infra*.

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 § 16. 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. Petitions for amendment or clarification of a unit or its representative are a type of “representation proceeding” on which the Board maintains data. (NMAC 11.21.2.35).

Please refer to the Operations Summary herein for details on all representation issues brought to the Board for resolution during the 2019 reporting period.

Approval of Local Board Ordinances, Resolutions or Charters

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)

Although there were no petitions for approval of new local boards filed during the 2019 reporting period, there were three new cases opened concerning revocation or rescission of local ordinances, charter amendments or resolutions creating local labor boards under § 10-7E-10 of the Act and 12 former case files re-opened for the same purpose. Please refer to the Operations Summary below for details regarding those cases.

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 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. See NMAC 11.21.3.19. The Board is empowered to remedy PPCs through the imposition of appropriate administrative remedies (PEBA § 9). The Board has authority to petition the courts for enforcement of such orders. *See*, PEBA § 23.

Please refer to the Operations Summary herein for details on the prohibited labor practices brought to the Board for resolution during the 2019 reporting period.

Impasse Resolution

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 pursuant to 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].

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. There was significant rulemaking activity during the reporting period. Please refer to the Operations Summary, *infra*, for details.

Case Resolution Time Frame

One of the PELRB's primary performance measures is the number of filed PPCs resolved within 180 days. The combined average number of days for resolution of all filed PPCs during this reporting period was 567 days – well over the 180 days goal. This represents an apparent substantial departure from prior years' consistent compliance with the 180 days goal. Closer examination of the data, however, reveals that the failure to meet completion goals is due to seven groups of cases held over from prior years due to lengthy appeals or by agreement of the parties:

1. In two related cases; *AFSCME v. State of New Mexico*, PELRB 125-15 and *CWA v. State of New Mexico*, PELRB 127-15 the issue before the PELRB was whether the State could be compelled to bargain over its removal of agency shop provisions from the parties' CBAs on the basis that while the PEBA explicitly identifies "fair share" as a permissive subject of bargaining, "union security" is a mandatory subject of bargaining. Both cases were filed in November of 2015. While the case was pending, the *Janus* case was making its way through the federal courts wherein the issue was whether the State of Illinois' deduction of agency fees from nonconsenting public employees' paychecks violates the First Amendment. See *Janus v. AFSCME, Council 31*, No. 16-1466, 585 U.S. ____ (2018). On April 14, 2016 the State of New Mexico filed an Unopposed Motion to Stay further proceedings pending the resolution of a declaratory judgment action in *State of New Mexico v. American Federation of State County and Municipal Employees, and Communications Workers of America, Local 7076*, case No. D-504-CV-2016-00153, on the same issue as was present in the *Janus* case, which Motion was granted. On March 15, 2017 however, the District

Court dismissed the declaratory judgment action for failure to exhaust the administrative remedies available in the stayed PELRB proceeding.

The parties sought and received an order holding the two consolidated cases in abeyance while they returned to the bargaining table. After those negotiations also ended in impasse, the parties sought a second time to hold matters in abeyance because of upcoming state elections. In March of 2019, the consolidated cases were placed into abeyance for three additional months upon request of the parties following the election of a new executive and the results of the *Janus* case. By that time the cases had been open for more than three years.

Eventually the parties settled their dispute based on the decision in *Janus*, but not until June of 2019; almost four years after they were first filed.

A third related case, *CWA v. State of New Mexico*, PELRB 115-18 filed August 13, 2018 was held in abeyance for the same reasons and eventually resolved after the *Janus* decision 302 days after filing.

2. On September 8, 2014 Communications Workers of America filed a Prohibited Practice Complaint against the State as PELRB 122-14, in which it alleged that the State made unilateral changes to a past practice of granting paid leave to union employee representatives for their time spent filing and investigating grievances. The PELRB Hearing Officer found that CWA had established a “past practice” whereby a grievant’s supervisor had discretion to determine whether time spent addressing his or her grievances was “time worked” or “Union time” and that the state interfered with that practice. The State defended itself as to this violation by arguing that CWA had failed to timely request bargaining after receiving notice of the change. The Hearing Officer rejected this defense and found that the letter announcing the State’s decision to cease paid time was a “fait accompli” thereby relieving CWA of its duty to request bargaining. This conclusion also was the basis for the Hearing Officer’s determination that CWA had established the State’s violation of Section 10-7E-19(F). (Failure to bargain in good faith).

On April 15, 2015 the PELRB adopted the Hearing Officer’s Report and Recommendation, including its Findings of Fact, Conclusions of Law and Rationale except those finding a violation of PEBA § 10-7E-19(F). With regard to that finding, the PELRB reversed the finding on the ground that the Union did not adequately explain why it took no action in a six-month period to request bargaining. CWA appealed the reversal of the § 19(F) conclusion and “fait accompli” finding. The State cross-appealed, the finding of a past practice.

The District Court affirmed the dismissal of CWA’s § 19(F) claim that the State refused to bargain collectively in good faith but because the PELRB did not adopt the findings regarding “fait accompli” and declined to find that the State refused to bargain and violated Section 19(F) the Court found the PELRB’s Order to be inconsistent with its conclusion that a violation of § 19(B) occurred. Accordingly, PELRB’s Order as to § 10-7E-19(B) was reversed and the matter remanded for further findings on March 13, 2017, two and one-half years after the case was filed

with the PELRB. From filing to final disposition by the PELRB 215 days elapsed – only 35 days beyond the Board’s 180-day goal.

CWA filed a Petition for Writ of Certiorari to the Court of Appeals on April 14, 2017. The case remained on appeal before the Court of Appeals until February 21, 2019 when the Court remanded for further findings on what effect a zipper clause in the parties’ CBA has on past practice and the issue of *fait accompli*. The parties resolved the issues on remand on April 12, 2019 and voluntarily dismissed all remanded issues on April 26, 2019. The file was closed June 11, 2019; 1737 days after filing and 1557 days after the Board’s 180 days metric.

3. AFSCME brought a PPC against the Department of Workforce Solutions on January 26, 2017 alleging bad faith bargaining and failure to negotiate salary and increased work duties. (PELRB 102-17). The PELRB’s Hearing Officer held an evidentiary hearing within the 180-day deadline on June 28, 2017 and issued his recommended decision on July 25, 2017; still within the 180 days. Both parties appealed to the PELRB for review. The Board did not meet in August. At its meeting on September 12, 2017, it affirmed the Hearing Officer’s recommended decision that NMDWS violated §§ 19(F) and (H) of the Public Employee Bargaining Act. A duly executed Order to that effect was issued on October 31, 2017, approximately 90 days beyond the 180-day limit. NMDWS appealed the Board’s Order to the District Court where it remained on appeal until July 26, 2018 when the District Court issued a Memorandum Opinion and Order affirming the Board. Thereafter, because no petition for further appeal was filed, the Board sought enforcement of its original order that had been stayed pending appeal. Compliance with the Board’s posting and injunction requirements was accomplished on March 1, 2019 and the file was able to be closed 715 days after opening.
4. On September 18, 2018 AFSCME, Council 18 brought a PPC against the State Personnel Office and the N.M. Dep’t of Corrections alleging unilateral implementation of new personnel policies. (PELRB 116-18). Motion practice delayed a hearing on the merits until January of 2019, within the 180-day deadline. However, at the request of both parties, a hearing on the merits was held in abeyance in order to facilitate settlement discussions with a new administration sworn in that January. A settlement was eventually reached and the claims voluntarily dismissed June 14, 2019, approximately 120 days beyond the 180-day deadline.
5. *NEA-Deming v. Deming Public Schools*, PELRB 111-18 concerned allegations of the School District’s failure to bargain, unilateral alterations to terms and conditions of employment, and direct dealing filed May 29, 2018. The PPC was stayed pursuant to a District Court Order issued in two consolidated representation cases involving the same parties, PELRB 304-17 and 305-17, pending the outcome of the appeal in those consolidated cases from 2017. After the appeal of PELRB 304-17 and 305-17 resulted in a Memorandum Opinion and Order affirming the Board on February 21, 2019, NEA-Deming moved to amend its complaint to include events occurring while the PPC was stayed. The Motion was granted, an amended PPC filed and the parties met on July 9, 2019 to schedule a hearing on the merits. Approximately one month later, on August 8, 2019 the parties reached a settlement and the case was

voluntarily dismissed. After review by the Board the file was closed September 17, 2019, 476 days after opening.

6. On August 10, 2018 AFSCME filed a complaint against the State (*AFSCME, Council 18 v. State of N.M.*, PELRB 114-18) concerning a refusal to deduct union dues, as contrasted with fair share or agency fees resolved by the *Janus* case discussed above. It was the State's position that under *Janus*, there must be a showing by clear and compelling evidence that an employee has affirmatively consented to deduction of union dues his or her paycheck. Pending at the same time, in the United States District Court for the District of New Mexico, was a case concerning the same issue: *Brett Hendrickson v. AFSCME Council 18 and New Mexico Human Services Department*, Case No. 1:18-CV-01119. At the request of the parties PELRB 114-18 was held in abeyance until the outcome of the federal court case. On June 12, 2019 the parties resolved their dispute and the PPC was withdrawn without resolution of the issue in the *Hendrickson* case. After review of the voluntary dismissal by the PELRB the file was closed on July 30, 2019, 354 days after opening.
7. Four related cases filed in March 2018 were consolidated for hearing in *CWA v. the Third Judicial District Attorney's Office*, PELRB No.'s 105-18, 106-18, 107-18 and 108-18. A fifth case, PELRB 112-18 later filed in June 2018, was not consolidated with the prior four. A Hearing on the Merits in PELRB 112-18 was held in abeyance pending the outcome of the consolidated prior four cases. Within 180 days of filing, on September 18, 2018 the PELRB approved a provisional partial settlement agreement reserving CWA's right to continue to a hearing on the consolidated cases with regard to those issues not yet settled but still being negotiated. Attention was then turned to the case held in abeyance, PELRB 112-18, but because of the agreement to hold the matter in abeyance, process was delayed until three months after its filing.

A hearing on the merits in PELRB 112-18 was held on October 16 and 17, 2018, continuing for a third day on November 26, 2018. In accord with a briefing schedule established at the conclusion of the hearing, closing briefs in lieu of closing argument were timely submitted by both parties on January 14, 2019. The Board's Hearing Officer issued a Recommended Decision on February 27, 2019 and the matter was reviewed by the Board at its April 2, 2019 meeting. After affirming the Hearing Officer's decision, and no further appeal being taken, the file was closed on April 18, 2019, 249 days after opening.

Removing settled cases from the calculation and discounting periods of time on appeal, those cases proceeding to a hearing on the merits were resolved *at the PELRB level* within an average of 114.5 days – well within the 180 days performance measure, though longer than the average of 88 days in the prior reporting period. See Table A.

Case Sources

As stated in the Introduction of this Report, a comprehensive review of local boards operations was undertaken in 2019 and activities related to that review constitutes a

significant portion of the Board's workload during the reporting period. Their inclusion in the analysis of the Case Sources would skew the source data toward local municipalities, counties and school districts because, by definition, those are the sources of petitions for approval of local resolutions, ordinances and charter amendments under Section 10. Therefore, staff is removing from source statistics the 14 case files re-opened in 2019 for review of local board compliance with section 10 and three new files opened for the same purpose.

After removing the re-opened local board files from consideration, we see that municipalities, special districts and counties comprised the largest source of filings in 2019 - 44% (seven cases) of all cases filed reporting period. The State and its agencies were close behind, constituting 38% (six cases) of all filings while school districts accounted for the remaining 18% (three cases). In recent reporting periods labor organizations representing city, county and school district employees were the most frequent petitioners, surpassing those representing state employees that had formerly been the most frequent filer. During this reporting period State employee labor representatives accounted for the majority of filings – six out of 16 new case filings during 2019 or 38% of the total. Three of those six cases were filed by AFSCME, Council 18 or its affiliates (19%). Communications Workers of America and National Education Association or their affiliates each filed two of the 16 new cases (12.5% each). International Association of Fire Fighters, Local 4366 filed one representation petition (6% of the total).

Filing by individual petitioners or complainants constituted approximately 25% of the total filings; an increase over the 11% of such filings in the prior reporting period. Once considered an anomaly, the increase in individual filings over the prior reporting period may indicate the beginning of a trend, perhaps the result of bargaining representatives disclaiming their interests in financially marginal bargaining units after the *Janus* decision. Staff will continue to monitor individual filings in this regard. See Tables B and C.

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. The court case summaries are informational only and should not be relied upon for legal research.

2019 OPERATIONS SUMMARY

29 case files were opened in 2019 compared to 28 cases filed in the prior reporting period. It should be noted that of the 29 case files opened in 2019, 14 are prior PELRB approvals of local government ordinances, resolutions or charter amendments (200 series) reopened by the Board for review of compliance with Section 10 of the PEBA. Setting aside those 14 Board-initiated case files, yields a total of 15 new filings – 13 fewer than in 2018 representing a 57% decrease in initial filings during the reporting period. That decrease is part of a two-year trend in which 2018 saw a 29% decrease from the average number of filings over the preceding 5 years.

Prohibited Labor Practice Cases

Of the 15 new case filings in 2019, six are prohibited practices complaints (PPCs) compared with 17 PPCs filed in 2018. This represents a 35% decline in complaints from the preceding reporting period and a 52% decline over the preceding two-year period:

1. In *AFSCME Council 18 v. NM Department of Taxation and Revenue*, PELRB 101-19, the union alleged violation of sections 19(A), (B), (D), (E), (G) and (F) of the Public Employee Bargaining Act. The case settled and was voluntarily dismissed.
2. In *AFSCME, Council 18 v. NM Dept. of Corrections*, PELRB 102-19, the union alleged the Department of Corrections made unilateral changes to working conditions in violation of Sections 5, 17(A), 19(B), (C), (F), (G), and (H). The case settled and was voluntarily dismissed.
3. *Rhonda Goodenough v. NM Children Youth & Families Department*, PELRB 103-19 concerned an individual employee alleging that the employer and union improperly excluded her position from inclusion in the recognized bargaining unit and consequently, from coverage under the CBA in effect. The Complaint was summarily dismissed for lack of standing or failure to state a claim. However, a second related PPC was filed following dismissal as described below:
4. In *Rhonda Goodenough v. NM Children Youth & Families Department*, PELRB 106-19, Complainant alleged retaliation against by the employer for filing the PPC PELRB 103-19. As of this writing the case is pending a hearing on the merits of the claim and is scheduled to be heard on January 8, 2020.
5. A union alleged violations of Sections 19(F) and (H) of the Act, stemming from the employer governing board rejecting a settlement agreement reached in contract dispute. See *CWA v. Timberson Water & Sanitation Dist.*, PELRB 104-19. The parties reached a settlement of all claims after the matter was scheduled for hearing on the merits. Following review of the Voluntary Dismissal called for as part of the settlement, by the Board at its November 12, 2019 meeting, this case was closed on October 25, 2019.
6. An individual employee brought a complaint alleging improper denial of a requested flex schedule in *Tamira Smiley v. HSD*, PELRB 105-19. The parties reached a settlement of the case and the complainant withdrew her complaint on December 20, 2019

In addition to the foregoing PPC cases opened in 2019, the Board continued working on cases opened in prior years but resolved in 2019:

1. In *AFSCME, Council 18 v. San Miguel County*, PELRB 103-18, the union alleged failure to bargain in good faith, discrimination, interference and coercion. The Board affirmed its Hearing Officer's decision that the union did not meet its burden of proof and dismissed the Complaint. This case was closed on January 17, 2019.
2. The Board consolidated five interrelated complaints alleging unilateral alteration of job duties; direct dealing, interference, coercion and intimidation in *CWA v. Third Judicial District Attorney, State of New Mexico*, PELRB 105-18, 106-18, 107-18, 108-18 and 112-18 consolidated. After an agreement to hold matters in abeyance pending the outcome of PELRB 112-18 alleging violation of §§19(A) (prohibiting discrimination against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization); 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); 19(D) (prohibiting discrimination in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage

membership in a labor organization; and 19(E) (prohibiting a public employer from discharging or otherwise discriminating against a public employee because he has signed or filed an affidavit, petition, grievance). The Board affirmed its Hearing Officer's conclusion that the union did not meet its burden of proof and dismissal of the PPCs and the cases were closed on April 18, 2019.

3. The Board issued its Order dismissing union claims *In re: AFSCME, Council 18, v. NM Human Services Department*, PELRB 123-17 in which the union alleged that HSD unilaterally implemented a performance quota for Family Assistance Analysts ("FAA") who work for the Income Support Division ("ISD") of the New Mexico Human Services Department ("HSD") in violation of §§ 19(F) (refuse to bargain collectively in good faith with the exclusive representative); 19(G) (refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule), and/or, 19(H) (refuse or fail to comply with a collective bargaining agreement). The Board upheld its Hearing Officer's decision that the Union did not meet its burden of proof while HSD established its affirmative defense that the productivity quota is not subject to bargaining based on Articles 15 and 18 of the CBA as well as the question whether ISD acted within its scope of authority under the CBA. No appeal was taken, and the case was closed January 7, 2019.
4. At a Hearing on the Merits held December 17, 2018 the parties in *AFSCME, Local 3277 v. City of Rio Rancho*, PELRB No. 113-18, agreed to make permanent, a preliminary injunction issued by the Executive Director in order to move the case into District Court for review. That agreement was reviewed by the Board on January 8, 2019 and an appeal was filed February 18, 2019. The merits of the union's claims of interference and coercion of employees for exercising PEBA rights in violation of NMSA 1978 Section 10-7E-19(B), domination or interference in labor union in violation of Section 19(C), refusal to bargain in good faith in violation of Section 19(F) and failure to comply with the parties' Collective Bargaining Agreement in violation of Section 19(H) are abated pending resolution of the injunction issue. See *City of Rio Rancho v. AFSCME, Council 18, Local 3277, AFL-CIO and the New Mexico Public Employee Labor Relations Board*, Second Judicial District Cause No. D-202-CV-2019-01398. (In re: PELRB 113-18). The District Court upheld the Board's Order granting a pre-adjudication injunction on October 28, 2019. No further appeal was pursued.

The six Prohibited Labor Practice Complaints (PPCs) filed during the reporting period are less than half of the number of PPCs filed in 2018, which had 17. As previously stated, this represents a decrease that may be attributable to a period of relative labor peace, particularly in light of the fact that only one of the PPCs required a hearing on the merits. The hearing for that case is scheduled for January 8, 2019.

As in prior years a significant percentage – 67% – of PPCs filed in 2019 were settled prior to a hearing on the merits. (See Table E). This compares favorably with the approximately 50% of the total PPCs filed in 2018 being settled prior to hearing. It is obvious that the *number* of filed PPCs has been declining over the past several reporting periods, but the rate of settlement expressed as a percentage of annual totals remains consistently around the 50% mark.

One PPC was summarily dismissed upon a Motion for Summary Judgment - *Rhonda Goodenough v. N.M. Children Youth and Families Dep't.*, PELRB 103-19. The rate of summary dismissal in this reporting period is consistent with that in prior years.

None of the cases filed in 2019 were resolved by a Board Order after a hearing on the merits. One case remains to be heard on their merits and is scheduled to be heard on January 8, 2020:

- a. *Rhonda Goodenough v. N.M. Children Youth and Families Dep't.*, PELRB 106-19. In this second PPC filed by Complainant during the reporting period, she alleges a violation of §19(E) and (G) when HSD took disciplinary action against the her in retaliation for submitting and participating in the prohibited practice complaint PELRB 103-19. A hearing on the merits is scheduled for January 08, 2020.

Representation Cases

As with the decline in prohibited practice filings, the PELRB experienced a decline in representation petitions over the prior reporting period. Six of the 2019 case filings were representation petitions, comprising two petitions for initial certification of a bargaining unit; two decertification petitions consolidated into a single case file, one union disclaimer of interest in a bargaining unit; and three clarification proceedings seeking to accrete position into an existing bargaining unit.

There was one case file opened during the reporting period seeking decertification of a bargaining unit comprising teachers in the Deming School District. Two petitions by separate filers were consolidated into a single case file. See *In re: Lucia Wyman and Victoria Pacheco & NEA-Deming*, PELRB 305-19. The petitions were summarily dismissed for lack of the requisite showing of 30% support.

In one instance a union disclaimed interest in representing a unit comprising Assistant District Attorneys in Doña Ana County. See *In re: Communications Workers of America & Third Judicial District Attorney's Office*; PELRB 301-19.

There were two case files opened in 2019 related to clarification of units or accretion of new positions in an existing unit:

1. *In re: AFSCME Local 2911 & Taos County*; PELRB 304-19;
2. *In re: Santa Fe County Firefighters, LAFF Local 4366 & Santa Fe County*, PELRB 306-19.

The *Taos County* case was resolved and closed after the parties agreed to accrete Sheriff's Department Sergeants into an existing bargaining unit of Sheriff's Deputies and an Amended Certification was entered on November 25, 2019. See 21-PELRB-2019.

The *Santa Fe County Firefighters* accretion case was summarily dismissed on October 30, 2019 upon a motion for dismissal filed by the County. However, the Dismissal was based on a ground other than that put forward by the County. The union was given ten days in which to demonstrate the jurisdiction of this Board to clarify the unit as petitioned for, primarily by

demonstrating the actual existence of the position in question. The union made no such demonstration and so its Petition was dismissed. Following dismissal, the Union attempted to withdraw the petition – a procedural impossibility in light of the prior dismissal.

Two new cases were opened during the reporting period seeking recognition of new bargaining representatives and units:

1. *In re: NEA-Las Vegas City & Las Vegas City Schools*, PELRB 302-19. This case resulted in certification after an election of a bargaining unit comprising Educational Assistants represented by NEA-Las Vegas City.
2. *In re: NEA-NM & San Juan College*, PELRB 303-19. This case was dismissed when the local board for the college agreed to comply with the board member appointment requirements of the PEBA Section 10 and the union withdrew its petition.

This represents a 54% decline in the number of representation petitions filed compared to the preceding reporting period, not considering the 14 re-opened prior PELRB approvals of local government ordinances, resolutions or charter amendments. Including those cases in the data yields an increase over the prior reporting period of 55% bring the number of representation cases up to the average over the prior five years.

In addition to the representation petitions filed in 2019, the Board continued work on the following representation cases filed in prior reporting years but not resolved until 2019:

1. *New Mexico Coalition of Public Safety Officers & Rio Rancho Police and Dispatch Association*, PELRB 307-17. In this case the Board affirmed its Hearing Officer's Summary Judgment dismissing the Union's Petition for Severance of Dispatchers from an existing bargaining unit including Police Officers because PELRB rules require severance of employees in the occupational groups specifically delineated in § 13 without the ability to fashion an appropriate unit based on clear and identifiable communities of interest. The case was appealed to the District, which affirmed the Board in September of 2018. After the time for requesting further appellate review passed without a Petition for Certiorari having been filed, the case was closed January 14, 2019.
2. *Jennifer Poling, NEA-Clayton & Clayton Municipal Schools*, PELRB 307-18. The PELRB approved the results of an election decertifying the National Education Association-Clayton as the recognized bargaining representative of employees in Clayton Municipal Schools on October 24, 2018. After the period for further appeal passed without an appeal being filed, the case was closed on January 17, 2019.

Approval of Local Board Ordinances, Resolutions or Charters

There were three new cases opened concerning revocation or rescission of local ordinances, charter amendments or resolutions creating local labor boards under §10-7E-10 of the Act:

1. In *In re: Hidalgo County*, PELRB 201-19, after learning that no members had been appointed to its local board and no rules enacted as required by Section 10 of the Act,

the PELRB sent the County a letter giving 30 days to comply with Section 10. The County decided to rescind its previously approved collective bargaining ordinance.

2. Because there was no union activity for several years, Loving Municipal Schools acquiesced in this Board's revocation of its previously approved collective bargaining resolution subject to its right to petition for approval of a new resolution in the future should the need arise. See *In re: Loving Municipal Schools*, PELRB 202-19.
3. In the course of researching local entities' compliance with Section 10 of the Act, staff learned that collective bargaining in the Los Alamos Public Schools was taking place pursuant to a resolution that had never been submitted to this Board for review and approval as required by Section 10. This Board issued an Order to Show Cause why the schools should not be enjoined from continuing to operate under the resolution unless and until it is approved by this Board as being compliant with Section 10 of the Act. On November 22, 2019 the Los Alamos School Board rescinded their resolution in its entirety, thereby coming back under the PELRB's jurisdiction. Closing the case will be reviewed by the PELRB at its January 2020 meeting. See *In re: Los Alamos Public Schools*, PELRB 203-19.

In addition to the foregoing, the Board re-opened several previously closed files to consider revoking its prior approvals of local board resolutions, ordinances or charters for failure to comply with § 10 of the Act. Pursuant to § 10(A) of the Act, local boards shall assume the duties and responsibilities of the PELRB. Further, "A local board shall follow all procedures and provisions PELRB unless otherwise approved by the PELRB. § 10(B) requires local boards shall be composed of three members appointed by the public employer. Because the local board "shall" assume the duties and responsibilities of the PELRB and follow all procedures and provisions of the PEBA after approval of a local board, requiring a local board to maintain a three-member board after the approval of the local board's ordinance, resolution or charter and to pass rules to affect its duties is consistent with the legislative intent of § 10. Consistent with this necessary implication is Board Rule 11.21.5 .13 NMAC, providing that upon a finding by the PELRB that a local board no longer meets the requirements of Section 10 of the Act, the local board shall be so notified and given a period of 30 days to come into compliance. If a local Board does not become compliant within that 30 days, Rule NMAC 11.21.15.14 provides:

"Upon issuance of a final order or judgement by a court of competent jurisdiction, finding that a local board is not in compliance with the act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of PELRB."

Only 26 of 51 local boards appointed by local governments pursuant to an ordinance, resolution or charter amendment approved by the PELRB under § 10 were able to verify that they appointed all three members of their boards, passed procedural rules and were meeting to conduct business. The following files were therefore re-opened to enforce the obligations required by § 10 of the Act:

1. *In re: City of Grants*, PELRB 211-04
2. *In re: Chama Valley ISD*, PELRB 214-04

3. *In re: City of Socorro*, PELRB 225-04
4. *In re: Curry County*, PELRB 229-04
5. *In re: City of Tucumcari*, PELRB 202-05
6. *In re: Town of Taos*, PELRB 205-05
7. *In re: Lea County*, PELRB 207-05
8. *In re: Socorro Schools*, PELRB 201-07
9. *In re: Carlsbad Municipal Schools*, PELRB 202-07
10. *In re: Zuni Schools*, PELRB 203-07
11. *In re: Española Mun. School Dist.*, PELRB 206-07
12. *In re: Lincoln County*, PELRB 202-08
13. *In re: Lake Arthur Mun. Schools*, PELRB 202-09
14. *In re: Ruidoso Mun. Schools*, PELRB 202-13.

One local board, that for Roswell Schools, was conditionally approved in 2010, but the changes directed to be made to its resolution as a condition of approval were never made. Consequently, it is PELRB staff opinion that although this board was originally counted among the 51 local boards created under Section 10, it technically does not exist. No certificate of approval was ever issued by the PELRB and the Roswell Schools' labor-relations policy refers to the PEBA – not to a local labor management resolution. The Board's records will reflect that there is no approved resolution and Roswell Schools should no longer be counted among the group of local labor boards.

The remainder of the 51 Section 10 Boards gave assurances to staff that they were taking action to comply with the PEBA. Staff will continue to monitor those assurances during the next reporting period. The PELRB directed the above-listed political subdivisions that could not or would not verify their compliance with § 10 of the PEBA that they had 30 days to come into compliance or prior approval of the local ordinance or resolution at issue would be revoked in accordance with NMAC 11.21.5.14. When the 30-days' notice did not compel universal compliance, the Board issued Orders to Show Cause why its prior approval of those ordinances, resolutions or charter amendments should not be revoked.

The results of these enforcement actions were somewhat mixed. Three entities rescinded their local board legislation¹ and four acquiesced in this Board revoking their local board legislation². In several instances, the Board allowed entities additional time in which to comply with the requirements of § 10.³

Staff recommended the revocation of their prior approval in three instances (City of Socorro, City of Tucumcari and Ruidoso Schools.) On November 25, 2019, the Board

¹ Hidalgo County, Sierra County and the City of Artesia.

² Española Schools, City of Socorro and Socorro Schools. Lake Arthur Schools has expressed its intent to acquiesce in revocation or rescind its ordinance, but as of this writing, has not yet taken action.

³ Zuni Schools, Chama Valley ISD, Ruidoso Municipal Schools, Town of Taos, Lea County, Lincoln County, were given until the February 2020 meeting of the PELRB to provide evidence of compliance; The City of Grants demonstrated that its board comprised three members, but one of them had been elected to the city council and was no longer eligible to serve on the board. The City was working on appointing a replacement. In light of this information, the Executive Director recommended against revocation of prior approval of the Grants ordinance.

revoked its prior approval in re: the City of Socorro, Carlsbad Schools and the City of Tucumcari. See footnote 3 below for the action taken in re: Ruidoso Schools.

Rulemaking Activity

The Board undertook amendment to its rules by authorizing the Executive Director to proceed with hearings on proposed amendments summarized as follows:

- A. **11.21.1.11 REPRESENTATION OF A PARTY:** This change will eliminate an apparent exception to the requirement that a representative of a party file a notice of appearance for employees of a party to reflect the reality that all representatives of a party to file a notice of appearance, typically upon the filing of an initial pleading. This will enable PELRB staff to ensure all appropriate individuals receive notice of Board action.
- B. **11.21.1.12 EX PARTE COMMUNICATIONS:** This change removes the specific enumeration of types of proceedings (specifically, the outdated reference to “fact finding” which is a term of art related to impasse resolution proceedings) to which the prohibition of ex parte communications applies and makes it applicable to any proceeding before the Board
- C. **11.21.1.15 RECORDS OF PROCEEDINGS:** This change removes references to the now obsolete practice of “tape recording” to encompass modern audio recording technologies.
- D. **11.21.1.16 NOTICE OF HEARING:** This change clarifies the duties of PELRB staff in notifying parties of proceedings and expands the scope to include conferences in addition to hearings.
- E. **11.21.1.18 MISCONDUCT:** This change clarifies the duty and power of the Board to control its proceedings. The added language clarifies the statutory authority for the rule, adds abusive behavior to the list of prohibited conduct, includes examples of the possible remedies for misconduct, and provides for Board review of the exercise of this power by one of its agents.
- F. **11.21.1.22 BURDEN OF PROOF:** This change removes outdated language related to impasse resolution proceedings applicable under PEBA I but inapplicable since the passage of PEBA II.
- G. **11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS:** This change adds language to provide a deadline for responses to motions not addressed in a scheduling order or filed in the absence of a scheduling order.
- H. **11.21.1.33 CHAIRPERSON SUCCESSION:** This new rule is intended to ensure that the chairperson has at least one year of experience in PELRB rules and procedures as well as parliamentary procedure, and that a chairperson with such experience is always in place regardless of the expiration of terms.

- I. **11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:** This change corrects an error in punctuation to provide more clarity.
- J. **11.21.2.25 PRE-ELECTION CONFERENCE:** These changes have two major components: 1) adding language that allows for conducting an election using electronic ballots, and 2) allowing the waiver of the requirement for a pre-election conference if the parties can stipulate to a satisfactory consent election agreement that is approved by the director at or soon after a Status and Scheduling Conference.
- K. **11.21.2.27 BALLOTS AND VOTING:** This rule adds language referring to electronically conducted elections in light of the changes to 11.21.2.25 allowing electronic balloting. It also allows the director to delegate the responsibility of conducting elections to an election supervisor pursuant to the authority granted by 11.21.1.28.
- L. **11.21.2.30 CHALLENGED BALLOTS:** In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.
- M. **11.21.2.31 TALLY OF BALLOTS:** In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.
- N. **11.21.2.33 CERTIFICATION:** This change clarifies the action required of the director after an election and adds language that codifies the Board's longstanding practice of reviewing the results of representation elections before issuing a certification, a practice that might not take place within ten (10) days.
- O. **11.21.2.39 VOLUNTARY RECOGNITION:** This change corrects a grammatical error.
- P. **11.21.2.42 DISCLAIMER OF INTEREST:** This new rule codifies the right of a labor organization to disclaim its interest in a bargaining unit without the necessity of undergoing decertification, so long as its conduct is not inconsistent with such disclaimer.
- Q. **11.21.3.17 BRIEFS:** This change corrects a typographical error which incorrectly cited the rule for briefs.
- R. **11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:** The changes to subsection (A) and (B) and (D) clarify the types of enactments that can be submitted for Board approval to better reflect the reality that the Board does not approve "boards," which might not be constituted at the time of approval, but rather the ordinances, charter amendments, or resolutions authorizing their creation. The changes to subsection (C) clarify the Board's jurisdiction over public employee labor relations matters in the absence of a "fully functional" local

labor board complying with section 10 of the Act and ensure that public employees have a mechanism for exercising the rights established by the PEBA regardless of the functional status of a local labor board.

- S. **11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS:** The first change (“and” to “any”) corrects a typographical error. The proposed amendment adds language requiring local boards to timely respond to inquiries by the PELRB or its staff necessary to carry out its functions and duties; to conduct studies on problems pertaining to employee-employer relations; and request from public employers and labor organizations the information and data necessary to carry out the board’s functions and responsibilities pursuant to § 9(B) of the Act.

Public comment was taken at a hearing held December 2, 2019 and those comments will be presented to the PELRB at its January 2020 meeting for consideration before voting to enact or amend the rules as proposed.

Impasse Resolution

As stated in the overview above, 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. During this reporting period staff have been monitoring impasse in negotiations in the City of Española. This impasse has been ongoing since the prior reporting period and although mediation has not been successful, neither party has requested a panel of arbitrators to select one to resolve the impasse.

SUMMARY OF BOARD ORDERS

1-PELRB-2019

AFSCME, LOCAL 3277 and CITY OF RIO RANCHO (January 18, 2019). (PELRB 113-18).

The Board found that both the Board *qua* Board and its Hearing Officer have authority to issue preliminary injunctions, and because the City’s actions may exceed what was required under the Supreme Court’s decision in *Janus v. AFSCME, Council 31, et al.*, 138 S.Ct. 2448, 2486 (2018) when withholding union dues from existing union members, it ratified Director Griego’s issuance of a preliminary injunction pending the outcome on the hearing of the merits denied an appeal from Injunctive Relief.

This was appealed to the Second Judicial District Court as case number D-202-CV-2019-01398. On October 28, 2019 the District Court affirmed the Board. Refer to the Summary of Court Decisions for further details of the Court’s Memorandum Opinion and Order.

2-PELRB-2019

AFSCME, LOCAL 3103 and SAN MIGUEL COUNTY (January 18, 2019). (PELRB 311-18).

The PELRB recognized the Union's disclaimer of interest as the incumbent labor organization representing a bargaining unit of Detention Officers, Sergeants and Lieutenants, Classification Programs Officers, Classification Programs Records Coordinators, Transport Service Supervisors, Sheriff's Department Sergeants and Deputies, Radio Dispatchers, Commissary Officers, Visitation Officers, Administrative Area Secretaries, Inmate Program Officers and K-9 Handlers employed by the County of San Miguel.

3-PELRB-2019

AFSCME, COUNCIL 18 v. HIDALGO COUNTY, (January 21, 2019). (PELRB 310-18).

The PELRB recognized the Union's disclaimer of interest as the incumbent labor organization representing a bargaining unit of Corrections Officers, Dispatchers, Sheriff's Deputies, Detention Officers and Corporal Detention Officers employed by the County of Hidalgo.

4-PELRB-2019

AFSCME, LOCAL 3277 and CITY OF RIO RANCHO (January 29, 2019). (PELRB 113-18).

At a hearing on the merits the parties agreed that the November 5, 2018 temporary injunction referred to 1-PELRB-2019, shall be made permanent, allowing the parties to appeal immediately to district court. Therefore, the Board converted the preliminary injunction into a permanent injunction based on the findings of fact found by the hearing officer in his preliminary injunction.

This was appealed to the Second Judicial District Court as case number D-202-CV-2019-01398. On October 28, 2019 the District Court affirmed the Board. Refer to the Summary of Court Decisions for further details of the Court's Memorandum Opinion and Order.

5-PELRB-2019

OPEN MEETINGS ACT RESOLUTION (March 5, 2019).

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

6-PELRB-2019

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 7076 v. STATE OF NEW MEXICO (March 7, 2019). (PELRB 125-15 and 127-15 consolidated).

The PELRB agreed to hold further scheduling in this consolidated case in abeyance in order to facilitate ongoing settlement discussions.

7-PELRB-2019

COMMUNICATIONS WORKERS OF AMERICA, THIRD JUDICIAL DISTRICT ATTORNEY'S OFFICE, (April 3, 2019). (PELRB 301-19).

The PELRB recognized the Union's disclaimer of interest as the incumbent labor organization representing a bargaining unit of non-probationary Trial Attorneys, Assistant Trial Attorneys, Senior Trial Attorneys and Deputy District Attorneys employed by the Third Judicial District Attorney's Office.

8-PELRB-2019

IN RE: HIDALGO COUNTY LABOR RELATIONS BOARD (April 8, 2019) (PELRB 201-13).

The Board directed Hidalgo County to comply with that provision of Section 10 of the Act requiring local Boards to appoint three members within 30 days.

9-PELRB-2019

NEA-LAS VEGAS CITY and LAS VEGAS CITY SCHOOLS (July 30, 2019). (PELRB 302-19).

The Board approved a Consent Election Agreement for a representation election for a unit comprising Las Vegas City Schools educational assistants.

10-PELRB-2019

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, CLC, v. STATE OF NEW MEXICO, (June 10, 2019). (PELRB 115-18).

The PELRB approved the parties' Settlement Agreement and directed its Executive Director to close the case.

11-PELRB-2019

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO v. NEW MEXICO DEP'T OF HEALTH, (June 10, 2019). (PELRB 117-18).

The PELRB approved the parties' Settlement Agreement and directed its Executive Director to close the case.

12-PELRB-2018

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO v. STATE OF NEW MEXICO, (June 10, 2019). (PELRB 122-14 and 127-15).

The PELRB approved the parties' Settlement Agreement and directed its Executive Director to close the case.

13-PELRB-2019

NEA-LAS VEGAS CITY and LAS VEGAS CITY SCHOOLS (July 30, 2019). (PELRB 302-19).

The Board approved Certification of the election results from a representation election and authorizes the Director to issue a Certificate of Representation for a unit comprising Las Vegas City Schools educational assistants.

14-PELRB-2018

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO v. STATE OF NEW MEXICO, NEW MEXICO CORRECTIONS DEPARTMENT (July 30, 2019). (PELRB 102-19).

The Board ratified the Executive Director's voluntary dismissal of this case and ordered the Director to close the case.

15-PELRB-2019

AFSCME, COUNCIL 18 v. STATE OF NEW MEXICO (July 30, 2019). (PELRB 114-18).

The Board ratified the Executive Director's voluntary dismissal of this case and ordered the Director to close the case.

16-PELRB-2019

AFSCME, COUNCIL 18 v. STATE OF NEW MEXICO (July 30, 2019). (PELRB 116-18).

The Board ratified the Executive Director's voluntary dismissal of this case and ordered the Director to close the case.

17-PELRB-2019

AFSCME, COUNCIL 18 and CWA, LOCAL 7076 v. STATE OF NEW MEXICO (July 30, 2019). (PELRB 125-15).

The Board ratified the Executive Director's voluntary dismissal of this case and ordered the Director to close the case.

18-PELRB-2019

IN RE: LOVING MUNICIPAL SCHOOLS (September 16, 2019). (PELRB 202-19).

Subject to the employer's right to seek approval of a local labor relations resolution in the future, the Board revoked its prior approval of July 2, 2009.

19-PELRB-2019

IN RE: CITY OF PORTALES (September 17, 2019). (PELRB 228-04).

The Board approved grammatical and punctuation changes of its previously approved City's Labor Management Relations Ordinance in its recompilation of Subsection H regarding reducing agreements to writing and mandatory bargaining over dues deductions if requested by either party.

20-PELRB-2019

RHONDA GOODENOUGH v. N.M. CHILDREN, YOUTH AND FAMILIES DEP'T. (September 17, 2019). (PELRB 103-19).

The Executive Director summarily dismissed this PPC for lack standing or failure to state a claim because Goodenough was not within the unit covered by the CBA at issue and therefore, was not entitled to claim its protections. There exists no indication that the union ever sought to represent workers holding the job in question and there is no history of

accretion activity concerning the position. Accordingly, the Complainant has no cognizable interest in the protections afforded to bargaining unit members under the CBA. The employer's "failure" or refusal to extend contract coverage to an employee who is not within the bargaining unit for whom the contract was negotiated cannot reasonably be construed to constitute an impairment of the Complainant's bargaining rights under the PEBA. Similarly, Complainant's disagreement with the employer's classification of her job as supervisory and therefore, exempt from collective bargaining, without more, does not lead to a conclusion that PEBA rights have been violated. There were no allegations that Complainant sought accretion into an existing bargaining unit, clarification of an existing unit to include her job or that she sought to establish a separate appropriate bargaining unit covering her position. Accordingly, the question whether her job is or is not a "supervisor" as that term is defined by Section 4(U), is immaterial. Assuming for the sake of argument that her position is entitled to PEBA bargaining rights does not result in a conclusion that those rights have been violated absent any allegation that she sought to vindicate those rights by petitioning this Board for recognition of representation within a unit that includes her job.

Summary Dismissal was appealed to the full Board, but the complainant did appear to argue her case. The Board ratified the Executive Director's summary dismissal of this case and ordered the Director to close the case.

21-PELRB-2019

In re: AFSCME, COUNCIL 18, LOCAL 2911 and TAOS COUNTY. (November 25, 2019). (PELRB 304-19).

Upon an unopposed Petition to accrete sergeants into an already existing bargaining unit comprising Sheriff's deputies, the Board approved an Amended Certification of the existing bargaining unit.

22-PELRB-2019

In re: CITY OF SOCORRO. (November 25, 2019). (PELRB 225-04).

The PELRB revoked its 2004 approval of the City's Labor-Management Relations Ordinance.

23-PELRB-2019

In re: CITY OF TUCUMCARI. (November 25, 2019). (PELRB 202-05).

The PELRB revoked its 2005 approval of the City's Labor-Management Relations Ordinance.

24-PELRB-2019

In re: ESPAÑOLA MUNICIPAL SCHOOL DISTRICT. (November 25, 2019). (PELRB 206-07).

The PELRB revoked its 2007 approval of the School District's Labor-Management Relations Ordinance.

25-PELRB-2019

In re: CARLSBAD MUNICIPAL SCHOOL DISTRICT. (November 25, 2019). (PELRB 202-07).

The PELRB revoked its 2007 approval of the School District's Labor-Management Relations Ordinance.

SUMMARY OF COURT DECISIONS

1. *Bd. of Ed. for Deming Public Schools v. National Education Assn.-Deming and State of New Mexico Public Employee Labor Relations Board*, Second Judicial District Cause No. D-202-CV-2017-06276. (In re: PELRB No.'s 304-17 and 305-17 consolidated). On August 30, 2017 Deming Public Schools appealed from a Decision and Order of this Board upholding its Hearing Officer's recommended decision granting the Union's Petition to Amend Certification to affect a name change and his decision to confer incumbent status on the Union representing an existing wall-to-wall unit. See 9-PELRB-2017 (August 15, 2017). The District Court (J. Chavez) affirmed the Board on February 21, 2019, denied a Motion to Stay judgement and for reconsideration on August 19, 2019. In so doing, the Court determined that the Board's determination that continuity of representation of the unit in question by the union since 1999 was supported by substantial evidence and that its recognition of an existing wall-to-wall unit was not contrary to law. The union withdrew an associated PPC for failure to bargain in good faith (PELRB 111-18). No further appeal was pursued and after the deadline for seeking a writ of certiorari passed, the file was closed on October 7, 2019.
2. *Communications Workers of America, AFL-CIO v. State of New Mexico*, Court of Appeals Cause No. A-1-CA-36331. (In re: PELRB 122-14). In September of 2014, CWA brought a complaint alleging unilateral changes in violation of the state's duty to bargain by ceasing a prior practice of supervisors granting paid time for union officers and stewards investigating and filing employee grievances. The PELRB found that the State created a past practice of paying union representatives for time spent on grievances in the discretion of the employee-representative's supervisor and that ceasing the past practice without bargaining violated the PEBA's requirement of good faith bargaining over mandatory subjects of bargaining, dismissed charges of antiunion discrimination but sustained its Hearing Officer's findings that the State failed to comply with a provision of the PEBA or board rule and interfered with employee rights under the PEBA by unilaterally altering a mandatory subject of bargaining. However, the Board reversed the Hearing Officer's finding that the state failed to bargain in good faith.

The Union appealed dismissal of its bad faith claim, while the state appealed the finding that an enforceable past practice was created. See Second Judicial District Court Cause No. D-202-CV-2015-03814. On March 15, 2017 the District Court (J. Butkus) granted the PELRB's Motion to Dismiss and affirmed its Order as to Section 19(F) but reversed the Board as to Section 19(B), because it was inconsistent with a finding that there was no bad faith failure to bargain under Section 19(F).

The State sought and was granted a Writ of Certiorari in September of 2017. See Court of Appeals Case No. A-1-CA-36331. The New Mexico Court of Appeals reversed the

District Court and upheld the PELRB on February 21, 2019 remanding the effect of a zipper clause in the parties' CBA on past practice and whether the State presented a fait accompli. The parties reached a settlement on all remaining issues and voluntarily dismissed all remaining claims on April 26, 2019. The file was closed on June 11, 2019.

3. *AFSCME, Council 18, AFL-CIO v. State of New Mexico Department of Health and the New Mexico Public Employee Labor Relations Board*, Second Judicial District Court Cause No. D-202-CV-2017-08953 (PELRB 305-16). In November of 2017 AFSCME filed a Petition for Accretion of Home Health Aide Supervisors and Psychiatric Technician Supervisors into an existing bargaining unit comprising Home Health Aides and Psychiatric Technicians. Its Petition was dismissed by the PELRB on November 16, 2017 on the ground that Home Health Aide Supervisors and Psychiatric Technician Supervisors do not share sufficient community of interest with the existing bargaining unit, so that their inclusion would render the unit inappropriate. That conclusion was based on the collective bargaining history, lack of interchange of employees, and substantial differences in the required skills and functions that, on balance, demonstrated no shared community of interest. After denying a request for interlocutory appeal and for reconsideration, the union appealed to the District Court (J. Butkus) on December 18, 2017. See *AFSCME, Council 18 v. State of New Mexico, Dep't. of Health and New Mexico Public Employees Labor Relations Board*, Cause No. D-202-CV-2017-08953.

The District Court affirmed the PELRB on March 15, 2019. Holding that the Union had not met its burden of showing that the determination of the Board was unreasonable or without a rational basis, unsupported by substantial evidence, or otherwise not in accordance with the law. There was no further appeal and the file was closed April 18, 2019.

4. *City of Rio Rancho v. AFSCME, Council 18, Local 3277, AFL-CIO and the New Mexico Public Employee Labor Relations Board*, Second Judicial District Cause No. D-202-CV-2019-01398. (In re: PELRB 113-18). On January 29, 2019 the City of Rio Rancho appealed to the Second Judicial District Court (J. Franchini) from an Amended Order of the PELRB making permanent a preliminary injunction granted by its Hearing Officer requiring the City to "continue to honor the parties' collective bargaining agreement, in particular the provisions requiring withholding authorized union dues deductions from its employees' wages and...[to] reimburse the union for the difference in dues lost to the union as a result of the City's July 5, 2018 and July 17, 2018 [correspondence to its employees]." On October 28, 2019 the District Court affirmed the Board and identified two key issues on appeal. First, whether the PELRB has the authority to grant injunctive relief and second, whether the Board's decision to grant injunctive relief is contrary to law based on the U.S. Supreme Court's decision in *Janus v. American Federation of State, County and Municipal Employees, Council 31*, 138 S.Ct. 2448 (U.S. 2018).

The District Court determined that the Public Employee Bargaining Act "expressly acknowledges that the Board is authorized to issue such relief" referring to Section 23(A) of the Act:

"The board ... may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including *those for*

appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.”

(Emphasis in the original).

The Court was persuaded by the Union’s argument that for the Board to seek enforcement of such an order, it must have the power to issue it in the first place. Concerning the merits of granting the injunction the Court rejected the City’s argument that the injunction was inappropriate because it addressed an action that had already happened rather preventing an action from occurring. The City’s action was continuous rendering a remedy at law insufficient and injunctive relief appropriate. The Court was also not convinced that the Board violated its own procedural rules in granting the injunction before issuing a scheduling order.

The City’s argument that the Board’s decision is contrary to law because *Janus* mandated the action it took in not only ceasing fair share deductions from non-members but also in polling the entire bargaining unit, including union members, seeking reauthorization for the payment of any union fees, was also rejected by the District Court. The City’s reading of *Janus* as “restoring employees’ First Amendment rights to choose whether to pay any money at all to a labor organization” was inaccurate because the specific question before the Court in *Janus* was the First Amendment implications of a state law that forced public employees, who are *nonmembers* to subsidize a union by payment of agency fees. *Janus* did not address the payment of union dues by union members. Therefore, the City went beyond the scope of *Janus* in seeking reauthorization for payment of union dues from members of the union.

No further appeal was pursued. The deadline for filing a petition for writ of certiorari passed on November 28, 2019 without a petition having been filed.

PENDING APPEALS

By the end of the reporting period there are no cases currently pending resolution on appeal.

Conclusions:

Staff anticipated an increase in unions disclaiming their interests in representing bargaining units for economic reasons after union security clauses were declared to be unconstitutional in *Janus v. AFSCME, Council 31*, No. 16-1466, 585 U.S. ____ (2018). The anticipated increase was not realized. Three unions disclaimed their interests in this reporting period; only one

more than in the prior year. Staff does not consider that increase to be statistically significant.

2019 saw the oft-disputed jurisdiction of the PELRB to issue preliminary injunctive relief upheld by the District Court. See *City of Rio Rancho v. AFSCME, Council 18, Local 3277, AFL-CIO and the New Mexico Public Employee Labor Relations Board*, Second Judicial District Cause No. D-202-CV-2019-01398. (In re: PELRB 113-18). (J. Franchini). (October 28, 2019). No appeal of that decision to the Court of Appeals was sought.

The Board was not called upon to decide many issues compared with prior reporting periods. Only two of the Hearing Officer's Recommended Decisions were appealed to the Board for review. In both instances the Hearing Officer was upheld without modification of his Recommended Decision. As a consequence, there were also fewer appeals of the Board's Order to the District Court and beyond. Only one case was appealed - *City of Rio Rancho v. AFSCME, Council 18, Local 3277, AFL-CIO and the New Mexico Public Employee Labor Relations Board, supra*. There is insufficient data to conclude that the decline in appeals at both the Board and the Court levels of review is the result of satisfaction or respect for recommended decisions at the Hearing Officer level or whether it is merely a consequence of reduced case filings overall. This data will continue to be analyzed in future reporting periods to see whether lower appeals rates continue if case filings increase over a period of time.

This reporting period saw the Board exercise its jurisdiction under two provisions of the Act:

- (1) NMSA 1978 § 10-7E-9(B) empowering the PELRB to conduct studies pertaining to its enforcement of the Act; to hold hearings and make inquiries necessary to carry out its functions and duties; to conduct studies on problems pertaining to employee-employer relations; and to request from public employers and labor organizations the information and data necessary to carry out the board's functions and responsibilities; and,
- (2) NMSA 1978 § 10-7E-10(A) requiring the PELRB to enforce local boards' compliance with the PEBA.

Under both PELRB and court precedent, this Board has authority under § 10 to review the content of labor ordinances and resolutions as part of the process of approving local boards. Furthermore, the PEBA prevails over conflicting provisions in local ordinances created pursuant to § 10. Accordingly, pursuant to §§ 9 and 10 of the Act, this Board is empowered to formally inquire of all local boards created under § 10 whether their board appointments have been made; whether they have promulgated rules necessary to accomplish and perform their functions and duties, and whether they have been meeting to hold hearings and make inquiries necessary to carry out its functions and duties; e.g. meeting to pass an annual Open Meetings Act resolution requirement of all boards and commissions.

As a result of staff research, a significant number of § 10 local boards were found to be out of compliance with the PEBA because they had not made board appointments, promulgated rules or held meeting to carry out their functions. Because this Board's Rules 11.21.5 .13 and 11.21.15.14 NMAC, provides that after notice and upon a finding that a local board is not in compliance with the Act, all matters pending before the local board shall be removed to and come under the jurisdiction of the PELRB, the Board acted to revoke their prior approvals of non-compliant local boards. The results of that action is summarized in the sections

above with the result that the Board revoked seven non-compliant ordinances or resolutions and three localities rescinded local labor-management relations ordinances thereby voluntarily coming back under the PEBA. This represents significant action because in the entire history of the PEBA the Board had only twice revoked its prior approval of a local board.

As noted within this report, monitoring local board compliance with the PEBA continues into the next reporting period.

Finally, a legislative proposal to amend the PEBA did not make it out of the House Judiciary Committee to a floor vote before the 2019 legislative session ended. Staff anticipates the same or similar amendments will be presented in the 2021 “long session” if not in the January 2020 30-days session. Staff will continue to monitor legislative activity and report in the coming years.

APPENDIX 1

PUBLIC EMPLOYEE LABOR RELATIONS BOARD STRATEGIC PLAN FY20

- I. **Vision Statement** - The Agency will become the leading collective expert on public employee bargaining in New Mexico, the preferred source for the resolution of labor/management disputes, and the recognized clearinghouse for information on pending issues and developing trends in labor law in order to promote "harmonious and cooperative relationships between public employers and public employees."
- II. **Mission Statement** - The New Mexico Public Employee Bargaining Act (PEBA), (§§10-7E-1 through 10-7E-26 NMSA 1978), reinstated in 2003 collective bargaining for public employees after the former public employee collective bargaining law expired in 1999. As the agency responsible for executing PEBA the Public Employee Labor Relations Board has authority over all general collective bargaining matters between public employee labor organizations or individual public employees under the Act and either state agencies or units of local government that that have not established a local labor board. The Board's mission is to guarantee public employees the right to organize and bargain collectively with their employers; promote harmonious and cooperative relationships between public employers and employees; and protect the public interest by assuring the orderly operation and functioning of the state and its political subdivisions as required by the PEBA, § 2. As part of its mission the Board also ensures that local labor ordinances and resolutions and local labor boards comply with PEBA.
- III. **Program Purposes** – As one of the State's smallest agencies, the PELRB has only one budgeted purpose – to fulfill the mission set by statute for the agency as outlined above. That purpose will be achieved by accomplishing the goals set forth in this plan.
- IV. **Program Goals** – The primary goal of this strategic plan must be to meet the continuing need for promptly scheduling hearings and providing involved parties with timely notice of hearings and related deadlines. A comprehensive review and revision of the Board's procedural rules is being undertaken in furtherance of this primary goal. In addition, a comprehensive review of the Board's procedural rules relating to the ability of newly approved local boards to operate is under way.

Equally as important is the ongoing need for processing the Board's day-to-day business in a timely manner, such as paying its bills and exercising budget control.

A second goal of the agency's program is to improve the Board's website by timely and regular posting case summaries as well as the actual court and Board decisions, posting the Board's hearings calendar, and making the posted forms interactive. The Board's website will be also be improved by updating it and the Board's database

with this information on an ongoing basis including subject, statute, rule and key word indexes, phrase digest, in depth and current case statistics, local board information, posting of all PELRB decisions and improved tracking of cases on appeal.

As its third goal, the Board must monitor developing trends as expressed in decisions by local labor boards, the National Labor Relations Board and the Federal Labor Relations Authority. Monitoring local board decisions will also serve the purpose of ensuring local board compliance with PEBA requirements.

A fourth goal is to conduct interagency training on application of the Public Employee Bargaining Act as needed and as time permits given the priority of processing complaints and petitions and to increase public awareness through public speaking teaching and writing.

The Board's fifth goal is to train its own staff and Board to develop expertise in the substantive law of public employee bargaining generally and PEBA specifically. Responsible staff should be fully trained in the software programs and equipment needed to complete the tasks necessary to accomplish each of the goals referenced herein, including newly acquired teleconferencing equipment that will allow the Agency to improve its remote meeting/hearings capabilities. The Agency's goal is to continue training for Board staff through FY20.

V. **Objectives Specific to Each Goal**

- **Goal: Scheduling hearings, providing timely notice processing the business of the Board.**
 - Objectives:
 - a. The board shall: (1) hold hearings and make inquiries necessary to carry out its functions and duties; (2) conduct studies on problems pertaining to employee-employer relations; and (3) request from public employers and labor organizations the information and data necessary to carry out the Board's functions and responsibilities. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit. See NMSA 1978 §10-7E-13(B).
 - Strategies/Tasks for accomplishing the objective:
 - a. The agency has already established a shared, centralized calendaring system and has established routine procedures for maintaining the hearing calendar. Staff compliance with those procedures is ongoing. The agency will work with DoIT personnel to improve the shared calendaring and tickler system by having it interact with the case contact and tracking database.
 - b. Staff will also work with DoIT to update the agency website, posting the calendar on the site, linking to reported cases and making the forms interactive. Ongoing maintenance of electronic files will continue hereby

- reducing paperwork and file space while simultaneously easing access to working files and speeding production monitoring and performance.
- c. The agency has already established uniform performance expectations, policies and procedures in addition to incorporating those existing by statute or rule along with the State's performance measures. Work will continue on standardizing procedures and evaluation criteria throughout FY20 and the Operations Manager's performance review measures comply with these procedures.
- d. The Board's Executive Director, assisted by the Operations Manager, will continue to hold hearings as required by the deadlines set in statute and the Board's rules for designating appropriate bargaining units, certifying and decertifying exclusive representatives and determining prohibited practices complaints as well as maintain proper records of all proceedings before the Board.
- e. The Board's Executive Director, assisted by the Operations Manager, will continue to hold hearings as needed upon request of the Board for the purposes of information gathering and inquiry, adopting rules pursuant to PEBA §10-7E-12.
- f. The Board's Executive Director, assisted by the Operations Manager, will hold a series of hearings to elicit public comment on comprehensive revision of the Board's procedural rules. After the statutory comment period they will present the changes to the Board for approval and once approved comply with the statutory requirements for archiving and publishing the changes.
- **Applicable FY20 Performance Measures**
 - a. Percent of decisions overturned on appeal;
 - b. 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;
- **Goal: Improve the Board's website.**
 - Objectives:
 - a. The Board has made substantial improvements to its website during the preceding fiscal year, updating information and making it easier to navigate. Much remains to be done however, primarily updating posted statistics and case summaries, key word digest and practice manual. These updates are ongoing and will be improved during FY20.
 - Strategies/Tasks for accomplishing the objective:
 - a. Court and arbitration decisions as well as Board statistics regarding the number and types of cases heard or other Board action taken are routinely monitored and updated on the Board's website quarterly. On a monthly basis, as the Board meets to act, updates to the website must be posted. This is done by calendaring a task in proximity to each Board meeting requiring staff to post the outcome of each board decision on a case as it occurs. With regard to the court decisions, once notice of each decision is made known to the Executive Director either through the courts' electronic filing notice system or through the Board's legal

- adviser, staff standard operating procedures will require posting of a .pdf version of each decision under the appropriate tab on the website.
 - b. Maintaining public access through the website to PELRB decisions with regular posting of those decisions as they occur will be ongoing throughout the fiscal year on a monthly schedule. This plan will ensure the public has electronic access to the most accurate and up to date information on New Mexico Public Employee Bargaining.
 - **Applicable FY20 Performance Measures**
 - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.
- **Goal: Monitor developing trends.**
 - Objectives:
 - c. Pursuant to PEBA §10-7E-9(B)(2) one of the Board's duties is to conduct studies on problems pertaining to employee-employer relations. The Board is empowered to request from public employers and labor organizations the information and data necessary to carry out that duty. This objective is to anticipate trends and educate the Board about them in order to be prepared to modify the Board's procedural rules if necessary or to remain informed about cases across New Mexico and the nation in order to make better decisions as issues are brought before the Board.
 - Strategies/Tasks for accomplishing the objective:
 - a. If budget allows, the Executive Director and one or more members of the Board should attend the National Judicial College to increase proficiency as administrative law judges and in the area of alternative dispute resolution.
 - b. If budget allows, staff will maintain the Board's membership in two professional organizations — Association of Labor Relations Agencies (ALRA) and Labor and Employment Relations Association (LERA). The Agency expects that at least the Executive Director if not one or more members of the Board will have attended one or more training session and/or the LERA or ALRA conferences by the end of fiscal year 2017. The Agency subscribes to *The New Mexico Labor Letter*, as well as ALRA and LERA newsletters online, which analyze cases and trends in Public Employee labor law. Relevant information from those publications will be transmitted to the Board via e-mail. Staff will maintain these subscriptions and regularly send relevant material to the Board members on a regular basis.
 - c. As the Board identifies issues or areas of interest that are relevant to its mission it will direct staff to undertake the kind of studies contemplated by the Act. The staff will issue subpoenas as necessary to fulfill its investigatory function.
 - d. Staff will track existing performance measures on a quarterly basis.
 - **Applicable FY20 Performance Measures**
 - a. Percent of decisions overturned on appeal

- **Goal: Conduct training.**
 - Objectives:
 - a. Conduct interagency training on application of the Public Employee Bargaining Act as needed and as time permits given the priority of processing complaints and petitions. The agency will conduct at least one interagency training session in FY20, and the Director will solicit opportunities to address labor relations groups on matters of public interest concerning the Board and its role.
 - Strategies/Tasks for accomplishing the objective:
 - a. Staff will update the PowerPoint presentation outlining the PEBA and put on a presentation using invited speakers and panel discussion moderated by experienced practitioners before the Board and/or members of the judiciary involved in PEBA related cases.
 - b. Once the presentation is prepared staff will notify interested parties via the Board's website and individual invitation to attend the seminar and will be responsible for scheduling and securing a convenient location.
 - c. The ongoing Board statistical tasks being undertaken in connection with other goals and objectives will provide presentation material for presentation to other interested groups as invitations for public speaking are received.
 - **Applicable FY20 Performance Measures**
 - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.

- **Goal: Improve Staff and Board training.**
 - Objectives:
 - a. It is important to the Board's mission that its staff and the Board develop expertise in the substantive law of public employee bargaining generally and PEBA specifically.
 - b. The Agency's goal is to continue training for Board staff related to the computer software used by the Board as well as the state SHARE network with an emphasis on budgeting and reporting procedures.
 - Strategies/Tasks for accomplishing the objective:
 - a. Responsible staff should be fully trained in the software programs and equipment needed to complete the tasks necessary to accomplish each of the goals referenced herein. If budget permits, the Executive Director and one or more members of the Board should attend the National Judicial College to increase proficiency as administrative law judges and in the area of alternative dispute resolution.
 - b. Staff has identified training seminars, at a minimal cost. Staff will pursue these training opportunities as the budget and time permits.
 - **Applicable FY20 Performance Measures**
 - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.

VI **Conclusion:**

This plan supports the overall mission of the Board to "to guarantee public employees the right to organize and bargain collectively with their employers" by improving the timeliness of hearings and reducing or eliminating errors in notice and scheduling. The collateral effect of improving the speed and number of hearings being held with fewer errors supports the Board's mission of promoting "harmonious and cooperative relationships between public employers and public employees" because it would encourage cooperation as an alternative to Board imposed solutions, and where such cooperation is not possible, a timely Board decision will provide the parties with clarity and a sense of direction with regard to public policies to be pursued. This in turn protects the public interest by ensuring a more orderly operation.

Table A
Agency 37900 Public Employee Labor Relations Board

Criteria	Outcome	Description
Percent compliance with statutes, with particular attention to due process, equal protection, the Public Employee Bargaining Act and Board rules.	100%	Staff ensures compliance with applicable laws and regulations by its standard operating procedures and by its centralized calendaring system. After review of all case files and Board meeting minutes for 2018, staff found no complaints that the Board violated rules or statutes, e.g. the Open Meeting Act, or otherwise failed to provide due process by the manner of conducting hearings or elections or by undue delay. Likewise, there were no self-reported incidents. There were two instances of incomplete audio records required by NMAC 11.21.1.15, but those did not result in complaints or allegations that the Board failed in its statutory duties.
Percent of decisions overturned on appeal	0%	For the reporting period, none of the cases were appealed to District Court.
Percent of cases resolved through agreement, mediation or arbitration prior to hearing	0%	Of the 27 cases filed during the reporting period, none required a hearing. 5 were settled, successfully mediated, or withdrawn prior to conducting a full evidentiary hearing; 1 was dismissed as facially invalid; 1 was an election in which the bargaining unit was not challenged; and 1 was an uncontested disclaimer of interest. (19 are pending)
Percent of cases resolved through agreement, mediation or arbitration post- hearing	0%	For the reporting period thus far, no cases have been resolved after the conclusion of a merits hearing.
Percent of prohibited practice complaints decided within 180 days of filing.	100%	All Prohibited Practice Complaints filed during the reporting period were resolved within 180 days of filing. All pending cases were filed less than 180 days before the preparation of this table.
Percent of prohibited practice complaints, not settled or withdrawn, decided within 180 days of filing.	0%	Of the 7 PPCs filed in the reporting period 5 are pending. The average time taken by the Board to decide the remaining 2 was 107 days. Of the cases that remain pending, all are expected to be resolved within the 180 day period.
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 bargaining unit recognition petitions processed within 180 days of filing	83%	A total of 6 petitions for recognition, clarification or decertification were filed during the reporting period. Three were resolved within 180 days. Of the 3 still pending, only one has been pending for more than 180 days and that was due to the parties not posting the required notices in a timely fashion.
Percent determinations of approval of local labor relations boards, bargaining unit recognition petitions and prohibited practice complaints processed and completed within the applicable regulatory deadlines	96%	All of the resolved cases were resolved within 180 days. Only 1 active case has been pending for more than 180 days, which was due to the parties not posting the required notices in a timely fashion.

**ALL CASES FILED WITH THE PELRB IN 2019
BY TYPE OF EMPLOYER OR RESPONDENT**

Table B

Type of Employer or Respondent	Types of Cases					TOTAL
	PPCs	Representation Petitions	Decertification Petitions	Related to Approval of Local Board	Impasse	
State*	5	1				6
County		2		1		3
Municipality						
Public School		3	1‡	2		6
Higher Education						
Medical Facility						
Other	1					1
Court						
Union		1	1‡			2
Individual						
Local Labor Board						
TOTAL	6	7	2‡	3		18‡

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

‡ Because interested parties in a decertification proceeding include both the union being decertified and the Employer, a single filing results in two types of Respondents so that the total will exceed the number of cases filed.

**ALL CASES FILED WITH THE PELRB IN 2019
BY PETITIONER OR COMPLAINANT**

Table C

Type of Petitioner						TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Related to Approval of Local Board	Impasse	
State*				3		3
County						
Municipality						
Public School						
Higher Education						
Medical Facility						
Other						
Court						
Union	3	5				8
Individual	3		1			4
Local Labor Board						
TOTAL	6	5	1	3		15

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

**ALL CASES FILED WITH THE PELRB IN 2019
BY PETITIONER AND TYPE**

Table D

Petitioner	Types of Cases				Impasse	TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Related to Approval of Local Board		
AFSCME Council 18	2					2
AFSCME Local 2911		1				1
CWA	1	1				2
NEA-NM	1	1				2
NEA-Las Vegas		1				1
Santa Fe County Firefighters IAFF Local 4366		1				1
Individual	3		1			4
State (PELRB)				3		3
TOTAL	7	5	1	3		16

PPC OUTCOME 2019

Table E

Total PPCs Filed		7
Sustained (In whole or in part)		0
By Hearing Examiner (w/o Board review)		
After Board Review		
After Review by Court		
Dismissed – no violation found		1
By Hearing Examiner (w/o Board review)	1	
After Board Review		
After Review by Court		
Summarily Dismissed		1
Dismissed after preliminary review (NMAC 11.21.3.12)		
Dismissed after Motion	1	
Deferred to Agency		
Deferred to Arbitration		
Dismissed on collateral estoppel grounds		
Deferred to local board		
Withdrawn and/or Settled		5
Withdrawn upon receipt of notice of facial inadequacy		
Withdrawn in favor of alternate venue		
Withdrawn as moot		
Settled prior to hearing	5	
Resolved after a Merits Hearing		
Pending		
Being processed at the PELRB	1	
Stayed or deferred for various reasons		
Matter is before the courts		
TOTAL PPCs CARRIED OVER FROM 2018	10	17

JUDICIAL APPEALS 2019

Table F

TOTAL PELRB DECISIONS APPEALED IN 2019		1
Appeals pending from prior years	2	
Appeals withdrawn		
Appeals dismissed for lack of prosecution		
Appeals dismissed on jurisdictional or venue grounds		
Decisions affirmed	2	
Decisions reversed		
Decisions affirmed in part, reversed in part	1	
Final Board Decisions Not Appealed Further		6
Board Decisions For Which Time To Appeal Has Not Yet Run		0