38-PELRB-2025

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

UNITED HEALTH PROFESSIONALS OF NEW MEXICO, AFT, AFL-CIO (UHPNM),

Complainant,

v. **PELRB No. 118-25**

REGENTS OF THE UNIVERSITY OF NEW MEXICO, FOR ITS PUBLIC OPERATIONS KNOWN AS THE UNIVERSITY OF NEW MEXICO HOSPITAL, SPECIFICALLY INCLUDING THE UNM SANDOVAL REGIONAL MEDICAL CENTER (SRMC),

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 her report on October 16, 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.

DocuSigned by:
Nan Nash
DEE4A440B2614C5...

Date: 12/10/2025

Nan Nash, Board Chair

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

UNITED HEALTH PROFESSIONALS OF NEW MEXICO, AFT, AFL-CIO (UHPNM),

Complainant,

v. **PELRB No. 118-25**

REGENTS OF THE UNIVERSITY OF NEW MEXICO, FOR ITS PUBLIC OPERATIONS KNOWN AS THE UNIVERSITY OF NEW MEXICO HOSPITAL, SPECIFICALLY INCLUDING THE UNM SANDOVAL REGIONAL MEDICAL CENTER (SRMC),

Respondent.

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

PROCEDURAL BACKGROUND AND SUMMARY

This matter comes before Executive Director Pilar Vaile, as the designated Hearing Examiner, pursuant to a Prohibited Practice Complaint (PPC) filed on June 9, 2025 and amended on June 17, 2025, by United Health Professionals of New Mexico, AFT, AFL-CIO (UPHNM) AFSCME Council 18, Local 1529 (Union or Complainant), against the Regents of the University of New Mexico for its public operations known as the University of New Mexico Hospital, including the Sandoval Regional Medical Center (SRMC or Respondent).

The PPC as amended cited violations of Sections 5(A)[1], 17(A)[2], 19(F)[3], and 19(H)[4] of the Public Employee Bargaining Act (PEBA), based upon allegations that: SRMC had failed and refused to implement the dues remittance provisions in Article 2 of the Parties' collective bargaining agreement (CBA); and SRMC's knowing and repeated failure to correct the violation amounted to bad faith bargaining. In its Closing Brief, the Union only cites Sections 19(F) (duty to bargain in good faith) and 19(H) (CBA compliance) from the PPC, although it also adds Section (G) (PEBA compliance). Nonetheless, it reiterates factual claims of the PPC and Union witness that the Respondent had interfered with Union operations and bargaining unit members' ability to form, join or assist the Union by failing to abide by the dues remittance process.

SRMC filed its Answer to the Amended PPC on July 8, 2025 denying the allegations, but adding averments related to "logistical challenges in automating dues deduction remissions to the Complainant". It also affirmatively asserted that, as of the filing of its Answer, "all such remissions" and "dues payments" "have been made"; and cited several affirmative defenses, including failure to state a claim, estoppel, and deferral to arbitration. (Answer, Paras. 7, 14.) Its Post-Hearing Brief elaborated significantly on the estoppel/waiver/laches defense, while also addressing all of the PEBA Sections and factual allegations raised in the PPC and reiterated at the hearing on the merits.

The hearing on the merits was held on August 13, 2025, at the PELRB offices at 2929 Coors Blvd. NW, Albuquerque, New Mexico 87120, pursuant to Scheduling Order dated July 16, 2025. There, all witnesses testified under oath administered by the Hearing Examiner; the proceedings were audio-recorded by the PELRB; and 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

[1] *See* NMSA § 10-7E-5(A) (giving 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").

[2] *See* NMSA § 10-7E-17(A) (requiring Parties to bargain in good faith on "wages, hours, and all other terms and conditions of employment").

[3] *See* NMSA § 10-7E-19(F) (making it a prohibited practice for a public employer to refuse to bargain collectively in good faith with the exclusive representative). This claim was added with the Amendment.

[4] *See* NMSA § 10-7E-19(H) (making it a prohibited practice for a public employer to "refuse or fail to comply with a [CBA]"). § 10-7E-19(H) (making it a prohibited practice to "refuse or fail to comply with a collective bargaining agreement").

September 12, 2025; and 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 any legal citations therein, even if not specifically referenced herein.

Based upon the preponderance of the record, and as further detailed below, the undersigned finds, concludes, and recommends to the Board that:

(a) the County breached Article 2 (Check-off and Maintenance of Union Dues and Cope) of the CBA and therefore Section 19(H) of the PEBA; but

(b) the Union failed to establish bad faith bargaining under Sections 17(A) or 19(F), or violation of Section 5(A) (interference with employees' PEBA rights); and

(c) the Union failed to establish that the proven breach of the CBA and violation of Section 19(H) supported the requested remedies beyond the finding and declaration of liability under Section 19(H) stated herein.

APPEARANCES AND RECORD

<u>For the Union</u>:	
Grace Rhodehouse Barberena, Esq.	Youtz & Valdez, PC
Adrienne Enghouse	Witness and UHPNM Organizer
<u>For the Respondent</u>:	
Kevin Gick, Esq. Cari Neill, Esq.	UNM, Office of General Counsel
Wilson Wilson	SRMC Director of Employee Relations

In addition to the sworn testimony of the foregoing two (2) witnesses, the Union offered 11 exhibits and SRMC offered 25 exhibits, all of which were accepted into the record and some of which overlapped with each other.[5]

[5] *See* the Parties' respective Exhibit Lists, incorporated by reference herein.

FINDINGS OF FACT

1. The Petitioner was certified as the exclusive bargaining representative for certain SRMC staff on November 19, 2024, after a lengthy organization campaign and extended litigation before the PELRB and the New Mexico Courts. *See* PELRB 304-22, Board Order 1-PELRB-2025, dated 1/17/25.[6]
2. Thereafter, the Parties negotiated a CBA that has been in full force and effect since January 2, 2025. (SRMC Ex. 1, CBA).
3. In Article 2 of the CBA, the Parties agreed that the Hospital would remit dues to the Union after each payday as follows:

> **Article 2**
> B. Dues Deductions
> 1. Employees may elect to become a member of the Union and execute an Authorization for Check-Off of Dues form and COPE, which the employee has voluntarily agreed to and indicates so with signature, designating that a portion of his/her wages representing uniform bi-weekly dues be withheld and forwarded to the Union in accordance with the conditions specified on the dues authorization form.
> 2. Upon receiving an Authorization for Check-Off of Dues from and COPE[,] the Hospital shall deduct bi-weekly dues, as fixed by the Union, from the wages paid to the employee…
> ….
> D. Within ten (10) business days after each pay day, the Hospital shall remit to the [UHPNM], all deductions for dues made from the wages of the employees for that pay period together with a list of all employees and their Employee ID numbers from whom dues have been deducted.
> E. The Hospital will correct any errors in payment to the Union or to an affected employee within thirty (30) days of notification by the Union of the affected employee, and certification by the Hospital that the Hospital has failed to deduct dues when authorized by the employee...
> F. By the fifteenth (15th) day of each month, the Hospital shall furnish the Union the names, addresses, dates of hire of employees in the bargaining unit, the names of employees who are terminated or have left the bargaining unit"…[and other information]…
> …

[6] *See also* PELRB 306-21, the Union's first Petition for Representation; the PELRB's 2024 Annual Report at 21, notes 33-34, listing the ten (10) PPCs filed in 2023 and the eight (8) PPCs filed in 2024 between the Parties (located at 2024-annual-report-with-cover.pdf); and the other two (2) PPCs filed in 2025, PELRB Case Nos. 117-25, 119-25.

H. The Authorization Check-off Dues Form shall be the form in Appendix A of this agreement.
I. The provisions of this Article of the Agreement shall supersede any conflicting or contrary provisions in the context of this Check-Off Authorization.
J. The Union shall indemnify and hold harmless the Hospital from any liability arising out of or in connection with such assignment of wages for Union dues.

(*Id.* at 5-6, Art. 2, emphases added.)

4. The first pay period after the CBA went into effect ended on January 18, 2025, with payday falling on January 24, 2025. (SRMC Ex. 20, 2025 Calendar with pay periods and paydays.)
5. However, there were some necessary and some inadvertent delays associated with implementing the provision, as explained to the Union by Mr. Wilson at the outset (Un. Ex. B at 2, 1/3/25 2:20 p.m. email), as well as additional logistical challenges throughout the year. Initial delays related to setup involved the following:
    a. First, SRMC Accounts Payable Department had to approve the Union as a vendor. This required Ms. Enghouse to submit a W-9, which was not completed until January 15, 2025, as Ms. Enghouse had to re-submit the form she first submitted on January 3, 2025 with the correct "wet" signature. The Union was not set up as a vendor until effective January 21, 2025. That fell early in the pay period so Ms. Enghouse believed the remittance could have included that pay period as well. However, that is contrary to reasonable and valid management policies and financial controls as found and discussed below.
    b. Next, SRMC HR had to create a purchase order (PO) each month, which the HR Information System (HRIS) Team sometimes did not receive until late, as occurred on or about March 17, 2025, when Accounts Payable did not provide the HR Generalist with a PO on time.
    c. Then, the SRMC HRIS Team had to set up the dues deduction in the "Lawson System", to deduct dues pursuant to the information provided by the Union. HRIS is responsible for tracking and maintaining all HR and pay records. This part also experienced some problems: on February 3, 2025, for instance, the HRIS Team emailed for confirmation of information Ms. Enghouse had already provided on or about December 23, 2025 (before the CBA was effective).
    d. Next, a UNM HR Generalist requests creation of the check using a Special Check Request Form.

e. Lastly, UNM Accounts Payable group mails out the check, and at least once it did not timely place one or more checks into the mailbox or mail system.

(Enghouse and Wilson testim.; Un. Exs. A-I; SRMC Ex. 20, Calendar; SRMC Exs. 6, 8-16, documents reflecting remittance processing.)

6. The Union never challenged the general procedure outlined above and in Un. Ex. B, p. 2/SRMC Ex. 3; and Ms. Enghouse agreed at the hearing that this process was not unreasonable on its face. As Mr. Wilson credibly explained, the multi-step process described above is standard and necessary to ensure appropriate accounting of public funds and control against malfeasance or fraud. He also opined that it is within management's Article 5 rights, which reserves management's "exclusive right to:… 2. Set standards; 3. Exercise discretion and control over Hospital organization and its operations; 7. Determine the methods, means, and personnel by which Hospital operations are to be conducted; and 8. Take whatever actions may be necessary to carry out the functions and mission of the Hospital …" (Un. Ex. A, CBA, Art. 5.) Mr. Wilson acknowledged that the administrative accounting/payroll procedures described in Para. 5 are also "very similar" or identical to the dues deduction processes used with SRMC's other Union, IAMAW Local Lodge 794, and also other UNMH unions. However, no evidence was offered to show their initial set-up and implementation processes or timelines experiences had been different.[7] Additionally, Ms. Enghouse agreed that SRMC's and/or Mr Wilson's response time to UHPNM's dues remittance issues was generally reasonable, such as when the Union was uploaded as a Vendor on the same day they received her wet signature on the W-9; or when a stop-payment was quickly put in at the Union's request in June 2025. (Enghouse testim., 1:01:17:01-01:18:01; Wilson 3:00:31:32-00:32:15; SRMC Exs. 6, 16, 22-24; see also CBA Art. 5, and Wilson testim., 2:00:18:12-00:19:01, 2:00:22:56-00:24:15, 2:00:42:37-00:43:47, 3:00:04:38-00:05:47.)
7. After implementation of the multi-step set-up process, the Union received its first dues check from SRMC on February 21, 2025. (Enghouse testim.; SRMC Ex. 20.) There was

[7] IAMAW does not appear to have the same issues but it appears that their dues deduction and remittance are handled by the UNMH HR/LR Dept. Absent specific evidence to the contrary, it is also at least as likely as not that other UNM or UNMH Unions had a different and/or better relationship with management. (*See*, *e.g.*, Note 6, *supra*, regarding the Parties' extensive litigation history, and Note 9, *infra*, regarding SRMC's relative "youth" as a UNM entity.)

an error with this first payment, however, because it used an incorrect dues cap of $38 (rather than $32), despite Ms. Enghouse having timely provided the correct cap information. Mr. Wilson took prompt steps to fix the error and return the excess dues collected back to the bargaining unit members, and he believed the problem was fixed until Ms. Enghouse later informed him in April 2025 that it was still uncorrected (*see* below). The uncorrected error made members angry at the Union and Mr. Wilson would not agree to send out an email explaining SRMC's role or responsibility in the over-deduction. He attributed the duration of the problem to the Union's failure to timely inform him of the ongoing problem, which was then corrected within 30 days of the notice. (Enghouse testim., Tr. pt. 1:33:04-01:36:29; Wilson testim., *2:00:47:50-00:54:24, 3:00:08:05-00:13:27, 3:00:29:54-00:32:08*; SRMC Ex. 1, CBA, Art. 2(E), giving the employer 30 days to cure errors upon notice from the Union; Un. Ex. F; and SRMC Ex. 7.)

8. The Union also raised another issue or objection with this first payment on February 21, 2025: that the remittance only included the pay period ending February 18, 2025 and not the pay period ending on February 1, 2025 with a February 7, 2025, payday. However, no payments could be made for that period since the Union had not yet been set up as a vendor as required by internal financial controls, as found above and discussed in more detail below. (*Id*.)
9. The issues with dues remittance continued after the first, flawed payment on February 21, 2025. On March 18, 2025, Ms. Enghouse again reached out to the Hospital to address the delay in dues remittance, pointing out that the dues owed from the February 21, 2025 pay date were still outstanding and nearly a month overdue. (Un. Ex. G, *see also* Tr. pt.1 0:37:50 - 0:39:05 (Enghouse); *see also* Tr. pt. 1 0:30:25 – 0:32:00.) At this point, Mr. Wilson explained the delay in his HRIS Team receiving the PO from HR, although Mr. Wilson had originally told the Union it was anticipated to take only one week. (Un. Ex. G.)
10. The delays in dues remittance continued through the filing and amendment of the instant PPC (July 10 and 16, 2025), and it continued until shortly before the August 13, 2025 hearing on the merits. For instance, certain April and May 2025 deductions were not received until June 2025; and a June 2025 remittance was also late, when Mr. Wilson learned that additional money had to be added to the PO. Then, on July 15, 2025, Mr. Wilson learned that a check was not deposited into the mail "due to an administrative

oversight" by a UNM HR or Pay Generalist. This prompted Mr. Wilson and SRMC to "transfer[] the responsibility for dues deduction processing" to the main UNM Hospital (UNMH) Office of HR and Labor Relations, "which has experience processing dues deductions and can interface faster and more efficiently with the departments responsible for [the Union's] checks." (Un. Ex. H and Wilson testim.) The last omitted, delayed or owed remittance (from June 2025) was not received until August, shortly before the August 13, 2025 hearing on the merits. (Enghouse and Wilson testim.; Un. Ex. H; SRMC Exs. 16, 25.)

11. Ultimately, only three (3) of twelve (23) dues remittances were made timely.[8] (SRMC Exs. 18 and 20; and Enghouse testim.).
12. During this time, Ms. Enghouse and Mr. Wilson continued to work together to resolve the various issues regarding dues, including whole pay periods that were delayed and multiple pay periods being covered in one check. (Un. Exs. G-I, *see also*, SRMC Exs. 14 and 15; Enghouse testim., and Tr. pt. 1 0:32:30 – 0:34:35; 0:39:00 – 0:40:15, and 0:40:40 – 0:43:15.)
13. LR Director Wilson, both in email and testimony, admits to the delays and recognizes the reasonableness of the Union's frustration with them. (Un. Exs. G-I, *see also*, SRMC Exs. 14 and 15.) Nonetheless, as he points out, Article 2 of the CBA itself contemplates errors or issues in implementation since it provides 30 days to cure the issue upon notification of it. (CBA, Art. 2(E) (that "[t]he Hospital will correct any efforts in payment to the Union or to an affected employee within thirty (30) days of notification by the Union..., and certification by the Hospital…")
14. The Union witness (Ms. Enghouse) admitted that, by the time of the hearing, all remittances were "now caught up" and that "all errors have been rectified". (SRMC Ex. 8; Enghouse testim., *1:00:39:13-00:39:34, 1:01:33:57-01:37:17*.)
15. Several days before the PPC hearing, the Hospital made structural changes to its dues remittance approach with UHPNM, including enabling use of direct deposit beginning in July 2025 and transferring more responsibilities to the main UNMH HR/LR Department,

[8] Ms. Enghouse believes "remittance" occurs when the money is in hand, and Mr. Wilson believes it occurs when sent or issued. As the Union notes in its Closing Brief, the late payments were late under either interpretation, so the distinction is moot. *Id*. at 2, note 1.

which has more established relationships with various UNM Departments than Mr. Wilson.[9] Mr. Wilson is "confident" that the dues deduction/remittance issues will be rectified moving forward, even while admitting that (in hindsight) this could and should have been addressed better and/or sooner. (Tr. pt. 3 0:14:07 – 0:18:43, *see also* Tr. pt. 1 0:43:33 – 0:44:43.)

16. The record also includes evidence related to the Respondent's affirmative defenses of estoppel, laches and/or waiver, based upon the Union's failure to exhaust the negotiated remedies of grievance-arbitration, under Article 2 of the CBA. After receiving the first and flawed dues remittance on February 21, 2025, the Union immediately filed a class grievance the same day by email. The grievance cited the February dues collection that exceeded the cap and SRMC's "failure to adhere to the agreed upon… deduction procedures" of Article 2, including bi-weekly deduction and correction of deduction errors within 30 days. SRMC did not respond to this grievance and the Union did not take steps to advance it further at that point.[10] (SRMC Ex. 19, Grievance.)
17. On April 3, 2025, the Union sent another email with the same subject line, that included the February 2025 claims. (*Id*.) Mr. Wilson responded to the April 2025 class grievance as follows:

> I am not sure what more I can do other than what I have told you in emails and conversations, the latest of which was Wednesday in front of our negotiating teams. We apologized for the delay, took responsibility, explained the cause of the delay, and told you how the problem had been fixed. This is the first I have heard that members have not been refunded. I will look into that. Regarding the meeting time and location request, exactly what would a meeting accomplish? Like other emails you have previously sent and copied to your colleagues, this email does not take into account the current status of an issue or the latest action taken on our part. This raises questions on how serious you are about constructively working through problems.

(*Id*.)

[9] SRMC is a relatively new entity under UNMH and it is a significant geographical distance from UNM's and UNMH's administrative offices located at or near Lomas Blvd. in Albuquerque. The UNMH ER/LR office, in contrast, is located near related UNM and UNMH administrative offices and has better and more well-established relationships with the personnel in their various departments related to pay and purchasing. (Wilson testim.)

[10] Ms. Enghouse could not recall if he did respond but the Exhibit indicates he did not, and the burden of proof is on the Union. (Enghouse testim., approx. 1:40.)

18. This was a clear, functional denial of the grievance, at which point the burden was upon the Union to advance it to the next step, pursuant to the CBA. The Union, however, did not do so. (CBA, Arts. 7.B.3, 7.B.5, and 8(F).)
19. Article 7 (Grievance Procedure), Section A defines a grievance as "a dispute or complaint arising between the Parties hereto concerning the proper application, the interpretation, or any alleged breach of this agreement." Section 7.B provides that "…3. Grievances not answered in accordance with the grievance procedures shall be deemed automatically appealed to the next step", while "…5. Any grievance not appealed from one step to the next in accordance with the time limits set forth in this Article shall be considered settled on the basis of Management's last answer and not subject to further appeal. (*Id*., Art. 7.A, B.3 and B.5, emphasis added.)
20. Article 8.F, states that "[t]he grievance and arbitration procedure contained herein shall be the sole and exclusive means of settling any dispute arising under this Agreement…" (*Id*., Art. 8.F, emphasis added.)
21. Lastly, the Union points to Ms. Enghouse's testimony to show a violation of or interference with bargaining unit members PEBA rights, based upon the delays in dues remittance. Failure to timely remit dues can interfere with Union operations to the extent Union cannot pay their bills or get out flyers or other printed organizing materials. No such inability was attested to. Additionally, Ms. Enghouse believes delayed dues remittance could limit voting rights under the Union bylaws. However, that evidence was not clear and she admitted it was a "gray area". Lastly, Ms. Enghouse believes failure to timely remit dues has negatively impacted two employees, because it has the "potential" to impair their access to Union insurance and/or trauma counseling under Union bylaws or procedures, but that evidence also was not clear or persuasive. (Enghouse testim.; *see also* Wilson testim.[11])

[11] Before coming to UNM HR/LR in 2016, Mr. Wilson worked for the Local Albuquerque Teachers Union for 20 years from 1993-2014, and he disputes these claims and any inference that management caused the harms alleged. In his experience, the ability to participate in Union activities or receive Union-provided benefits is dated from when the dues deduction/membership card is signed, not the date of remittance of those dues to the Union. In either case, however, that would be a Union-imposed limitation as he and the Respondent notes. (SRMC Post-Hearing Brief at 17, note 8.)

PARTY POSITIONS

The Union/Complainant's Arguments

As noted at the outset, the Union has dropped and added some PEBA citations between the PPC as amended and its Closing Brief, but all essential facts have remained unchanged throughout the proceedings.

The Union emphasizes that from February until the PPC was filed and then even shortly before the hearing itself, Respondent only paid three (3) of the twelve (12) dues remittance payments owed within the bargained-for time limit, despite being able to do so with its other Unions.

The Union notes that the record shows SRMC understood and had the capacity to correctly and timely implement Article 2, including timely remit dues to the Union for a pay period within the 10 business day limit, yet usually failed to do so. It further argues that "[b]argaining for and agreeing to language that is being effectuated elsewhere in the Hospital's administration and failing to effectively do so for this Union is a prime example of bad faith" under Section 19(F), because it shows SRMC had the ability and mechanisms necessary to timely implement and abide by Article 2. *See* Un. Closing Brief at 5. The Union argues that SRMC's failure to "change its approach to the dues remittance process" until after the Union filed the instant PPC, and shortly before the hearing on the merits, shows that its actions were *per se* violations of PEBA. *Id*. at 2.

The Union also asserts that SRMC has failed to collect and remit dues for the period between execution of the CBA and finalization of the Union's vendor status.

As remedy, the Union requests: (1) a finding that SRMC violated Sections 19(F) (good faith bargaining), Section (G) (PEBA compliance), and 19(H) (CBA compliance) of PEBA; (2) a cease-and-desist order; (3) "posting and emailing of a notice of its violations of PEBA and assurances that it will comply with the law"; (4) rescission of "any unlawful policies which prohibit or chill employee activity protected by the PEBA"; and (5) the payment of any dues still owed and interest on the late remittances. *See* Un. Brief at 7-8.

It argues that interest is "permissible" under NMSA § 56-8-3(A) (stating that "[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract…"); and that the maximum

interest allowable (15%) is an appropriate and necessary remedy here, given the Respondent's repeated and ongoing bad faith, and its "refusal to rectify this issue" until a PPC was filed. *Id*. at 7.

The Respondent's Arguments

As noted at the outset, SRMC's Post-Hearing Brief addressed all of the PEBA citations and factual allegations raised in the PPC, and it has raised specific arguments related to its asserted laches/estoppel/waiver affirmative defense.

SRMC argues as an initial matter that, as to the Section 5(A) claim and allegations, the Union "wholly fails to present any evidence that any individual public employee's rights were violated by Respondent's alleged actions". Based on that, it asserts, the Section 5(A) claim must be dismissed as a matter of law. (SRMC Motion at 16-17, citing *UHPNM v. SRMC*, 37-PERB-2024, PELRB Case No. 121-23.)

Next, as to the Sections 17(A), 19(F) and 19(H) and bad faith bargaining claims, Respondent argues that all the evidence demonstrated unequivocally that it worked in good faith with the Union, at all times; and that it "immediately and transparently" worked to rectify all administrative issues with dues remittance when notified of them, as provided for Art. 2(E) of the CBA. SRMC contrasts its conduct with that of the Union, which it asserts has instead violated the CBA by filing frivolous PPCs and failing to abide by the negotiated grievance and arbitration procedures. Basedon these facts, SRMC argues that the Section 17(A) and 19(F) bad faith bargaining claims must be dismissed as unsubstantiated. (*Id*. at 19-22.)

As to the final and remaining Section 19(H) claim, SRMC argues that the Union failed to establish breach of the CBA for two reasons.

First, it argues that the Complainant is legally estopped from bringing these claims under Section 19(H) because it failed to exhaust the negotiated remedies under Articles 7-8 of the CBA. It notes that the Parties agreed in Article 8(F) that "[t]he grievance and arbitration procedure contained herein shall be the sole and exclusive means of settling any dispute arising under this Agreement" (*see* Art. 8(F)), and that the Union filed two grievances but let them lapse. It asserts that "[t]he evidence presented at the hearing demonstrates unequivocally that, by not exhausting

its contractual remedies, Complainant waived its right to bring its breach of contract claims before the PELRB."

Accordingly, it argues that the Section 19(H) claim should be dismissed on this ground alone, especially given the volume of supporting case law. (*Id*. at 22-24, citing *Luginbuhl v. City of Gallup*, 2013-NMCA-053, ¶¶ 9-13 (bargaining unit members are bound by a CBA's grievance/arbitration procedures, and arbitration "provides an adequate and complete forum and remedy at law for disputes governed by the CBA"); *Francis v. Mem'l Gen. Hosp.*, 1986-NMSC-072, ¶ 14 (employee's failure to exhaust remedies in implied contract of employment meant he was "estopped from asserting that he suffered a deprivation of either a contractual expectation or a constitutionally protected entitlement"); *McDowell v. Napolitano*, ¶¶ 13-14 ("[t]he question, therefore, is not whether Appellee failed to exhaust all procedural remedies, but whether he substantially discharged his own contractual obligations so as to be able to complain of a breach by his employer"); *Lucero v. Board of Regents of Univ. of N.M.*, 2012-NMCA-055, ¶ 12 ("[f]rom *Francis* and *McDowell*, we glean the general rule that an employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies").)

Secondly, SRMC argues that even if the undersigned determined that the Union was not legally estopped from asserting its Section 19(H) claim, the Complainant has failed to meet its burden of proof that SRMC failed or refused to comply with the CBA. Instead, SRMC argues, the evidence shows that it corrected all administrative issues within 30 days of notice thereof, as specifically provided for or authorized under the plain language of Art. 2(E).

Lastly, the Respondent closes with its own prayer, based upon the full record of relevant fact and circumstances: that the Union be ordered to (1) exhaust negotiated grievance and contract remedies before filing PPCs alleging violation of Section 19(H) in the future; and (2) "reimburse Respondent for any and all costs incurred in responding to this frivolous complaint." (*Id*. at 25-27.)

SRMC observes that "[t]he purpose of the [PEBA]" include "promot[ing] harmonious and copperative relationships" and "pretect[ing] the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions." (*Id*. at 25, citing § 10-7E-2.) It argues that "[d]espite the fact that the pertinent provision of the contract worked exactly as

intended and Complainant suffered no loss as a result, Complainant filed the instant Complaint. In doing so, Complainant actively worked against the stated purpose of the Act." (*Id*. at 26.) SRMC argues that the requested remedies are warranted here "[d]ue to Complaintant's bad faith refusal to comply with the CBA and mis-use of the Board's complaint procedure…" (*Id*.)

RELEVANT LEGAL STANDARDS

The burden is on the Complainant to establish by a preponderance of the evidence that the County's acts or omissions violated the cited provisions of 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 Foster v. Bd. of Dentistry*, 1986-NMSC-009 at ¶10. As recently explained in PELRB Case No. 106-25,

> 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)).

See AFSCME Local 2499 v. Bernalillo County, 106-25 (Huchmala 2025).

Because the Respondent has responded to all of the PEBA citations and evidence at hand when the hearing closed, and requests its own remedy, all of the legal claims implicated in the pleadings and fact record are resolved here.

To review, Section 5(A) of PEBA gives 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"). Sections 17(A) and 19(F) require Parties to bargain in good faith on "wages, hours, and all other terms and conditions of employment". Finally, Section 19(H) makes it a prohibited practice for a public employer to "refuse or fail to comply with a [CBA]"; and Section 19(G) makes it a prohibited practice to "refuse or fail to comply with a provision of the [PEBA]"). Accordingly, these are the claims the Union must prove by a preponderance of the evidence.

ANALYSIS AND CONCLUSIONS OF LAW

(1) SRMC Breached Article 2 of the CBA and Section 19(H) of PEBA, But Other Asserted Violations Were Not Proven

Based on the foregoing findings, the Union established by a preponderance of the evidence that SRMC violated Article 2 of the CBA in an ongoing manner for months[12] at the time the PPC was filed, due to logistical delays and difficulties in implementing the Union dues deduction; and that, in doing so, it also violated Section 19(H) of PEBA.

In reaching this conclusion, the undersigned rejects SRMC's argument that it cured or voided any violation of the 10-business-day deadline because it cured all such violations within 30 calendar days, as allowed under Article 2.E. Essentially, the Union argues that these are two separate violations of Article 10, while SRMC argues that Article 2.E provides a safe harbor or absolution from the Article 2.D 10-business-day remittance requirement. Article 2.E is ambiguous to the extent it is subject to two conflicting interpretations, in this manner. *See, e.g.*, *Elkouri & Elkouri: How Arbitration Works* (ABA 8th ed., 2016), Chapter 9, Sec. 2 generally. However, the record is devoid of any evidence – such as bargaining notes or history – to establish that SRMC's interpretation the more reasonable one. *Id*., Ch. 9:3.A.1

Accordingly, the undersigned finds the 30-calendar-day cure period does not act as a safe-haven provision, but instead operates as an additional contractual requirement. (As discussed below, it may also constitute circumstantial evidence of good or bad faith.) As such, the undersigned finds and concludes that the Union established a violation of Section 19(H) of the PEBA.

However, the PPC's other claims fail.

As for the PEBA Section 5(A) claim, the undersigned agrees with the Respondent that the Union provided no evidence that any public employees' PEBA rights were impaired, and that is a fatal flaw to such a claim, which is likely why the Union ultimately dropped reference to it from its Closing Brief. *See United Health Prof'ls of N.M. v. Regents of the Univ. of N.M.*, Order No.

[12] The Union asserted it was an eight-month delay, which is not supported by the record. The undersigned has not calculated the exact delay but it appears to be some months less that what the Union proposes in any event, and perhaps five or six.

37-PELRB-2024, PELRB Case No. 121-23, 2024 WL 5339796 *4, 14 (Sept. 10, 2024) (stating "Sections 5(A), 5(B), 19(A) and 19(B) all address the rights of individual public employees protected by the Act" and "that any such infringement implicates the rights of individual employees not the Union"). Accordingly, that claim is dismissed as a matter of law. *Id*.

As to the PEBA Section 17(A) and 19(F) bad faith bargaining claims (the first of which was dropped and the latter of which was retained), the Union has failed to prove by a preponderance of the evidence, or persuade the undersigned, that SRMC and/or its agent(s) acted in bad faith, despite the frustrating circumstances presented.

The delays and difficulties were all attributable to financial control processes that were not within Mr. Wilson's control, and Article 2.E of the CBA obviously contemplates some administrative errors. Even though that provision does not absolve violations of the 10-business-day deadline and instead constitutes a separate obligation, it still evinces mutual Party recognition that administrative errors shall occur. Thus, their occurrence cannot, standing alone, prove violation of the duty to bargain in good faith. Rather, the duty to bargain in good faith must be established by something more than mere contract breach. A contrary interpretation of PEBA would violate the canons of construction that the CBA read as a whole and that one provision should not be read to make another provision meaningless or redundant. *See, generally Elkouri* at Ch. 9:A.viii.

Instead, the undersigned considers whether the month's long delay in perfecting the implementation process was unreasonable under the totality of circumstances, as well as whether there was any evidence of willful and intentional breach. *See, e.g.*, John E. Higgins, Jr., Developing Labor Law (6th Ed., 2012) at 913-918. The record establishes by a preponderance that the problem has now been fully rectified, even if it was only fully rectified after the filing of the instant PPC and immediately before the hearing on the merits. Moreover, over-deductions have been reimbursed, and no owed remittances were outstanding as of the date of the hearing. Contrary to Ms. Enghouse and/or Union Counsel's claims, no remittance was owed for any period prior to the date Ms. Enghouse's status as vendor was finalized. The undersigned credits Mr. Wilson's testimony that a government entity's ability to pay a vendor is strictly limited by the date that the vendorization process is completed. His testimony on this issue was more informed and reliable than that of Ms. Enghouse and also comports with the Hearing Examiner's observation and

experience with government procurement. Lastly, the record is clear that Mr. Wilson worked promptly and attentively with the Union when it notified him of issues.

Based on these facts, the Union also failed to establish a violation of Sections 17(A) or 19(F) of PEBA, regarding bad faith bargaining, although it did establish a violation of Section 19(H) for breach of Article 2 of the CBA.

(2) Waiver or Estoppel Principles Were Not Shown to Require Dismissal of the PPC, for Failure to Exhaust Administrative or Contract Remedies

As to the remaining and sustained claim based upon SRMC's violation of the CBA, SRMC argues in its Post-Hearing Brief, and its LR Director Mr. Wilson testified, that the dues remittance problems should have been fully grieved and taken to arbitration if necessary, pursuant to Articles 7 and 8 of the CBA. As a result, SRMC argues the Section 19(H) PEBA claim should be dismissed even if a breach were found, because the Union waived the claim by failing to first exhaust the negotiated remedies.

As Mr. Wilson credibly described and Ms. Enghouse did not dispute, the Union did not advance either the February 2025 grievance, or the April 2025 grievance. (Wilson testim.)

PEBA requires the Parties to negotiate a final and binding grievance and arbitration process, and here the negotiated CBA expressly provides that its grievance and arbitration procedures are the "sole and exclusive" means of resolving contract disputes. That same negotiated grievance procedure also provides that failure to respond is a rejection, and that if a grievance is not pursued beyond that, it shall be deemed settled at management's most recent decision. Based on these facts and the plain language of Article 2, SRMC argues that the Union waived these claims by not pursuing them and/or that it is now "legally estopped" from bringing these claims before the PELRB. (*Id*. at 22-24, internal citations omitted.)

These are interesting arguments, but the record does not provide adequate information or argument upon which to resolve their relative merits.

The undersigned observes that she had previously concluded in 2007, after extensive analysis of federal public sector labor law that may now be obsolete, that failure to exhaust the grievance-arbitration process constituted an absolute jurisdictional bar for "pure" contract claims

where bad faith or repudiation were not established. *See AFSCME Council 18 v. Dept. of Health*, PELRB Case No. 168-06 (7/16/07 Decision on Motion to Dismiss). However, she immediately had cause to question that broad conclusion in another case, based upon the facts presented therein, which shows the circumstance-dependent nature of the inquiry in any case. *See AFSCME Local 477 v NM Public Reg. Comm.*, PELRB Case No. 154-07.

Here, however, there was only a bit of testimony about the issue from Mr. Wilson, and the case law cited by SRMC is both inconclusive under these facts and also different from that previously relied upon by the undersigned to resolve similar disputes. On one hand, the ongoing relevance of federal law relied upon by the undersigned in 2007 as an analogy may be up for question. On the other hand, the Respondent raises a whole new line of argument that has not been previously briefed by the Parties here or previously considered by the PELRB or its hearing examiners.

It is true that *Luginbuhl* stands for the general propositions that bargaining unit members are bound by a CBA's grievance/arbitration procedures, and that arbitration "provides an adequate and complete forum and remedy at law for disputes governed by the CBA". However, those general propositions alone do not resolve the issue in the undersigned's view. Additionally, *Luginbuhl* and the other cases cited are all distinguishable from the facts presented here. For instance, the *Lucero* decision – which builds upon *Francis* and *Lucero* – involved court action and an employment handbook, while here we are dealing with a CBA, breach of which the PEBA expressly prohibits, even while mandating a negotiated process to resolve such disputes.

Moreover, there is a question in the undersigned's mind whether the Parties can negotiate to limit rights otherwise guaranteed under the PEBA. Recent PELRB precedent suggests it would disagree. *See, e.g*, *CWA v. Workers Compensation Administration*, 25-PELRB-2025 (Board reversed the undersigned hearing examiner's determination that the WCA was entitled to summary judgment for failure to produce documents that included statements related to infractions or discipline, and statements of opinion about FFO employees, because such documents were confidential under the CBA, State Personnel Board rules, WCA Policy No. 3 and/or IPRA, notwithstanding the general and broad duty under Sections 17(A) and 19(H) (good faith bargaining) to disclose relevant information on terms and conditions of employment).

Accordingly, the undersigned is not persuaded that dismissal due to waiver, estoppel or jurisdictional grounds, for failure to exhaust negotiated contract remedies, is supported in this case

by either the authority cited by SRMC, the authority previously relied upon by the undersigned in 2007 in analyzing similar arguments, or by the facts presented.

(3) Expansive or Unusual Remedies Are Not Appropriate in this Case

Lastly, the undersigned finds, concludes, and recommends that most of the remedies requested are not appropriate under the facts presented here, although it is appropriate to find and declare herein that SMRC violated Article 2 of the CBA and Section 19(H) of PEBA.

First, a cease-and-desist Order is moot. As found above, all remittances owed have been resolved and the record strongly indicates that all but occasional or intermittent administrative errors have now been resolved.

Second, an ordered posting of violation does not appear calculated to repair or remediate the Parties' relationship and instead seems calculated to make it worse. Specifically, if the problem has been resolved, such a posting would have no purpose other than to shame or embarrass the employer.

Third, the Union failed to identify any policy shown to be in conflict with the CBA or to impair or chill PEBA rights, much less that any particular policy or procedure should be rescinded. As such, all these remedies are inappropriate.

Fourth, there are no further dues remittances owed. The Union has requested the collection and remittance of dues for the period between the effective date of the CBA and Ms. Enghouse's approval as a vendor. However, as found and discussed above, no remittances were owed until the vendorization process was completed.

Fifth, the Union has requested 15% interest on any money owed, including delayed remittances. This is an unusual remedy request before the PELRB, even though authorized under other New Mexico law. Accordingly, a strong case is required to support the remedy request, such as particularly egregious, patterned, and/or intentional contract violations, or significant violations of other PEBA rights. The facts do not support an award of interest, however. Nor does the Union point to any prior case in which the PELRB or its hearing examiners, or a New Mexico Court, have ordered the payment of interest as a remedy for a technical breach of a CBA.

As discussed, the Union establishes a violation of Article 2 of the CBA and therefore Section 19(H) of the PEBA, but the Union failed its burden to establish that SRMC acted

unreasonably or in bad faith, such as with intentional animus or disregard. Absent such evidence, there is no support for interest damages, just as there was no support for claims predicated on bad faith bargaining.

The Union complains that SRMC should not have waited so long (until January 3, 2025, one business day after ratification and after the winter holidays) to begin to implement Article 2, and that SRMC should have been "ready to go upon execution". The Union representative, Ms. Enghouse, bases this expectation on the fact that she herself "starts stuff early" and she "responds to all emails within 24 to 72 hours." She distinguishes SRMC's and the Union's handling of the logistical difficulties. For example, she only learned about the issue with her W-9 signature when she emailed asking about the status of remittance set up, although she turned around her wet signature the next day. She admits that Mr. Wilson typically responded to her emails quickly and was even available by text (SRMC Ex. 17), but she complains that he always has an excuse for the failure or delay and the recurring problems are ultimately never fixed. Asked if Mr. Wilson's timely response to her many emails was evidence of SRMC working with the Union to fix the problem, she admitted that "Wilson is not the problem", and that the problems is "the Hospital systems", and that Mr. Wilson "just informs" the Union that the Hospital and/or he are "working on it." (Enghouse testim.)

Mr. Wilson admits that SRMC has breached the 10-business-day deadline to issue the remittance and sometimes also the 30-day (calendar) deadline to correct errors upon being notified of them by the Union. He also admits that "the Unin has every reason to complain" about the roll-out and implementation process. He maintains, however, that it has always been his intent to provide the dues as soon as possible and that he took the Union's notifications of errors seriously. Mr. Wilson also admitted that the Hospital initially told the Union that the Hospital would remit the dues once a month at the end of the month, and that was wrong. He has since "made sure staff knows" of and abide by the 10-business-day deadline that applies to each pay period. He has no authority over HRIS or other parts of the Hospital's accounts payable and payroll systems, however – the only thing he can do is communicate with the Union regarding issues as he learns of them. In this regard, he has "made it a big priority", however, to fix the issues and he got frustrated with the Hospital's internal units,

The undersigned finds and concludes that, as he testified, Mr. Wilson "does the best he can to fix it" when the Union alerts him to a problem, both because "it's his obligation" to do so and because he "doesn't want any more discord with the Union." (Wilson testim.)

Besides crediting Mr. Wilson's testimony, sincerity and good faith, the undersigned also finds many of the Union's complaints to be excessive, although coming from an understandable place of frustration. The problems that arose were of a type that are quite typical in setting up new and complicated governmental systems and purchases – particularly when the procedures require action across multiple departments. The ensuing delays and errors in setting up and implementing a multi-part governmental system were very regrettable and highly frustrating to all concerned, but they were to some extent unavoidable and in all cases promptly corrected upon notice. As such, the undersigned is left with the abiding impression that Ms. Enghouse has an overall sense of deep grievance that, while no doubt sincerely held, simply does not align with the established facts.

Notable to the undersigned are the facts that no showing was made of actual harm to the Union or bargaining unit members[13], malicious intent, or actual bad faith. Instead, the weight of the record is that SRMC, acting through Mr. Wilson, promptly took what steps it could to fix and improve implementation, and that the issues arose in other departments over which the SRMC Employment Relations Director had no control or influence. To award interest damages under these facts would, therefore, be punitive and inappropriate, since the Union did not demonstrate by a preponderance of the evidence that SRMC's agent in this matter acted intentionally, willfully or irresponsibly in implementing the dues remission provision. *See Elkouri* at Ch. 18:3.F (punitive damages not generally available in labor law for breach of contract claims).

Lastly, the undersigned also rejects SRMC's remedy requests, which are also unusual and unsupported by the evidence, and would therefore be punitive.

[13] The Union only asserted hypothetical harms. In contrast, Mr. Wilson pointed out that SRMC ultimately remitted more than owed to the Union since it did not attempt to claw back the $6.00 it overcharged and refunded to certain unit members.

RECOMMENDED DECISION

Based upon the foregoing findings, legal standards, reasoning and conclusions, the Hearing Examiner recommends the PELRB find and conclude that the Respondent violated Section 19(H) of PEBA by violating Article 2 of the Parties' CBA; and that no additional remedy is warranted beyond such finding and declaration.

Nonetheless, the Parties are cautioned that a pattern of similar breaches of Articles 2, 7 and/or 8 in the future could result in findings related to bad faith and increasing corrective consequences.

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 16th day of October, 2025

Pilar Vaile
Exec. Dir. and Hearing Examiner
Public Employee Labor Relations Board