# 37-PELRB-2025

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

**In re:**

**AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, NM COUNCIL 18, AFL-CIO, LOCAL 2499,**

**Complainant**

**v.** **PELRB No. 106-25**

**BOARD OF COUNTY COMMISSIONERS, BERNALILLO COUNTY,**

**Respondent.**

## ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on November 4, 2025, for *pro forma* adoption of the Hearing Officer's Report and Recommended Decision issued in this case pursuant to NMAC 11.21.3.19(D). The Hearing Officer issued his report on September 22, 2025 and no request for Board review was filed by either party. Accordingly, the Board adopts the Hearing Officer's Recommended Decision and the decision is binding on the parties but does not constitute binding precedent.

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Nan Nash
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Date: 12/10/2025

Nan Nash, Board Chair

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**BOARD OF COUNTY COMMISSIONERS, BERNALILLO COUNTY,**

**Respondent**

## HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

**STATEMENT OF THE CASE:** This matter comes before Matthew Huchmala, designated as the Hearing Officer in this case, on a Prohibited Practice Complaint (PPC or Complaint) filed by the American Federation of State, County and Municipal Employees, NM Council 18, AFL-CIO, LOCAL 2499 (AFSCME or Union) against the Board of County Commissioners of Bernalillo County (County or Employer). The Complaint alleges that the County violated the Public Employee Bargaining Act (PEBA) when it retaliated against Union President Joseph Trujeque by making him the subject of a disciplinary investigation for statements he allegedly made at a meeting between the Union and the County. The County answered the PPC admitting the jurisdiction of this Board, that a meeting took place and statements were made during that meeting, and denying the rest of the allegations in the complaint.

A hearing on the merits was held Wednesday, August 06, 2025. All parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. On the entire record in this case and from my observation of the

witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following Recommended Decision.

**EXHIBITS AND WITNESS TESTIMONY**

The parties offered two stipulated exhibits:

**Exhibit A:** The Notice of Investigation provided to Joseph Trujeque and the Referral for Internal Investigation that form the basis for the Complaint.

**Exhibit B:** The Employer's policies on Firearms Control, Incident Reporting, Use of Force, Firearms, and Use of Force Policy Summary.

At the hearing, testimony was received from Corrections Officers Joseph Trujeque, Nicholas Watkins, Robert Speedy, Peter Koeppe, Angel Montoya, and Gerald Hepting, Union representative Robert Trombley, Deputy Warden Reyna McCann, and Warden Kai Smith.

**FINDINGS OF FACT:** I begin my analysis by noting that the standard of proof applied in administrative proceedings is a preponderance of the evidence. (*Foster v. Bd. of Dentistry*, 1986-NMSC-009 at ¶10). Preponderance of the evidence simply means the greater weight of the evidence. (Campbell v. Campbell, 1957-NMSC-001 at ¶24). To prove by the greater weight of the evidence means to establish that something is more likely true than not true [or] what is sought to be proved is more probably true than not true (NMRA 13-304 (uniform jury instruction)). Accordingly, I find the following facts to be proven by a preponderance of the evidence:

1. Complainant is a "labor organization" as that term is defined in §4(K) of the PEBA. (Complaint and Answer).
2. Respondent is a "public employer" as that term is defined in §4(R) of the PEBA. (Complaint and Answer).

3. The PELRB has jurisdiction over this matter. (Complaint and Answer).
4. There was a meeting between management and the union on February 17, 2025 attended by Joseph Trujeque (JT), Nicholas Watkins (NW), Robert Speedy (RS), Peter Koeppe (PK), Angel Montoya (AM), Gerald Hepting (GH), Robert Trombley (RT), and Shane Youtz (Counsel for the union) representing the union, and Warden Kai Smith (KS), Deputy Warden Reyna McCann (RM), and County Attorney Daniel Roberson representing the County. (Complaint; Answer; Ex. A; Testimony of JT, RT and KS).
5. One stated purpose of the February 17, 2025 meeting was for the Union to express its serious concerns about Warden Smith's plan to switch to 12-hour shifts. (Testimony of JT).
6. Joseph Trujeque is a Correctional Officer (CO) at the Bernalillo County Metropolitan Detention Center (MDC) with 23 ½ (non-continuous) years of experience. (Testimony of JT).
7. Joseph Trujeque is the president of Local 2499 and has been since 2016. (Testimony of JT).
8. Nicholas Watkins and Robert Speedy are certified firearms instructors. (Testimony of NW and RS).
9. The February 17, 2025 meeting was contentious, with both sides speaking forcefully, and Warden Smith displaying annoyance at the union representatives for having to fill in an organizational chart, and at one point pounding the table. (Testimony of JT, NW, RS, PK, GH, RT).

10. At the February 17, 2025 meeting, the Warden was informed by Mr. Watkins and Mr. Speedy that the plan to switch to a 'pooled weapons' system was contrary to Department of Public Safety guidelines. (Testimony of RS, NW and KS).
11. During the February 17, 2025 meeting, Mr. Trujeque stated he had drawn his weapon 13 times over the course of his career. This statement was made in the context of a discussion about the use of weapons at MDC to rebut an assertion made at a previous meeting that there had only ever been 3 incidents of weapons being drawn at MDC. (Testimony of JT, RS, NW, PK, AM, GH, RT, KS).
12. Warden Smith made no attempt to clarify Mr. Trujeque's comments at the time. (Testimony of KS).
13. The drawing of a weapon by a CO at MDC is a rare occurrence, with only a few incidents happening each year and 13 incidents of weapons being drawn in only a few months would be an extraordinary occurrence. (Ex. A, Testimony of JT, RT, AM, RS, NW, RM).
14. Deputy Warden McCann does not remember the specifics Mr. Trujeque's '13 times' comment and thought that it was hyperbole or exaggeration. (Testimony of RM).
15. The day after the February 17, 2025 meeting, after consulting with Deputy Warden McCann regarding Mr. Trujeque's statements at the previous day's meeting, the Warden opened an investigation, the subject of which was Joseph Trujeque. (Ex. A, Testimony of JT and KS).
16. MDC procedures were not followed when opening the investigation, which does not have an ITS Incident number. (Ex. A, Testimony of JT and KS).
17. An investigation is the beginning of the disciplinary process and could lead to discipline up to and including discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The Complaint alleges violations of Sections 5(A), 5(B), 19(A), 19(B), 19(D), 19(E), 19(F) and 19(G) of the PEBA. I must decide each alleged violation, but I will discuss the §19 claims first because the §5 claims are based on the underlying claims of violations of §19. Neither party's closing brief delineated their argument by alleged violation; I do not find this format very helpful in making a decision. Nevertheless, I will summarize each party's argument below and do my best to address their arguments as I discuss each alleged violation.

The Union's Closing Brief makes much of the fact that the origin or cause of the investigation it alleges to be retaliatory (and as a result discriminatory) were statements made during a negotiation session while Mr. Trujeque was acting as union president, and that therefore he was within his "absolute rights" as a union representative and cannot be punished in any way for anything that might come to light during such meetings. I decline to adopt this extreme view.

The Employer's Closing Brief's argument has four main parts. The first is that there was no evidence presented that any employee's rights under the PEBA have been restricted so the §5 claims must fail. I will address this argument when I discuss the §5 claims below.

The second is that the investigation into Mr. Trujeque is not about his actions as a union representative, but his actions as a CO. While technically true, it does not dispose of the claims. While punishment or adverse action specifically for union activity is clearly discriminatory (e.g. discharge for collecting interest cards), it is not the only form of discrimination or retaliation, and is unsurprisingly quite rare. As was noted in *Wright Line*, "an employer will rarely, if ever, baldly assert that it has disciplined an employee because it detests unions or will not tolerate employees engaging in union or other protected activities."

(*Wright Line*, 251 NLRB 1083 (1980)). That the investigation is not into Mr. Trujeque's union activity cannot by itself absolve the Employer. The question is whether the investigation is *because of* his union activity, not whether it is *about* his union activity.

The third is that opening an investigation is not an adverse employment action, so no violation can occur unless and until the investigation results in some form of discipline. No citation is provided for this principle. This line of reasoning was rejected by the Hearing Officer's decision on a Motion for Summary Judgment in PELRB 113-16, and I decline to adopt it here. Just being placed under investigation will engender some stress and worry on the part of the employee under investigation and will require the Union to use part of its finite resources representing the employee during the investigation, even if no discipline is imposed. I find and conclude that being placed under a disciplinary investigation has an adverse effect on an employee's employment and it need not result in actual discipline before it implicates the PEBA.

The fourth argument put forth by the Employer is similar to the first and claims a violation cannot be found because of a lack of evidence for intimidation or "chilling" of union activity by the Employer because the union continues to engage in concerted activities; or, put another way, that unsuccessful attempts to intimidate a union or "chill" union activity do not violate the PEBA. No citation was provided in support of this assertion and I do not find this argument persuasive.

Section 5 of the PEBA uses similar language as Section 7 of the National Labor Relations Act (NLRA), and Section 19 of the PEBA uses similar language as Section 8 of the NLRA. Accordingly, we can look to the jurisprudence about those sections of the NLRA for guidance. (Regents of UNM v. NM Federation of Teachers, 1998- NMSC-020, at ¶18).

**Section 19(A)**

Section 19(A) declares it is a prohibited labor practice for an employer to "discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization." (NMSA 1978 §10-7E-19(A)). The *Wright Line* case (Wright Line, 251 NLRB 1083 (1980)) set forth a test to use in so-called 'dual motive' cases and has been used by this board when determining alleged violations of §19(A). First, the complainant must put forth a "*prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." (Id.) *Wright Line* also makes a distinction between 'dual motive' cases and 'pretextual' cases. In cases where "the asserted justification is a sham in that the purported rule or circumstance advanced by the employer did not exist, or was not, in fact, relied upon. When this occurs, the reason advanced by the employer may be termed pretextual. Since no legitimate business justification for the discipline exists, there is, by strict definition, no dual motive." (Id.). Here, the union showed that the day after a contentious meeting between union and management, where the union voiced serious objections to one proposed change and indicated another was contrary to law, Warden Smith initiated a disciplinary investigation into the union president. I find and conclude that this presents a *prima facie* showing as required by the first step of the Wright Line test.

As a "legitimate business justification" the Employer argues that because Mr. Trujeque's statements made the Warden aware of 13 incidents of the use of force (pulling of a weapon) in the recent past the Warden was obliged to open an investigation to see if reporting requirements were met. I find this to be pretext in that the purported circumstance

advanced by the employer did not exist. The greater weight of the evidence supports a finding that Mr. Trujeque's statements at the February 17, 2025 meeting were to the effect that he had pulled his weapon 13 times in his career spanning more than two decades. Those who testified that they understood this to be his meaning used words like "sure" and "certain" in their testimony. By contrast, the witnesses who testified to other meanings were not so confident in their recollections. I can infer that Warden Smith was not so certain of his recollection of Mr. Trujeque's statements because he sought out Deputy Warden McCann for confirmation. Deputy Warden McCann's testimony at the hearing was that she was unsure of the specifics of Mr. Trujeque's '13 times' statement and thought it was an exaggeration.

Employer argues that Mr. Trujeque's status as union president does not grant him immunity and the County should not be prohibited from investigating him because he is the union president. This is correct; he is not immune from investigation or discipline and the County is not prohibited from investigating him. However, when, as here, the purported justification for the investigation is found not to exist, the County will not be able to satisfy the second part of the Wright Line test. Because the Employer did not meet their burden of demonstrating a legitimate business justification (the second part of the Write Line test), I find the Employer violated §19(A) of the PEBA.

**Section 19(B)**

Section 19(B) declares it is a prohibited labor practice for an employer to "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act or use public funds to influence the decision of its employees…regarding whether to support or oppose a labor organization…or whether to become a member of any labor organization." The first prohibition against interference,

restraint and coercion appears to be a reiteration, as a prohibited practice, of the rights established in §5(A). Because I conclude below that §5(A) has been violated, I also conclude that this portion of §19(B) has been violated.

In regard to the second prohibition, because a violation of §19(A) is based on an "employee's membership in a labor organization," a reasonable inference can be made that the discriminatory/retaliatory conduct of the employer that constitutes the violation of §19(A) is intended to send a message to (i.e. influence) other employees about their union support and/or membership. Because the County is a public employer, a reasonable inference can be made that it used public funds to pay the employees who engaged in that conduct. However, a public employer has no *corpus,* so it must necessarily utilize paid employees to carry out its functions. Such an expansive view, basing a violation of this section on violations of other sections, would be tantamount to finding the underlying violation was by a public employer and render this section of the PEBA redundant. "It is axiomatic that…when construing statutory language, [one] must presume that the legislature did not intend an absurd result or intend to perform a useless act when enacting the statute." (Martin v. Middle Rio Grande Conservancy Dist., 2008-NMCA-151 at ¶10). The union did not set forth any evidence of the County expending funds aside from the argument expressed above. I therefore conclude that there was no violation of this portion of §19(B).

**Section 19(D)**

Section 19(D) declares it is a prohibited labor practice for an employer to "discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization." As noted above, an inference can be made that the County's conduct was intended to send a message to employees about their membership in the union. The Wright Line analysis can also be applied to

discrimination of this type. I incorporate by reference my Wright Line analysis from the discussion of §19(A), above, and conclude the Employer violated §19(D) of the PEBA.

**Section 19(E)**

Section 19(E) declares it is a prohibited labor practice for an employer to "discharge or otherwise discriminate against a public employee because…a public employee is forming, joining or choosing to be represented by a labor organization." I see little material difference between an employee being a member of a labor organization and an employee choosing to be represented by a labor organization, so that the same analysis that supports a violation of §19(A) will support a conclusion that §19(E) was also violated. I incorporate by reference my Wright Line analysis from the discussion of §19(A), above, and conclude that the Employer violated §19(E) of the PEBA.

**Section 19(F)**

Section 19(F) declares it is a prohibited labor practice for an employer to "refuse to bargain collectively in good faith with the exclusive representative." The Complainant presented no evidence regarding any refusal by the County to bargain in good faith and made no specific argument about this section in their closing brief. I therefore conclude that a violation of §19(F) has not been shown by a preponderance of the evidence and this claim is dismissed.

**Section 19(G)**

Section 19(G) declares it is a prohibited labor practice for an employer to "refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule." The Union seems to argue that the violations of other sections supports a conclusion that this section was also violated. However, much as was noted above in the analysis of §19(B), an expansive view, basing a violation of this section on violations of other sections, would be

tantamount to finding that the PEBA was violated because the PEBA was violated and render this section of the PEBA redundant. "It is axiomatic that…when construing statutory language, [one] must presume that the legislature did not intend an absurd result or intend to perform a useless act when enacting the statute." (Martin v. Middle Rio Grande Conservancy Dist., 2008-NMCA-151 at ¶10). The union did not set forth any evidence of the County refusing or failing to comply with the PEBA or Board rule aside from the violations found above. I therefore conclude that a violation of §19(G) has not been shown by a preponderance of the evidence and this claim is dismissed.

**Section 5(A)**

Section 5(A) grants public employees the right to "form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion." The same analysis that found the Employer violated §§19(A), (D), and (E) will support a finding that §5(A) rights were infringed. This is supported by NLRA jurisprudence. The NLRB has, since its earliest days found that violations of §8(a) also violate §7 of the NLRA. (See JOHN E. HIGGINS, THE DEVELOPING LABOR LAW (7th Ed.) Chapter 6.I.C). Therefore, I conclude the Employer violated §5(A) of the PEBA.

**Section 5(B)**

Section 5(B) grants public employees the right to "engage in other concerted activities for mutual aid or benefit." As Employer correctly points out in their Closing Brief, no evidence was presented that any employees were prevented from engaging in concerted activity. Because the Complainant failed to provide evidence of any rights being infringed, this claim is dismissed.

**DECISION:** Complainant has presented sufficient evidence to prove its claims for violations of Sections 5(A), 19(A), 19(B), 19(D), and 19(E) of the PEBA by preponderance of the evidence. The claims of violations of Sections 5(B), 19(F), and 19(G) are dismissed. Employer is ordered to cease its disciplinary investigation into Joseph Trujeque that was the subject of this proceeding and remove any references to the investigation from his personnel file. Because everyone involved is management or union officials, I decline to order a posting of a Notice of Violation and leave it to the parties to distribute news of this decision.

Issued, Monday, September 22, 2025.

Matthew Huchmala

Matthew Huchmala
Hearing Officer
Public Employee Labor Relations Board
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