

# 4-PELRB-2026

## STATE OF NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

**ALBUQUERQUE AREA FIRE FIGHTERS,  
IAFF LOCAL 244 BERNALILLO COUNTY  
CHAPTER,**

**Complainant**

v.

**PELRB No. 122-25**

**COUNTY OF BERNALILLO, NEW MEXICO,**

**Respondent.**

**ORDER**

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on February 17, 2026, 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 January 6, 2026, 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*

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Date: 2/19/2026

Nan Nash, Board Chair

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

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**COUNTY OF BERNALILLO, NEW MEXICO,**

**Respondent**

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

**INTROUDCTION**

This matter comes before the undersigned Hearing Examiner pursuant to a Prohibited Practice Complaint (PPC) filed by the Albuquerque Area Fire Fighters, IAFF Local 244 (Union or Complainant) against the County of Bernalillo (County or Respondent) on July 23, 2025.

The Union alleges that the County violated Section 19(F) of the New Mexico Public Employee Bargaining Act (PEBA) (breach of the duty to bargain in good faith), by first failing and refusing to respond, and then engaging in “unlawful delay” in responding, to requests for information (RFIs) regarding the random drug testing of bargaining unit members pursuant to Article 28 of the Parties’ collective bargaining agreement (CBA).

The University filed its Answer on August 22, 2025, generally denying the allegations based on lack of information and asserting common affirmative defenses. Thereafter, a Status and Scheduling Conference was held on August 27, 2025; and a Scheduling Order and Notice of Hearing was issued September 12, 2025, and modified on October 14, 2025.

Pursuant to a modified Scheduling Order, an evidentiary hearing on the merits was conducted on November 3, 2025, at the PELRB offices at 2929 Coors Blvd. NW, Ste. 303, Albuquerque, New Mexico, 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.

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 was shown by a preponderance of the evidence to have violated Section 19(F) of PEBA. Accordingly, the undersigned recommends that the PPC be SUSTAINED and a remedy be provided as outlined below.

### **APPEARANCES AND RECORD**

For the Union

Justin Lesky, Esq.  
Theodore “Teddy” Ygbuhay  
Miguel Tittman

Law Offices of Jusin Lesky  
County Chapter Vice President and Witness  
Local President and Observer

For the County:

Justin Green, Esq.  
Lena Rudolph

Jackson Lewis  
Senior or Lead Employee Relations Specialist and Witness

In addition to the sworn testimony of the foregoing two (2) witnesses, the Parties jointly submitted three (3) exhibits: Jt. Ex. 1 – the Parties current CBA (2024-2026); Jt. Ex. 2 – February and April 2025 email requests for information; and Jt. Ex. 3 – the County’s October 29, 2025 response the IAFF Local 244’ Request for Production.

### **FINDINGS OF FACT**

The following facts are found by a preponderance of the evidence:<sup>1</sup>

1. Complainant Albuquerque Area Fire Fighters, IAFF Local 244, Bernalillo County Chapter is and was at all times material hereto a “labor organization” as defined by Section 4(K) of the PEBA. (PPC and Answer.)

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<sup>1</sup> *See* Relevant Legal Standards, *infra*.

2. Respondent County of Bernalillo, New Mexico is and was at all times material hereto a “public employer” as defined by Section 4(R) of the PEBA. (PPC and Answer.)
3. The Union is and was at all material times hereto an “exclusive representative” under Section 4(1) of the PEBA. (PPC and Answer.)
4. The Union’s current bargaining unit is comprised of approximately 306 public employees working for the County in the positions of Battalion Commander, Captain, Lieutenant, Paramedic/Firefighter, Apparatus Engineer, and Firefighter. (PPC and Answer.)
5. Since certification, the Union has negotiated and entered into successive collective bargaining agreements with the County. The collective bargaining agreement (“CBA”) currently in effect between the parties became effective on or about July 1, 2024, and is set to expire on June 30, 2026. Article 28 of the CBA addresses Drug and Alcohol Testing for bargaining unit members. (Jt. Ex. 1.)
6. On February 20, 2025, the Union Vice President for the County Chapter (Theodore “Teddy” Ygbuhay) issued a request for information (a.k.a. RFI or information request) by email to the County’s Senior or Lead Employee Relations Specialist, Lena Rudolph, courtesy copying her direct supervisor, Don Hill, the Senior Manager of Labor and Employee Relations at the County. The RFI concerned random drug testing of bargaining unit members under Article 28. The Union asked the County to respond by March 7, 2025, and it requested information falling in the following categories:
  - (1) Testing Records and Selection Methodology:
  - (2) Calendar Year Testing Quotas
  - (3) Policy Compliance and Oversight(Jt. Ex. 2.)
7. On April 2, 2025, after the County failed to respond to the February RFI, the Union re-iterated its request, but this time only to Ms. Rudolph. (Jt. Ex. 2; Ygbuhay testim.)
8. Thereafter, still receiving no response, the Union filed the instant PPC on July 23, 2025.
9. On October 29, 2025, less than a week before the rescheduled hearing on the merits, counsel for the County produced documents related to testing records and selection methodology and responded that it “has no documents responsive” to the other two categories of requests. (Jt. Ex. 3.)

10. The request for information was prompted by concerns of bargaining unit members that County drug testing was not being conducted randomly. For instance, some reported being tested “randomly” every month for three months in a row. (Ygbuhay testim.)
11. The Union takes contract enforcement very seriously and did not initially assume bad motive. It waited before reiterating its request because it wanted to “give management a fair chance to meet its statutory obligation and follow the Contract.” (Ygbuhay testim.)
12. The County finally responded on October 29, 2025, shortly before the hearing on the merits. Its delayed response stated that there no responsive documents for much of the RFIs. It is also very problematic to the Union that it took eight (8) months for the County to respond at all. This is important to the Union because the Union “runs on dues”, has limited financial resources, and should be able to expect the contract to be adhered to without having to hire an attorney, file a PPC, etc., which represents a direct cost to the Union and to Union members. (Ygbuhay testim.)
13. The County’s Senior or Lead Employee Relations Specialist, Lena Rudolph, is the primary or initial liaison for information requests such as this. Her demeanor was one of overall nervousness, personal honesty, and some vagueness and inconsistency. She testified that she is a “one-person show” as far as responding to county-wide emails goes, and that she is sometimes “flooded”. She agreed she was not always timely, but she has expressed to people to “please call me if it is urgent”, because she recognizes that she is sometimes “flooded.” Their office was very short-handed at the time at issue, and she may have also been out of the office for part of the period at issue. However, she was somewhat contradictory in also emphasizing that there is an “entire office and liaisons” that can be contacted through the LR page of the bernco.gov website, including her supervisor, Don Hill, the Senior Manager of Labor and Employee Relations. The undersigned credits Ms. Rudolph’s testimony that she herself did not fail to act intentionally, and that she was not operating from a position of bad faith.
14. The Union VP, Teddy Ygbuhay, did not recall ever seeing an out-of-office email notification for Ms. Rudolph during this time, but if he had, he would have reached out to Mr. Hill. He was “not sure” why he did not follow up with or courtesy copy Mr. Hill, after Ms. Rudolph failed to respond to the February 2025 RFI. (Ygbuhay testim.)

15. At least part of the problem of delay appears to originate in the County’s legal department and/or office of outside counsel. Ms. Rudolph forwarded the February and April 2025 requests to them for their review, and she was specifically waiting for a response from the County’s Senior Attorney, Daniel Roberson. On or about October 15, 2025, he informed her that they did not have a system to track randomness and that the County had no obligation to create documents, which she relayed to the Union. (Rudolph testim.)

### **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 sections 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”); *Foster v. Bd. of Dentistry*, 1986-NMSC-009 at ¶10 (that the standard of proof applied in administrative proceedings is a preponderance of the evidence). “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”. *See AFSCME Local 2499 v. Bernalillo County*, PELRB No. 106-25, Hearing Officer’s Report and Recommended Decision dated 9/22/25), citing *Campbell v. Campbell*, 1957-NMSC-001 at ¶24 (that preponderance of the evidence simply means the greater weight of the evidence) and NMRA 13-304 (uniform jury instruction).

In this case, it is violation of the duty to bargain in good faith that the Union must establish by a preponderance of the evidence. *See* NMSA § 10-7E-19(F). The duty to bargain in good faith includes the duty to provide, upon request, any relevant information necessary to administer and police collective bargaining agreements. *See National Union of Hospital and Health Care Employees District No. 1199 v. UNMH*, 3-PELRB-2005 (Oct. 19, 2005); *see also AFSCME Locals 624, 1888, 2962 and 3022 v. City of Albuquerque*, Albuquerque Labor Management Relations Board, Case No. LB-06-033 (June 12, 2007); and John E. Higgins, Jr., *The Developing Labor Law* (7 ed.), Ch. 13.IV and cites therein.

Notably, the duty of good faith bargaining does not only prohibit express refusals to provide information. Rather, it imposes a good faith effort to “diligently” respond under the totality of the circumstances, and the failure to do so may constitute “unlawful delay.” The length of delay required to meet this standard will vary depending on such factors as “the complexity and

extent of the information sought, its availability and the difficulty in retrieving the information.” See *West Penn. Power d.b.a. Allegheny Power*, 339 NLRB 585, 587 (2003), quoting *Samaritan Med. Ctr.*, 319 NLRB 392, 398 (1995); and *Riley Constr. Co. v. NLRB*, 23-1899, 23-1946 (6th Cir. Nov. 26, 2025) (rejecting a per se approach to delayed responses, holding that the duty to furnish information is not defined by rigid timelines but by a standards of reasonable, good-faith promptness).

## ANALYSIS AND CONCLUSIONS OF LAW

The facts are largely undisputed, although the Parties disagree on how they should be interpreted.

The County emphasizes, based on its sole witness, that that its failure to respond to the request was “inadvertent”, an “oversight” attributable to the size of the County’s operations<sup>2</sup> or third-party or outside counsel, and was “not purposeful”. (Co. Brief at 1-2.) As such, it argues that the Union fails to establish bad faith through unlawful or unreasonable delay. The County also argues that, “[u]pon the filing of the PPC, the County acknowledged the oversight and began retrieving relevant document response to the...[RFI]” Lastly, it argues that the PPC is now moot since the County responded to the RFI before the October hearing on the merits, and “the Union has not conveyed any deficiencies or inadequacies with the County’s Response...” (*Id.* at 3)

The record evidence, however, overwhelmingly supports the Union’s position and not the County’s defense or justification(s).

As an initial matter, the undersigned finds and concludes that the information requested by the Union in this case – information on implementation of Article 28, concerning random drug testing, in the face of information suggesting a potential CBA violation – clearly falls in the category of “relevant information necessary to administer and police the collective bargaining agreement.” See, e.g., *UHHCE Dist. 1199, supra*.

Next, the undersigned finds and concludes that the County’s delay was unreasonable or “unlawful” under the fact record. As the Union observes, the County failed to respond not just after the second request, but after a PPC was filed, after a Status and Scheduling Conference was

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<sup>2</sup> It notes that “Bernalillo County is the most populous county in New Mexico” (*Id.* at 1), which is surely a true statement although no witness testified to the nexus between the size of the County and its unlawful delay.

held, and after the matter set twice for a hearing on the merits. Thus, the RFI response was not filed until

eight and a half months after the initial request, almost seven months after the follow-up request, three months after the complaint was filed in this matter, and less than a week before the second scheduled hearing on the merits was to take place

(Un. Brief at 3.)

The Union also emphasizes the lack of documents ultimately produced (the County ultimately responded that it possessed no document to more than half of the requests), and the grave prejudice this eight-month-long delay causes to the Union, through its inability to investigate and remedy contract violations that could have been going on that whole time (*id.*), as well as the expense and burden of retaining counsel to file the instant PPC.

The undersigned agrees and finds and concludes the delay was unreasonable or unlawful under the totality of the circumstances, and that the issue is not now made moot by the unlawfully delayed response. In so findings and concluding, the undersigned rejects as incredible the County's argument that its delay was excused or justified by (a) actions of a third-party or outside counsel who was not called to testify; or (b) or that the Union's failure to request an update from his other contacts in County HR mitigated the County's breach of its duty to bargain in good faith. (County Brief at 2.) As seen in the findings above, Ms. Rodriguez' testimony as to the availability of others in her absences, and the culpability of outside counsel was unclear or equivocal. It was also hearsay as to the actions of Mr. Roberson or any internal or third-party counsel, and not subject to cross-examination. Lastly, the Union sent the RFI to its typical contacts and there was no evidence presented at the time or at the hearing that it should have been directed elsewhere.

Based on the totality of the record, the evidence the County offers in its defense is neither credible nor persuasive. The Union made a strong and clear case of violation. As such, it was incumbent on the County to call the necessary witnesses to present any defense or evidence in exculpation or mitigation. Instead, the overwhelming weight of the evidence is that the County knew the response to the RFI was stuck somewhere in the County's legal department or with outside counsel, and Mr. Roberson failed to take adequate steps to ensure no unlawful delay. Because the County fails to rebut the clear evidence of unwarranted delay under the totality of the circumstances, the Union establishes by a preponderance of the evidence that the County engaged in bad faith bargaining under Section 19(F) of the PEBA.

## RECOMMENDED DECISION

Based upon the foregoing findings, legal standards, reasoning and conclusions, the Hearing Examiner recommends that the PPC be SUSTAINED and remedied by (a) a declaration of violation of Section 19(F); (b) an order directing the County to cease and desist such violations; and (c) an order directing the County to post a copy of the Hearing Examiner or PELRB's decision and resultant order in the usual location for posting such notices, at all County facilities where bargaining unit members regularly work.

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 6<sup>th</sup> day of January, 2026

A handwritten signature in black ink, appearing to read 'P. Vaile', is written over a light blue rectangular background.

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Pilar Vaile  
Executive Director and Hearing Examiner