

34-PELRB-2025

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

In re:

**AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 18,
AFL-CIO, LOCAL 1529,**

Complainant,

v.

PELRB Case No. 112-25

DOÑA ANA COUNTY,

Respondent

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on November 4, 2025, upon a request for review of the Hearing Officer's Report and Recommended Decision issued September 19, 2025. Upon review of the record, hearing from the parties' representatives, and being otherwise sufficiently informed, the Board, by unanimous vote, hereby adopts the Hearing Officers Recommended Decision, but clarifies it as follows: the Board agrees that collective bargaining agreements need to be followed and contractual obligations met; the Board was not presented with evidence of other violations by the county; the Board makes a distinction between violations of contractual due process occurring before the disciplinary hearing and violations that occur after the hearing; in this case the violations occurred after the employee's disciplinary hearing and had no adverse effects on the employee's right to appeal the discipline; the Board acknowledges that a violation occurred, but the appropriate remedy is not expungement of the discipline.

The Employer is ordered to post a Notice of Violation in all areas where employees usually receive notices for a period of no less than 180 days; the Notice need not be posted in areas not frequented by employees.

DocuSigned by:

Nan Nash

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Date: 11/11/2025

Nan Nash, Board Chair

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**HEARING EXAMINER'S REPORT OF
FINDINGS, CONCLUSIONS, AND RECOMMENDED DECISION**

INTRODUCTION

This matter comes before Executive Director Pilar Vaile, designated as the Hearing Examiner in this case, pursuant to a Prohibited Practice Complaint (PPC) filed on April 25, 2025 by AFSCME Council 18, Local 1529 (Union or Complainant) against Doña Ana County (County or Respondent).

The Union alleges that notice of the results of a pre-determination hearing and delivery of a Notice of Determination for Officer Christian Ramirez, regarding a 30-day suspension for substantiated violation of the County's sexual harassment policies, were provided beyond the period of time and not in the manner allowed under Article 9, Section 18(G) and (H) of the Parties' negotiated collective bargaining agreement (CBA); and that the resultant discipline should therefore be rescinded and expunged from Ofc. Ramirez's personnel file, among other remedies, under Section 19(H) of the Public Employee Bargaining Act (PEBA). *See* NMSA § 10-7E-19(H) (making it a prohibited practice to "refuse or fail to comply with a collective bargaining agreement").

The County filed its Answer on May 12, 2025, generally denying the allegations, but adding averments related to its attempts to timely deliver the results of investigation and Notice of Determination. Thereafter, a Status and Scheduling Conference was held on May 19, 2025; and a Scheduling Order and Notice of Hearing was issued on May 19, 2025. Pursuant to the Scheduling

Order, the County filed a Motion to Dismiss on June 16, 2025 and the Union filed its Response on July 3, 2025. Thereafter, the undersigned Hearing Examiner denied the Motion to Dismiss on July 10, 2025; and a hearing on the merits was held at the County offices, located at 845 N. Motel Blvd., Las Cruces, New Mexico 88007 (Room 113), where the witnesses testified under oath administered by the Hearing Examiner, and the proceedings were audio-recorded by the Hearing Examiner. All Parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce and/or object to evidence. After the close of the evidentiary record, the Parties filed written closing briefs on August 15, 2025. Thereafter, this Report was timely issued upon an extension of time under PELRB Rules. *See* NMAC 1.21.1.31.

The undersigned Hearing Examiner bases the following findings, analysis, conclusions, and recommended disposition upon the entire record of relevant and reliable evidence, including observation of the witnesses and their demeanor on the witness stand, and post-hearing briefs and legal citations therein, even if not specifically referenced herein.

Based upon the preponderance of the record, the undersigned finds and concludes that the County breached Article 9, Section 18(G) and (H) of the CBA. However, she recommends that the Union's request for mitigation of discipline be rejected because it is not an appropriate remedy under the weight of the record, given the gravity of the proven and admitted misconduct and the lack of harmful error demonstrated. *See* Norman Brand and Melissa Biren, *Discipline and Discharge in Arbitration*, Third Ed. at 2-39 (ABA LEL, 2015) at 13-7 (that labor neutrals disfavor rescinding or reducing discipline based on procedural errors where "neither the employee's guilt nor the fairness of the employer's procedures is in dispute").

APPEARANCES AND RECORD

For the Union:

Joel Villareal	AFSCME Council 18 Staff Representative
Cpt. Patrick Howie	Witness and the Detention Center Captain of Operations
Ofc. Christian Ramirez	Witness, Affected Officer, and current Local VP
Sgt. Thomas Burns	Witness and Local President
Ofc. Lori Diaz	Witness and former Steward and VP
Lt. Anthony Eberwine	Witness and Lt. in Charge of the Professional Standards Unit (PSU)

For the County:

Cari Neill, Esq.	County Attorney
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Ashley Suniga
Kent English

Witness, and County Assistant Director of Human Resources (HR)
Witness, and County IT Director

In addition to the sworn testimony of the foregoing seven (7) witnesses, the Parties jointly submitted three (3) exhibits, which were accepted into the record¹; the Union submitted six (6) exhibits, five of which were moved for admission and also accepted²; and the County submitted four (4) exhibits that were different from those offered by the Union, one of which was moved for the admission and accepted.³

FINDINGS OF FACT

1. The Petitioner is the exclusive bargaining representative for the Corrections Officers and Sergeants employed by the County at the Doña Ana County Detention Center (Detention Center or DACDC). The bargaining unit is recognized as AFSCME Local 1529, which is part of AFSCME Council 18. (PPC and Answer.)

¹ Jt. Ex. 1, current collective bargaining agreement (CBA) between the Parties, effective 2022-2026; Jt. Ex. 2, an Amendment to the current CBA, dated 8/28/24, that did not affect the operative language at issue; and Jt. Ex. 3, the Notice of Discipline at issue.

² Un. Ex. 3, the 2016-2020 CBA between the Parties was tentatively ruled admissible over objection, if relevance was shown, but the Union thereafter did not move for its admission; Un. Ex. 4, email regarding IA 24-012, the instant matter, dated 11/25/24 at 5:15 p.m., also admitted over objection; Un. Ex. 5, email from IT dated 11/25/24 regarding Outlook email issues; Un. Ex. 6/Co. Ex. B, email exchange between Ofc. Christian Ramirez and Shawn Spain, HR; Un. Ex. 7, Notice of Determination dated 11/25/24; and Un. Ex. 8, Google Map showing distance between the County Detention Center and HR.

³ Only Co. Ex. G, Excerpt of the Doña Ana County HR Policy Manual, was formally moved for admission as a separately identified County Exhibit. Three of the County's marked exhibits were duplicative of the Unions (Co. Ex. B/Un. Ex. 6; Co. Ex. D/Un. Ex. 2; and Co. Ex. F/Un. Ex. 1.) The County did not move for the admission of its remaining three marked exhibits – Co. Exs. A, C and E, the Step 2 and 3 Grievances and request for arbitration concerning the same discipline - and it appears from the County's Post-Hearing Brief that it believes it moved for their admission. (*Id.* at 3.) In any event, consideration of the documents would not be prejudicial or particularly helpful to the trier-of-fact, because the grievance's existence and basic claims were referenced in the testimony, and are undisputed.

2. The Parties are currently bound by a CBA that is in effect through June 30, 2026. (PPC and Answer; *see also* Jt. Exs. 1-2, CBA and First Amendment thereto, dated 8/8/24.)⁴
3. Officer Christian Ramirez is employed by the County at the Detention Center and his position is included in the bargaining unit. (PPC and Answer.) He has been employed as an Officer at the Detention Center for almost 14 years at the time of the evidentiary hearing, and the PPC is filed on his behalf. He is now the Local Vice President, but it was not clear if he became VP before, after, or during the events at issue here. (Ramirez testimony.)
4. On October 30, 2024, the County served Ofc. Ramirez with a Notice of Intent to Suspend Employment, based upon an HR complaint that Ofc. Ramirez had forcibly kissed a co-worker against her wishes on July 31, 2024. The County charged Ofc. Ramirez with violation of Sections 2-2 and 2-3 of the County's Discrimination and Harassment Policy, Sections 2(A), (B) and (C) of its Operating Procedures, Code of Ethics/Employee Conduct. Based upon its investigation into the complaint, "[t]he County's internal investigator and EEO Determination Board concluded that [Ofc. Ramirez] engaged in prohibited conduct" as alleged in the NOI, including "kiss[ing] Officer Laura Lopez on the mouth while grabbing her face aggressively so that she could not move". (Jt. Ex. 3/Un. Ex. 7, Notice of Determination; Suniga testimony.)
5. Article 9 of the CBA governs discipline. Article 9, Sections 2, 12, 14, and 15 provide that "discipline shall only be for just cause".
6. In Article 9, Section 3, the Parties agreed that "[t]he County reserves the right to investigate allegations of employee misconduct..."
7. As to investigation timelines, Article 9, Section 15 provides that,
....All findings will be handed down in a timely manner not to exceed twenty (20) business days from the conclusion of a Professional Standards Unit (PSU) investigation, which occurs when the official finding(s) form is issued by the department head or designee...When a PSU related investigation continues beyond twenty (20) business days from initiation, and when the PSU investigation is only administrative in nature (not a criminal investigation), then the Union shall be

⁴ The amendments were not relevant to the instant matter.

informed....[and] further informed every successive thirty (3) calendar days thereafter via email...”

8. Additionally, Article, Section 16 provides that,

Except where outside agencies are involved in the investigation, the County may impose discipline no later than eighty (80) work days after it acquires knowledge of the incident for which the disciplinary action is posed, unless facts and circumstances exist which require a longer period of time.”

The 80-workday time limit translates to 16 calendar weeks or approximately four (4) months.

9. Article 9, Section 18 provides procedures and timelines related to the pre-determination hearing and issuing the results of the pre-determination hearing and the Notice of Determination, as follows.

a. Article 9, Section 18.E states that “[i]f there is a request for a Pre-Determination Hearing to the Notice of Intent, the hearing shall take place within 10 work days of a request for a hearing, unless ... a hearing officer who is not a county employee is retained to conduct the hearing.”

b. Article 9, Section 18.F states that “[t]he purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story”, and that “[i]t is an initial check against mistaken decisions and a determination of whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action.”

c. Article 9, Section 18.G states that “[t]he employee shall be notified by the department head or designee, within five (5) work days, of the results of the pre-determination hearing.”

d. Article 9, Section 18.H states that “[t]he Notice of Determination will specify the disciplinary action to be imposed, and the effective date of the action. The notice will be delivered by mail to the employee's address of record, email, or by personal delivery”

e. Article 9, Section 18.I states that the “[t]he Notice of Determination may be appealed in accordance with the grievance articles. Only employees who elect to have the pre-determination hearing shall have an appeal right.

(Jt. Exs. 1-2, emphases added.)

10. The Parties, in their CBA, have also expressly adopted certain County Policies if and where they do not conflict with the express terms of the CBA. Specifically, Article 4 provides as follows:

1. It is the intent of the parties that the following sections from the Human Resources Policies and Procedures as Amended November 12, 2019, apply to the terms and conditions of employment of the members of the Collective Bargaining Unit, except where the provisions within the sections may be in conflict with specific articles of the Agreement [or CBA].

...

2-3. Discrimination and Harassment Procedures

...

(Jt. Ex. 1, Art.4.1, emphases added.)

11. The County's Discrimination and Harassment Procedures, in turn, provide as follows:

Sec II – EMPLOYMENT RIGHTS AND RESPONSIBILITIES

...

2-3. DISCRIMINATION AND HARASSMENT PROCEDURES

...

B. Sexual harassment is a special form of unlawful harassment and is prohibited by state and federal laws and the County. All employees must be allowed the opportunity of reemployment in an environment free from unwelcome sexual conduct. The County will not tolerate known sexual harassment of any employee by any other employee including Department Heads, Supervisors and Managers. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature are prohibited if:

...

3. The conduct has the purpose or effect of substantially interfering with an affected person's work performance or creating an intimidating, hostile or offensive work environment.

C. The County also prohibits:

...

5. Unwelcome, unwanted physical contact, including but not limited to, touching, tickling, pinching, patting, brushing against, hugging, cornering, kissing, fondling; and forced sexual intercourse, contact or assault.

...

V. Failure to comply with any timeline for taking disciplinary action shall not preclude the admissibility of any information, statements or evidence obtained during the investigation nor shall such a violation be used in a manner that a lack of technical compliance by County would preclude the discipline of an employee who otherwise should be disciplined as a result of violating the County's policies prohibiting unlawful harassment, unlawful discrimination and unlawful retaliation.

(Co. Ex. G, emphases added.)

12. The HR Assistant Director, Ashley Suniga, believes there is no conflict between the CBA and the County's anti-harassment policy. (Suniga testim.) For the reasons discussed in more detail below, the undersigned finds that there is no conflict.
13. On November 18, 2024, a pre-determination hearing (a.k.a. a "pre-det hearing") was held. (Jt. Ex. 3/Un. Ex. 7.)
14. At the November 18, 2024 pre-det hearing, Ofc. Ramirez "indicated that [he] kissed Officer Lopez on the cheek, and that [he] had done so before and she did not complain." He also "provided several possible rationales for Officer Lopez to submit a complaint against [him], including [his] participation in a prior grievance submitted by Officer Lopez that 'did not go her way.'" (Jt. Ex. 3/Un. Ex. 7.)
15. November 25, 2024 was the fifth workday after the pre-det hearing and therefore the County's deadline, under the plain language of Article 9, Section 18(G), to notify Officer Ramirez of the results of that hearing (§ 9.c, *supra*).⁵ Moreover, the un rebutted testimony establishes that the "results" of the pre-determination hearing and the "Notice of Determination" (§ 9.d, *supra*) are treated by the Parties as the same thing, and that the County issues the results by issuing the Notice of Determination. (Eberwine and Diaz testim; Jt. Ex. 1, CBA, Art. 9, Sec. 19(G) and (H).)
16. On November 25, 2024, Pre-Determination Hearing Officer Cody R. Rogers issued his written Notice of Determination, which substantiated the charges against Ofc. Ramirez. (Jt. Ex. 3/Un. Ex. 7.) He substantiated the charges based on Ofc. Ramirez's failure to "introduce any evidence regarding [his] credibility or Officer Lopez's credibility or whether [his] prior interactions with Officer Lopez including kissing her (or others) on the cheek"; and the prior determinations of misconduct by "the County's internal investigator and EEO Determination Board", both of whom or which Hearing Examiner Cody thought "were in a better position to assess [Ofc. Ramirez's] credibility and that of Officer Lopez than [Cody]". (*Id.*)

⁵ To the extent the undersigned previously inferred that the last day to issue the pre-det hearing results was instead in December, that inference is hereby reversed because it was based on the undersigned's erroneous reading of isolated portions of the CBA. *See* July 10, 2025 Order denying the County's pre-hearing Motion to Dismiss.

17. As early as 8:00 am. on November 25, 2024, the County's secured email through Outlook was disabled. At 10:20 a.m., the County IT Department notified County employees of such by email, including those in HR and at the Detention Center. (Un. Ex. 5, IT email dated 11/25/24, 10:20 a.m.; Ramirez testim.)
18. That afternoon, at about 3:30 p.m., County HR Administrator Shawn Spain (who did not testify) called Officer Ramirez and alerted him that the Notice of Determination had been issued; the County's secure email server was down; and he could elect to have her send it to him by unsecured email or he could travel the approximate one-mile distance between the Detention Center and HR to pick it up. Ofc. Ramirez declined to accept delivery of the Notice of Determination from Ms. Spain by unsecured email; or to travel to the HR office to pick it up because he was on duty elsewhere, and this was not a direct order since Ms. Spain is not his supervisor. Ms. Spain told Ofc. Ramirez that she would continue to try to send it by secure email. At about 4:30 p.m., Ms. Spain called Ofc. Ramirez again and informed him that the secured email was still down. She reiterated the offer for Ofc. Ramirez to accept the document through unsecured email or to pick it up himself from HR, which he again rejected. (Un. Ex. 6, email thread at 3; Un. Ex. 8, Google Map illustrative aid; Ramirez testim.)
19. At about 4:34 p.m. on November 25, 2024, Ms. Spain emailed Ofc. Ramirez stating that she "was not able to send the Determination from Cody Rodgers to you via secure email as we are having issues" but that "[i]t is available for you to pick up in HR today anytime before 5:00 p.m. if you can." Ofc. Ramirez emphasized that he did not see or read this email until about 5:20 p.m., although he had already been informed of this by telephone. (Un. Ex. 6 at 3; Ramirez testim.; ¶ 18, *supra*).⁶

⁶ There was conflicting documentary evidence concerning the time that Ms. Spain sent the email to Ofc. Ramirez on the afternoon of November 25, 2024. The Union offered two versions, provided to them by Ofc. Ramirez. One version of the email shows it was delivered at 5:12 p.m. that day (Un. Ex. 4), but the undersigned credits as more credible the testimony of the IT Director that the email showing a 5:12 p.m. timestamp evidenced alteration in the header font, which is auto-generated and therefore usually of uniform size. Instead, here the time and date were conspicuously enlarged. (*Cf.* Ramirez and English testim.) The County argues that this is evidence that Officer Ramirez is acting dishonestly or otherwise not deserving of the requested remedy.

20. At no point did Ms. Spain provide Officer Ramirez with the “results” verbally or by email. (Un. Ex. 6; Ramirez testim.) The Union also disputes whether she was a proper “designee” of the Director to issue the results.
21. On November 27, 2024 at 9:00 a.m. (two workdays after the deadline to deliver the results under Art. 9, Sec. 18(G)), HR Administrator Spain emailed Ofc. Ramirez, stating that “[y]esterday I emailed you Cody Rogers Determination from your hearing. Did you receive it?”, to which Ofc. Ramirez replied at 11:55 a.m., saying “I did not receive it.” At 1:49 p.m. on November 27, 2024, Ms. Spain responded, “I apologize. I am not sure why you did not receive it. I sent it secured email and it said it was delivered. Since it is not going through, I have a copy ready for you that you can pick up in HR.” At 3:51 p.m., Ofc. Ramirez replied, “I’m currently on a Medical transport with another officer at MMC hospital per my assigned post today.” (Un. Ex. 4 at 1-2; *see also* Ramirez testim.)
22. The County and HR were closed November 28-29, 2024 (Thursday and Friday), for the Thanksgiving holiday.
23. On Monday, December 2, 2024 (three workdays after the deadline to deliver the results under Art. 9, Sec. 18(G)), Ms. Spain emailed Ofc. Ramirez at 8:09 a.m., stating that “Lt. Eberwine has a copy of the determination from your hearing as well if you would like to pick it up from him.” (Un. Ex. 6 at 1.) At that point, Lt. Eberwine had access to the document but was not aware that neither the actual results nor the physical document had yet been delivered to Ofc. Ramirez. (Eberwine testim.)
24. On Friday December 6, 2024 (seven workdays after the deadline to deliver the results under Art. 9, Sec. 18(G)), Lt. Anthony Eberwine was informed that the Notice of Determination had not yet been delivered to Officer Ramirez. This upset him greatly. He is the lead PSU investigator and is usually responsible for delivering Notices of Intent to Discipline and Notices of Determinations of disciplinary results in EEO cases. He had never previously issued a suspension verbally. He knew and understood the results and Notice had to be delivered within five workdays, and he felt strongly that the mistake reflected poorly on him, although the undersigned finds and concludes he had no involvement in or

- responsibility for the delay. Instead, Lt. Eberwin did not timely serve the results and Notice in-person because Ms. Spin in HR erroneously told him that Ofc. Ramirez had already been served with the Notice of Determination. (Eberwine testim.)
25. That day, December 6, 2024, Lt. Eberwine delivered the written Notice of Determination to Ofc. Ramirez in person. (Eberwine and Ramirez testim.) It and the included pre-det hearing results were delivered seven workdays late under Article 9, Section 18 of the CBA.
26. All witnesses agree that the County has not had an issue or problem before Officer Ramirez's case, in timely issuing results and/or the Notice of Determination. (Eberwine, Diaz, Burns, and Suniga testim.) All witnesses credible on this issue also agree that such Notices are routinely issued in-person by either Lt. Eberwine or the Officer's commanding officer, although they are occasionally served by secured email. (Eberwine, Diaz, and Burns testim.)⁷ (The CBA provision does not speak about whether the email must be secured, but that is the Parties' regular and mutually accepted practice.)⁸
27. Captain Patrick Howie, is the Captain of Operations. He was directed by the Detention Center Director (who did not testify) to issue Ofc. Ramirez the 30-day suspension. After the charge was investigated by the Professional Standards Unit and the Board of Captains found the charge was substantiated, the then-Director of the Detention Center gave Cpt. Howie the choice of terminating Ofc. Ramirez or

⁷ Ms. Suniga initially testified that it is normal to convey results by telephone or require the employee to pick the Notice of Determination up at HR. Thereafter, she acknowledged that HR also had the "ability to use Lt. Eberwine or a member of management" to deliver the results and/or Notice, but she stated that HR "first sees if the employee can pick it up" and if not, then it is either sent by secured email or Lt. Eberwine obtains the Notice of Determination from the shared-drive, and serves it. The undersigned infers that Ms. Suniga was mistakenly referring to the process permitted under County policy, for non-bargaining unit members, when she testified to a practice of requiring officers to come to HR to pick up Notices of Determination. (Note 8, *infra*.)

⁸ Contrary to what is provided in the CBA at issue, County policy expressly provides that non-bargaining unit employees may be notified to come to HR to pick up results/Notices of Determinations. (Co. Ex. G at 145, Section 10-5, that "[t]he employee will be notified that the notice is available to be picked up or will be delivered by email to the employee's address of record"). It is also generally easy for an employee to obtain permission and/or relief to be allowed to go to HR for matters of this nature, upon the employee's request. (Eberwine testim.)

issuing him a 30-day suspension. Cpt. Howie objected, believing that no discipline was warranted. Cpt. Howie, however, has no prior experience with EEO cases and did not conduct or review the investigation. Additionally, the Detention Center Director told him that the County leadership and EEO require a tough stance on misconduct of this nature, which was corroborated by HR testimony. Still believing both penalties were excessive, Cpt. Howie opted for the 30-day suspension as the lesser of the two. (Howie testimony; *see also* Suniga testimony.)

28. The Union and Ofc. Ramirez do not dispute that Ramirez’s 30-day suspension was grieved solely on the procedural grounds asserted here, and that is also reflected in the grievance documents. (Motion to Dismiss and Answer; Note 3, *supra*; Co. Exs. A, C, and E.) This means that they did not challenge the merits of the discipline, including the findings and conclusions that Officer Ramierz “kissed Officer Lopez on the mouth while grabbing her face aggressively so that she could not move”; and that in doing so he violated the County’s anti-sexual harassment policy. The disposition of that grievance was not made evident at trial but it appears to be pending arbitration, based upon the limited testimony provided about it.

PARTY POSITIONS

The Union/Complainant’s Arguments

The Union argues that the foregoing facts establish a clear violation of the express language of the CBA, and that the only appropriate remedy to avoid incentivizing future, similar contract violations is to rescind, or in the alternative reduce, Officer Ramirez’s 30-day suspension.

First, the Union argues that the County has already essentially admitted in its Answer that it violated the CBA, and therefore Section 19(H) of the PEBA, in justifying its alternate reading of the CBA as follows:

That same day [November 25, 2024], HR promptly contacted Mr. Ramirez via email to inform him of the determination and to notify him that there were technical issues in transmitting the document electronically. The email *clearly advised Mr. Ramirez that the Notice was available for immediate*

pickup. This action constitutes timely notice within the spirit and letter of the union agreement. The communication from HR on November 25, 2024, constituted the initial notification and fulfilled the County's obligation to make the determination available within the prescribed timeframe.

(Un. Post Hearing Brief at 5-6; Answer at ¶ 7, emphases added.)

The Union argues that this paragraph concedes or establishes that Ms. Spain's email was flawed and insufficient notice for three separate reasons: she was not the Detention Center Director or his designee; she did not inform Officer Ramirez of the results of the pre-det hearing during their calls or in the emails; and the formal, written Notice of Determination was not issued within the five (5) workdays required under Article, 9, Section 18(G).

Second, the Union argues that sub-sections G and H of Article 9, Section 18 both refer to the same thing, as evident from the language and structure of the CBA and as testified by all the witnesses. As such, the County's argument that the timeline of subsection (G) for issuing "results" is not applicable to the subsection (H) written Notice of discipline action is "disingenuous." It notes that the Parties used differing verbiage to describe the results/Notice throughout the Section, so little weight can be assigned to the fact that it is referred to as "results" in subsection (G) and a "Notice of Determination in subsection (H).

It urges a "a common sense, plain reading of Section 18" that does not overstate the supposed ambiguity. The Union also points out that the CBA process shares similarities with the County policy for non-bargaining unit members, except that the policy for non-bargaining unit members states that "[t]he employee will be notified that the notice is available to be picked up or will be delivered by email to the employee's address of record." (Co. Ex. G at 145, Section 10-5; *see also* Note 8, *supra*.) It believes Ms. Spain simply applied the wrong process.

Third, the Union argues that the timeline exception found in the County's anti-sexual harassment does not apply or operate to absolve the County of the CBA's time limit. The County policy provides that technical non-compliance with a deadline for issuing results will not operate to preclude the discipline. (Co. Ex. G at 11, Sec. 2-3(V).) The Union describes this as a conflict with the plain time limit set out in the CBA.

Lastly, the Union argues that overturning or mitigating discipline is an appropriate and necessary remedy in this case. It distinguishes this situation from cases where the violation of *Weingarten* rights to Union representation in an investigatory interview has been held not to support overturning or mitigating the discipline. It argues that this case deals with an express due process right negotiated by the Parties. It also distinguishes the PEBA from the National Labor Relations Act (NLRA), from which the *Weingarten* case derives – the PEBA, unlike the NLRA, expressly prohibits breaching a CBA.

The Union instead analogizes this situation to cases where arbitrators have reversed public sector discipline in New Mexico due to an employer’s failure to conclude an investigation within 45-days as required under the relevant CBA in those cases. (*Id.* at 12-13, citing *AFSCME CJ8 and Joe Ray Chavez v. CYFD*, CV-2018-03069, Decision and Order at 8 (2nd Jud. Dist. Ct., 2018) (upholding arbitrator’s decision overturning discipline for exceeding the 45-day investigation/charging period); *AFSCME Council 18 v. State of New Mexico, RLD*, FMCS Case No. 10-55784, pgs. 11-12 (Sheiber 2011) (arbitrator reaches same decision); and *AFSCME Council 18 v New Mexico Corrections Department*, FMCS Case No. 12-50893-1, pg. 14 (Sargent 2012) (same).

The Union argues that “[c]learly this shows that it is not unreasonable to overturn or at least mitigate the level of discipline imposed for violating the CBA”. It also argues that “[t]he County has not shown any remorse or taken any accountability for its actions”, and it urges the PELRB to “maintain the integrity of the CBA” and “not allow the County to choose at its discretion whether to follow the letter of the [CBA]”, as that would only encourage future similar violations.

The County’s Arguments

The County emphasizes that the Union bears the burden of proof. (County Post Hearing Brief at 9, citing NMAC § 11.21.1.22(B) (“[i]n a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence”); *Selmeczki v. NM Dep’t of Corr.*, 2006-NMCA-024, ¶ 13, 139 N.M. 122, 129 P.3d 158, citing *Regents of Univ. of N.M.*, 1998 NMSC 20, ¶ 7, 125 N.M. 401, 962 P.2d

1236 (“[t]he burden is on the party challenging the agency decision to demonstrate grounds for reversal”).

In its post-hearing brief, it concedes that the evidence shows Officer Ramirez did not receive the Notice of Determination letter until December 6, 2025. Nonetheless, it argues, the evidence shows “Ofc. Ramirez acted in bad faith to avoid service by refusing to pick up the Notice letter despite being told that it was available and then falsifying evidence to support the argument that he was not notified in a timely fashion.” (*Id.* at 10, citing Eberwine, Suniga, English, and Ramirez testimony; and Exhibit 5, with the distorted header (*see* Note 6, *supra*).) It also argues that Ofc. Ramirez was shown at the hearing to be an unreliable witness and to have demonstrated a lack of candor as an employee over the years.⁹

The County also distinguishes “results” from “Notice” (defined by Merriam-Webster as “to give someone formal notice of an event or an occurrence”); and emphasizes that the Subsection (G) five-workday deadline is not re-stated in Subsection (H) regarding the Notice of Determination. From this, it argues that the Subsection (G) five-workday deadline therefore does not apply to Subsection (H). It also argues that the bad faith and lack of candor shown by Ofc. Ramirez render the requested relief requested inappropriate.

Next it argues that, if its interpretation of Article 9, section 18(G) and (H) are rejected, “there is an exception in the CBA for EEO complaints. Article 4 of the CBA intentionally includes provisions of the Human Resources Procedures”, including “Section 2-3, Discrimination and Harassment Procedures, of the Human Resources Policies and Procedures”, which “carves out the definition of harassment, including sexual harassment, and provides an exception to the ‘typical’ policy and procedure”:

Failure to comply with any timeline for taking disciplinary action shall not preclude the admissibility of any information, statements or evidence obtained during the investigation *nor shall such a violation be used in a manner that a lack of technical compliance by County would preclude the discipline of an employee who otherwise should be disciplined as a result*

⁹ Testimony about prior discipline was accepted over objection, related to Ofc. Ramirez’s truthfulness and honesty. As credibly described by the Assistant Director of HR, Ashley Suniga, Officer Ramirez had several disciplinary incidents in 2015 and 2019 involving honesty/lack of candor. Additionally, the County impeached Officer Ramirez by showing that he gave inaccurate or misleading testimony describing his prior work history, by stating or suggesting he “self-demoted” from Sergeant when he was demoted in relation to dishonesty. (Suniga testim.)

of violating the County's policies prohibiting unlawful harassment, unlawful discrimination and unlawful retaliation.

Id. at 10-11 (emphasis added in Brief). The County argues that “[t]his exception applies to the handling of EEO complaints under both the Human Resources Policies and Procedures and the CBA”. (*Id.*) It further argues that this provision applies here, because Officer Ramirez and the Union do not challenge the findings of proven and serious misconduct.

Lastly, the County argues that it did not act unreasonably, arbitrarily, or capriciously in issuing the 30-day suspension. *Id.* at 11-2, citing *Selmeczki, supra* at ¶ 13, quoting *Archuleta v. Santa Fe Police Dep’t ex rel., City of Santa Fe*, 2005 NMSC 6, ¶ 7 (holding that “progressive discipline is not required before termination when the conduct for which an employee is terminated constitutes just cause to terminate”). It notes that the evidence shows that “Ofc. Ramirez had been disciplined, including suspension, multiple times prior to the EEO complaint”, and that “the actions of Ofc. Ramirez” for which he was disciplined here “were so egregious that the discipline was warranted, even if he had no prior discipline.” *Id.* at 11 citing *Selmeczki* at ¶ 19 (holding that “progressive discipline is not required before termination when the conduct for which an employee is terminated constitutes just cause to terminate”).

Thus, it argues, the 30-day suspension was not “unreasonable or without a rational basis, when viewed in light of the whole record.” *Id.* at 11. It emphasizes that the “Complainant does not argue that the discipline imposed was unjust, arbitrary, or capricious based on the actions of Ofc. Ramirez” but that “[i]nstead, Complainant seeks to have just discipline overturned because of an alleged lack of timely notice.” It urges that “[t]he facts and evidence presented in this case simply do not support overturning just discipline, and the Complainant has not provided evidence to prove otherwise.” *Id.* at 12.

RELEVANT LEGAL STANDARDS

Here, the Union is essentially asserting that the Agency’s breach of the CBA’s negotiated timelines and procedures related to discipline in Art. 9, Section 18(G) and (H) resulted in a violation of fundamental procedural due process, and therefore resulted “harmful error” as well as a violation of Section 19(H) of the PEBA.

As the County correctly observed, the burden is on the Complainant to establish by a preponderance of the evidence that the County's acts or omissions violated the PEBA. See NMAC 11.21.1.22(B) (that "[i]n a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence"); see also *Selmeczki, Regents of Univ.*, and *Archuleta*.

In applying or interpreting CBAs to determine if a violation of Section 19(H) of the PEBA has occurred, the undersigned applies the common standards and principles of contract interpretation observed in the field of labor arbitration, as being the most relevant and also well-established and widely known and understood by parties to a CBA. See Theodore St. Antoine, Ed., *The Common Law of the Workplace* at 69-70 (Second ed., 2005; BNA NAA) (Ch. 2, "Contract Interpretation" by Arbitrator Carlton Snow) (that "collective bargaining agreements are not ordinary contracts", and the law of the organized workplace has adopted traditional contract principles in "recognition of the special need for flexibility" in the "effort to erect a system of industrial self-government").

The trier-of-fact's most fundamental role in the case of CBA disputes is to ascertain the mutual intent of the Parties, primarily based upon the parties' chosen contract language understood according to its ordinary meaning. See Roger L. Abrams, *Inside Arbitration* (BNA 2013) at 243, 245 ("intent of the parties is the lodestar with primary evidence being the words they used to express their bargain"). Ultimately, a neutral must settle the question of a contract's construction based upon the relevant provision's plain ordinary meaning, choosing the interpretation that is the most reasonable or the least unreasonable according to the evidence provided. See *Inside Arbitration* at 243, 246-47, 259-60 (arbitrator's job is to determine intent, usually by filling in gaps with the best evidence of intent available, and the test is which interpretation is the most reasonable; if they are in "equipoise", the claimant did not meet their burden of proof); Alan Miles Ruben, ed., *Elkouri and Elkouri: How Arbitration Works* at 481 (BNA 6th ed. 2003) (hereinafter "*Elkouri*") (noting that in some cases the job is to "chose the course which does the least violation to the judgment of a reasonable man").

Additionally, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Elkouri* at 478, quoting *Restatement (Second) of Contracts* § 205 (1981).

Next, because this case involves issues of discipline and discharge, well-established notions of “industrial due process” are also relevant. Due process is a critical component of CBA just cause provisions and labor law generally. *See* Brand and Biren, *Discipline and Discharge in Arbitration*, Third Ed. at 2-39 (ABA LEL, 2015) (that “Courts accept that arbitrators consider due process as a standard part of interpreting [CBAs] that require just cause for discipline”). Due process, or “industrial due process” as it is often termed in the collective bargaining context, is often framed as requiring “(1) timely action by the employer; (2) a fair investigation; (3) a precise statement of the charges; (4) a chance for the employee to explain before the imposition of discipline; and (5) no double jeopardy...”, and many neutrals also add (6) “no showing of prejudice...” *See Discipline and Discharge* at 2-12; and *Common Law of the Workplace* at 209, 217-18 (noting that “[a]rbitrators attach considerable importance to contractual provisions concerning the procedure that employers must follow in discharging, disciplining, or otherwise adversely affecting employees”).

The “no prejudice” standard in labor or collective bargaining law is functionally the same as the “harmless error” standard that is observed in federal labor/employment law, as well as in administrative and criminal law. *See, e.g., Discipline and Discharge* at 2-12, 2-37 – 2-39, 13-2 – 13-9, 13-34 – 13-37 (that an appropriate remedy depends on such factors as whether the agency error asserted was “harmless”, meaning it did not offend fundamental notions or principles of due process and/or did affect the outcome; and also considers “[w]here the employer complies with the spirit of the contract and the employee is not prejudiced by procedural violations”).¹⁰

¹⁰ Compare *Cornelius v. Nutt*, 472 US 648 at 657-665 (1985) (that the Civil Service Reform Act of 1978 (Act) requires an arbitrator to apply the “harmful error” where breach of a procedural CBA right is alleged, and describing harmful procedural errors as those that “cast doubt upon the reliability of the agency’s factfinding or decision”); 5 USC § 7701(c)(2)(A) (that when an employee appeals action to the MSPB, an agency’s decision “may not be sustained ... if the employee ... shows harmful error”); and 5 CFR §1204.4(r) (defining “harmful error” under the federal Merits Systems Protection Board as “[e]rror by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of error”); *United States v. Texas*, 136 S. Ct. 2271, 2272 (2016) (mem.) (per curiam) (similar, regarding remedies for violation of the Administrative Procedures Act); and *State of New Mexico v. Steve Tollardo*, 275 P.3d 110 (N.M. 2012) (clarifying the New Mexico standard for harmless error as it relates to criminal trials and the confrontation clause, stating that “[i]n the final analysis, determining whether an error was harmless requires reviewing the error itself and its role in the trial proceedings, and in light of those facts, making an educated inference about how

ANALYSIS AND CONCLUSIONS OF LAW

The first question presented is whether the City breached Article 9, Sections 18(G) and (H) of the CBA, and thus Section 19(H) of the PEBA, as alleged. *See* NMSA 10-7E-19(H) (that “[a]public employer or the public employer’s representative shall not...refuse or fail to comply with a [CBA]”).) The overwhelming weight of evidence supports the ultimate finding and conclusion of “yes”.

In reaching this determination, the undersigned rejects the County’s argument that the five-workday time limit under Section 18(G) does not also apply to the Notice Determination referenced in Section 18(H). That interpretation is unreasonable and unsupported by either the plain language and structure of the CBA or witness testimony. Rather, the undersigned agrees with the Union that when all subsections are read together, it is evident that subsections (G) and (H) refer to the same thing, and this is confirmed by credible testimony about how the parties have in fact implemented the timeline.

Any other reading makes little sense, particularly given the Parties’ use of varying language or identifiers throughout the CBA to refer to the same or similar things, as shown by the Union. *See Common Law of the Workplace* at 72, 76 (“[w]hen interpreting agreements [or CBAs], arbitrators use the ordinary and popular meaning of words, unless there is an indication that the parties intended a special meaning”; and “if words ‘are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language use’ or is ‘plain meaning’”) (citing *Elkouri* at 434). Additionally, witness testimony establishes that the Parties themselves have been interpreting 18(G) and 18(H) to be subject to the same deadline. *See Common Law of the Workplace* at 89-94 (that parties’ past practices in implementing a CBA can be relied upon as an “interpretive aid” in understanding their intent as to its meaning).

The undersigned also rejects the County’s argument that the Section 18(G) “results” could be somehow deemed to have been constructively reported to Officer Ramirez simply by informing him that the Notice of Determination was available for pick up. This is

that error was received by the” trier of fact, to determine if “there is a reasonable possibility” that the error “contributed to Defendant’s convictions”).

contrary to the plain language of the provision. *See* CBA, Art. 9, Sec. 18(G) (that “[t]he employee shall be notified by the department head or designee, within five (5) work days, of the results of the pre-determination hearing”).

Similarly, the undersigned rejects the argument that telling a bargaining unit member that their Notice of Determination was ready for pick up within the next 30 minutes, “if you can”, somehow “fulfilled the county’s obligations” under Section 18(H) to “deliver” the Notice. This is also contrary to the plain language of the provision.¹¹ *See* CBA, Art. 9, Sec. 18(H) (that “[t]he notice will be delivered by mail to the employee’s address of record, email, or by personal delivery”).

The County also cites no legal authority in support of the bold and novel propositions that declining to waive rights is evidence of bad faith; and that a contract beneficiary can be compelled to waive their rights under a CBA simply by inviting them to do so. Such arguments, claims or interpretations are unreasonable on their face. In the absence of any binding or persuasive authority in support of this claim, they are also rejected.

Accordingly, the Union has met its burden to establish by a preponderance of the evidence that the County violated Article 9, Section 18(G) and (H) of the CBA, and derivatively Section 19(H) of the PEBA.

Having concluded that, we come to the more significant question presented: what shall be the appropriate remedy for the proven violation of Article 9, Section 18(G) and (H) of the CBA, and Section 19(H) of the PEBA?

Upon consideration of the entire record and the Parties’ arguments, the undersigned finds, concludes, and recommends that the remedy requested by the Union – rescission/removal or mitigation/reduction of the 30-day suspension – is not appropriate under the facts presented here, because this was a technical violation that was not shown to have resulted in prejudice or harmful error to Officer Rameriz.

The undersigned agrees in principle that the CBA provisions violated relate to due process concerns and represent important rights to ensure that discipline is timely issued to

¹¹ The undersigned renders no opinion on the Union’s arguments about Ms. Spain not being a proper “designee” to relay the results under Subsection (G), since no evidence was presented one way or the other as to either her authority, or the Director’s delegation thereof.

affected bargaining unit members. However, in this case, multiple factors make rescission or even reduction/mitigation of the suspension wholly inappropriate.

First and foremost is the fact that Ofc. Ramirez never challenged the merits of either the finding of serious misconduct involving sexual harassment or the penalty selection, as found above.¹² This means that he was proven to have engaged in serious misconduct: kissing a fellow officer on the mouth without her consent, “while grabbing her face aggressively so that she could not move”. The severity of the proven misconduct weighs heavily against reducing or rescinding the suspension, absent a compelling showing that the choice of discipline was “arbitrary, capricious, discriminatory or otherwise violative of fundamental notions of reasonableness, fairness and/or due process.” *Discipline and Discharge* at 2-83 (citations omitted).

Second, all the evidence offered concerning bad faith or anti-Union animus on the County’s part in choosing the penalty of a 30-day suspension was vague and speculative in nature, and the Union failed to rebut the legitimate business purpose of issuing heavy discipline for proven sexual harassment, such as by showing the asserted purpose was pretextual. *See, e.g., AFSCME Council 18 and Doña Ana County*, N.M. Court of Appeals No. A-1-CA-39783 7 D at ¶¶ 5-6 (slip op., Aug. 15, 2023) (affirming use of the *Wright Line* test for evaluating actions or “encounters in the workplace in connection with protected union activity, under which “a union must show that the employer had animus against the union activity or against the union, and that this animus was a motivating factor in the discipline” or other action).

The burden of proving union animus requires more than conclusory assertions of procedural irregularity or unfairness. Instead, it requires reliable evidence and inferences grounded in fact, of a causal connection between evidence of animus and the adverse action. *Compare Volvo Group North America, LLC*, 370 NLRB No. 52 (2020) (“find[ing] that the General Counsel did not sustain his burden under *Wright Line* of proving that [the employee’s] protected activity [or status] was a motivating factor in the Respondent’s

¹² At his pre-determination hearing and presumably before the EEO investigator, Ofc. Ramirez had claimed unsuccessfully that he merely kissed her on the cheek, and that he “had done so before and she did not complain” (Un. Ex. 7/Jt. Ex. 3) , but he abandoned those claims in his grievance and before the undersigned.

decision to issue” discipline where no “causal relationship” was shown between the employee’s protected status or activity and the adverse action).

Here, nothing of that nature was established. Although the investigation was lengthy, it did not exceed the period allowed under the contract; and the charge was a serious one. Additionally, there is no evidence in the record suggesting or hinting that the County was motivated by Ofc. Ramirez’s involvement or role in the Union. Nor was evidence of disparate discipline offered, such as other Officers receiving lesser penalties for similar sexual harassment violations. *Discipline and Discharge* at 2-75 - 2-83 (unequal enforcement of policies, including issuing inconsistent penalties for their violation, can be a basis for overturning or mitigating discipline).

By all record evidence, the colossal failure by Ms. Spain or another designee of the Director to timely convey the pre-determination hearing results and deliver the Notice of Determination as required under the CBA was motivated by nothing more than pre-Thanksgiving Holiday distraction, major IT difficulties, and/or a transient decline in work performance standards.

Third, reducing or rescinding the 30-day suspension would not be appropriate here because harmful error or prejudice to Officer Ramirez has not been demonstrated. It is true, as the Union argues, that “[a]rbitrators attach considerable importance” to negotiated discipline procedures and that “[i]n most cases arbitrators take the ... violation into account in assessing the ... employer action.” *See Common Law of the Workplace* at 209, 217-18. However, not every procedural protection is a fundamental one going to due process and “in most cases arbitrators...do not declare the entire action a nullity”. *Id.*; *see also Discipline and Discharge* at 2-37 (“[d]ue process violations do not always warrant the reversal of the disciplinary action imposed” and “[w]here there has been no prejudice to the grievant, the employer’s action may be sustained”). Here, there was no evidence that the delay prejudiced Officer Ramirez’ rights, such as by impairing his ability to defend himself, to appeal the matter, or take other remedial efforts.¹³

¹³ The Union emphasizes several arbitration awards that found prejudicial harm in the violation of a CBA’s 45-day investigation/charging period. The undersigned does not find these to be relevant or persuasive for this case. It is easy to imagine a situation where a lengthy delay in investigating and/or charging misconduct results in a compromised investigation and/or impedes the employee’s ability to defend themselves, due to the loss of evidence including the fading or coloring of

Fourth, rescission or reduction of the suspension is not warranted under Article 4 of the CBA and County Policy 2-3, Discrimination and Harassment Procedures, which together provide that delay from a stated procedural deadline will not be grounds to reduce discipline that is otherwise supported by just cause. (Jt. Ex. 1, Art. 4; and County Ex. G, 2-3(V).) The Union argues that Policy 2-3(V) violates the CBA's disciplinary timelines in Art. 9, Sec. 19(G) and (H). However, Policy 2-3 is entirely consistent with the well-recognized principles of labor law that procedural errors do not in and of themselves constitute a violation of due process, and that technical violations that do not give rise to harmful error should generally not be relied upon to rescind or mitigate discipline that was otherwise shown to be justified under the principles and standards of just cause.

Accordingly, the undersigned finds that this provision does not conflict with the five-day limit stated in the CBA, and that the Parties did indeed incorporate the cited anti-Harassment policy language into the CBA by expressly incorporating the policy by reference, and by the lack of conflict. Additionally and/or in the alternative, the undersigned finds that incorporation was not required because the same result derives from standard labor law principles as discussed.

Fifth, it is also notable that Officer Ramirez was not terminated and instead received only a lengthy suspension. Most of the cases discussed in the cited labor treatises involved termination, and the arbitrators frequently declined to offer both back pay and reinstatement in those cases. This suggests that mitigation for procedural violations is generally only appropriate in cases of termination, *e.g.*, where the employee is confronted with what some advocates term the "industrial capital punishment." *See Discipline and Discharge* at 2-56.

Finally, there was no reliable and credible evidence offered that a 30-day suspension for proven sexual harassment/unwanted kissing was excessive in any way. *See Discipline and Discharge* at 2-84 (the right to choose the quantum of discipline for proven misconduct is generally within management's sound discretion and "[m]ost arbitrators

memories, etc. In contrast, the five-workday deadline to issue results and the written Notice does not appear to target as critical and obvious a risk of irreparable harm to the employee since the charges and evidence are well documented at that point. This is not to say that exceeding the five-workday limit would never amount to harmful error or give rise to prejudice, only that it was not shown to do so here.

hesitate to reduce the penalty imposed by the employer if the penalty is consistent with that imposed in similar cases and there are no elements of discrimination, unfairness, arbitrary, or capricious action”).

Although Cpt. Howie (the Operations Captain who was directed to issue the discipline) believed the penalty was excessive, he had no experience with EEO investigations, which he described as “completely different”; and he was not involved in the investigation. (Howie testim.) Therefore, his opinion testimony on the issue of appropriateness of the penalty is given no weight because it is based on limited personal knowledge. Additionally, a reasonable basis for Cpt. Howie’s opinion was not otherwise demonstrated, given that Ofc. Ramirez was proven to have engaged in sexual harassment. *See Discipline and Discharge* at 2-56 – 2-59 (serious misconduct, including sexual harassment, can warrant termination for a single occurrence, although mitigating factors are still considered). Nor, as noted above, was there any evidence of disparate treatment of Officer Ramirez due to his Union role or involvement. *Id.* at 2-75 - 2-83.¹⁴

RECOMMENDED DECISION

Based upon the foregoing findings, legal standards, reasoning and conclusions, the Hearing Examiner determines the County violated Article 19(H) of PEBA by violating Article 9, Sections 18(G) & (H) of the Parties’ CBA. She further determines that an appropriate remedy is a posting “in all public buildings owned, leased or operated by the DACDC” (PPC at 3) that the instant conduct violated the PEBA.

The Parties are also cautioned that a pattern of similar violations in the future could result in findings related to bad faith and increasing consequences, including mitigation of discipline based on technical non-compliance.

¹⁴ The undersigned also observes that the Union offers no evidence or argument by which to define a proper and reasonable amount of mitigation in the case of a lengthy suspension for proven sexual harassment. For instance, has similar misconduct been charged with lesser suspension at the Detention Center? Or are there labor law decisions out there suggesting a 30-day suspension for unwanted and forcible kissing should be reduced by one day, cut in half, or rescinded entirely based on a procedural violation? Without such factors or guidance, any reduction of the penalty by the PELRB runs a high risk of being deemed “arbitrary and capricious” in turn.

This is a final disposition, and an aggrieved Party may obtain Board Review of this Recommendation pursuant to NMAC 11.21.3.19

Issued this 19th day of September, 2025

A handwritten signature in black ink, appearing to read 'P. Vaile', is positioned above a horizontal line.

Pilar Vaile
Exec. Dir. and Hearing Examiner