

5-PELRB-2026

STATE OF NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

**MCKINLEY COUNTY FEDERATION OF
UNITED SCHOOL EMPLOYEES, LOCAL
3313 AFT-NM,**

Complainant

v.

PELRB No. 124-25

**GALLUP-MCKINLEY COUNTY
PUBLIC SCHOOLS,**

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 his report on December 8, 2025, and no request for Board review was filed by either party. Accordingly, the Board adopts the Hearing Officer's Recommended Decision regarding the violations of the PEBA and the award of monetary damages; the decision is binding on the parties but does not constitute binding precedent. The Board retains jurisdiction over the case until the outstanding issue of the amount of damages has been resolved.

DocuSigned by:

Nan Nash

DEE4A440B2614C6...

Date: 2/19/2026

Nan Nash, Board Chair

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

In re:

**McKinley County Federation of
United School Employees, Local
3313 AFT-NM,
Complainant**

v.

PELRB No. 124-25

**Gallup-McKinley County
Public Schools,
Respondent**

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

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 McKinley County Federation of United School Employees (MCFUSE or Union) against Gallup-McKinley County Public Schools (District or Employer). The Complaint alleges the district violated the Public Employee Bargaining Act (PEBA or the Act, NMSA 1978 §§10-7E-1 et seq.) when it unilaterally ceased deducting voluntary contributions to the Union's Committee on Political Education (COPE) authorized by employees on their dues deduction authorization forms. The District answered the Complaint, admitting the status of the parties under the PEBA and the jurisdiction of this Board, and that it had ceased to make the COPE deductions, but generally denying any violation of the PEBA, asserting that the District is not required to deduct the COPE contributions because they are not membership dues, *per se*.

A hearing on the merits was held Thursday, October 09, 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. Following the hearing, the parties submitted closing briefs on November 14, 2025. 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 findings and Recommended Decision.

EXHIBITS AND WITNESS TESTIMONY

The Union called the following witnesses: Sawyer Masonjones, union president; Melissa Flores, administrative assistant for NEA-NM; Paulette McLaughlin, teacher; and Kelli Furney, teacher.

The Parties stipulated to the entry of the Collective Bargaining Agreement (CBA) as Exhibit J-1.

The Union offered the following exhibits that were entered into the record after foundational testimony (Exhibit E was not introduced):

- A. AFT/MCFUSE Dues Deduction Authorization Form.
- B. Dues Withholding Spreadsheet for FY 2025
- C. Masonjones email of 5.14.25 re: COPE and Dues Deduction Change, with list of COPE contributors
- D. Deductions Register June 2025
- F. Masonjones paystub February 2025
- G. McLaughlin paystub February 2025

The District called the following witnesses: Ashley Ryan, Assistant superintendent; and Jvanna Hanks, Deputy Superintendent. The District offered the following exhibits that were entered into the record following foundational testimony:

- 1. Union's Final Counter Proposal
- 2. School District's Final Proposal
- 3. Copy of dues paying members with adjusted dues for COPE
- 4. National AFT Chapter (COPE discussion)
- 5. New Mexico AFT Chapter (COPE discussion)
- 6. MCFUSE Membership Form

7. New Mexico Governmental Conduct Act Compliance Guide
8. 2025-2027 APS_AFT Negotiated Agreement
9. 2024-2027 CWA Food and Nutrition Services Negotiated Agreement

Exhibits 8 and 9 were admitted over objection for the limited purpose of demonstrating that other approaches to the deduction of voluntary contributions are possible. Exhibit 10 was offered by the District, but was excluded from the record because it was a summary of other CBA's dues deduction articles prepared by an employee of the District, and I found that it was not sufficiently reliable as evidence of the contents of those agreements.

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. The COPE deductions were made from employees' paychecks from 2016 to February 2025. (Complaint and Answer).
5. On or about February 24, 2025, the Employer ceased making the COPE deductions from employees' paychecks. (Complaint and Answer).

6. At all times relevant to this case, the Union used Exhibit A as the form by which employees would authorize the deduction of dues from their paychecks. (Testimony of Mason Jones)
7. The Union uses the COPE funds to conduct political activity at the local level. (Testimony of Kelli Furney)
8. There was a School Board election in 2025 in which 3 of the 5 seats on the School Board were contested. (Judicial Notice)

REASONING AND CONCLUSIONS OF LAW:

The Complaint alleges violations of Sections 19(B), (C), (F), and (H). I will begin my discussion with the violation of Section 19(H) because the other violations will turn on whether the District breached the CBA by ceasing the deduction of the COPE monies.

Section 19(H)

Section 19(H) of the PEBA makes it a prohibited practice for a public employer to “refuse or fail to comply with a collective bargaining agreement.” Here, the relevant portion of the parties’ CBA, Article 5, Sections (C) and (D) states:

Section C. The District shall *continue* to provide payroll deduction of Federation membership dues in the amounts designated by the Federation for all employees who voluntarily authorize the deductions.

Section D. Requests for deductions shall be honored by the District provided the deduction request is submitted to the District Payroll Office on a form authorized by the Federation. The Deductions shall be made from the employee’s paychecks for each pay period. (emphasis added)

The form referred to in Section D is Exhibit A, which was entered into the record during the hearing.

The District and the Union entered into the CBA in effect in February 2025 in 2022. (Ex. J-1). There was no direct testimony about how long Exhibit A had been in use as the dues deduction authorization form, but there was no testimony that any other form had ever been used, so an inference can be made that the parties were using Exhibit A as the dues deduction authorization at the time the CBA was executed. At that time (2022), it can be inferred that the District was deducting

the COPE contributions in accordance with the forms (Exhibit A's) submitted to the District by the union, because the CBA states that the District "shall continue" to make the dues deductions. Indeed, the District continued to do so for almost three years, until February 2025.

The District attempts to make a significant distinction between the minimum dues required to be a member of the union and the additional amounts members can contribute to COPE, arguing that the 'membership dues' in Article 5 refer only to the base dues and not the additional COPE contributions, and that it only ceased the deductions when it 'discovered' the union had been 'mischaracterizing' the COPE contributions as membership dues. This argument strains credulity. The District had been deducting the COPE contributions for several years prior to February 2025. In order to know how much to deduct from an employee's paycheck, the District would have had to look at the "form authorized by the Federation" (Exhibit A) filled out by that employee and submitted to the District by the Union. This form clearly denotes that the additional amount to be deducted is to **"SUPPORT THE LOCAL UNION'S COMMITTEE OF POLITICAL EDUCATION"** (emphasis (bold, all caps) in the original). It is difficult to believe that the District had been deducting the COPE contributions for several years before anyone read the form. I find and conclude that the District was aware of the contents of the dues deduction form and the nature of the COPE contributions when the CBA was executed.

The District also argues that past practice cannot be used to alter the unambiguous language of a contract. As a threshold issue, then, I must determine if the language is unambiguous. Both parties assert that the term 'membership dues' is unambiguous. However, common English usage and the parties' arguments and past performance suggest two possible interpretations: 1) the amount required for membership, or 2) the amount paid by the union membership pursuant to the dues deduction authorization form (Ex. A). I find and conclude that the term 'membership dues' in Article 5 of the CBA is not so unambiguous as to preclude the consideration of the parties' past practice. Furthermore,

the contract contains an agreement to continue doing something, so we must look to past practice to see what the parties meant to continue. As noted above, when the parties entered into the CBA in question, the District was deducting the total amount of base dues and COPE contributions based on the Exhibit A's provided to it by the union. So when the District agreed to "continue to provide payroll deduction of Federation membership dues in the amounts designated by the Federation... provided the deduction request is submitted to the District Payroll Office on a form authorized by the Federation" they agreed to continue to make the deductions as they had been doing, i.e. deducting both base dues and COPE contributions in accordance with the dues deduction authorization forms. Therefore, I find and conclude that when entering into the CBA, the parties agreed that the term 'membership dues' in the CBA included both the base dues and the additional COPE contributions.

In support of its position, the District cites *CWA v. Beck* (487 US 735 (1998)) for the proposition that membership dues cannot be used for political activity. The case is not very analogous to the present situation, involving a private sector union and being decided pre-*Janus* (see below), but a discussion of it can help my analysis nonetheless. In that case, the SCOTUS found that agency fees collected from private sector employees could not be used for political activity. In its argument, the District conflates agency fees with membership dues, and makes no distinction between public and private sector unions, which is incorrect. Prior to the *Janus* decision, agency fees in public sector unions were mandatory payments by non-members purportedly representing the portion of the total dues that was not used for political activity; the *Janus* decision found them to be unconstitutional. Because of the inherently political nature of a public sector union, any payments to such a union amounted to forced political speech, violating the employees' First Amendment rights. Applying an analogy to agency fees for public sector unions actually cuts against the District's position. In an agency fee situation with a public sector union (prior to the *Janus* decision which declared them unconstitutional), the smaller agency fee paid by non-members for the non-political

activity would be analogous to the base dues and the larger amount paid by members of the union (membership dues) would be analogous to the base dues plus the additional COPE contributions.

When the CBA was executed, and up to February 2025, the District deducted both base dues and additional amounts for COPE from employees' paychecks. In February 2025 the District unilaterally ceased deducting the additional COPE amounts without direction from the Union or negotiating a change to the language of the CBA. I find and conclude that the District's cessation of the deduction of the COPE amounts does not comply with the parties' CBA and constitutes a violation of §19(H).

The District also argues that the Governmental Conduct Act (GCA, NMSA 1978 §10-16-1 et seq.) prohibits the deduction of COPE contributions. This argument is not persuasive. In *Janus v. AFSCME* (585 U.S. 878, 2018) the Supreme Court of the United States ruled that all public sector union activity was inherently political. Because of this, mandatory 'agency fees' or 'fair-share' contributions violated public employees' First Amendment right not to engage in political speech, so any money deducted from employees' paychecks for public sector unions must be voluntarily authorized by the employee from whom it is collected. In response to that decision, the New Mexico Attorney General issued Advisory Letter 2018-15, which specifically states "Union member employees may pay dues through a payroll deduction." Because the *Janus* case found all contributions to public sector unions constitute political speech, and the Attorney General specifically stated that public employees can pay these dues by payroll deduction, and we can assume the Attorney General was aware of the GCA when drafting the Advisory Letter referred to above, we can infer that a public employer deducting union dues from a public employee's paycheck is not a violation of the GCA. However, interpretation and enforcement of the GCA is beyond the authority of the PELRB, so I make no determination either way.

I need not make any such determination, however. Section 3 of the PEBA states: “In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and rules.” This declaration is followed by a list of specific statutes that are not superseded; the GCA is not included. The GCA dates back to 1993, when the legislature renamed the Conflict of Interest Act, and the current PEBA was enacted in 2003, so in the case of a conflict, the PEBA would control.

Section 19(F)

Section 19(F) of the PEBA makes it a prohibited practice for a public employer to “refuse to bargain collectively in good faith with the exclusive representative.” Section 17(D) “Scope of Bargaining” states: “Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue.” Unilateral changes to mandatory subjects of bargaining, without a waiver by the union, are *per se* violations of the duty to bargain in good faith. (*NLRB v. Katz*, 369 U.S. 736 (1962) interpreting a similar prohibition in the NLRA; see also *CWA v. State* 2019-NMCA-031). Here, that the parties chose to negotiate the issue is evident from its inclusion in the CBA. The District unilaterally ceased collecting COPE contributions authorized by the employees without bargaining. There is no allegation or evidence that the Union waived its right to bargain the issue. Therefore, I find and conclude that the District failed to bargain with the union over a mandatory subject of bargaining in violation of §19(F) of the PEBA.

Section 19(B)

The relevant portion of §19(B) of the PEBA makes it a prohibited practice for a public employer to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act.” One of the rights afforded to public employees by the PEBA is the right to “form, join or assist a labor organization...without interference, restraint or coercion.” (NMSA 1978 §10-7E-5(A)). Here, the affected employees had negotiated a means by which

they would assist a labor organization (the Union) through voluntary deductions from their paychecks and the District unlawfully ceased making those deductions. I find and conclude that this interfered with their right to assist a labor organization in violation of §19(B) of the PEBA.

Section 19(C)

Section 19(C) of the PEBA makes it a prohibited practice for a public employer to “dominate or interfere in the formation, existence or administration of a labor organization.” As noted above, the Supreme Court of the United States has found public sector unions to be inherently political organizations. Here, the District unlawfully refused to deduct the employees’ contributions to the Union’s political activity. Kelli Furney testified that the District’s refusal to deduct the COPE funds seriously curtailed the union’s political activity in the School Board election. Refusing to collect and distribute the funds the local union relies on to conduct political activity at the local level, especially in an election year when a majority of the seats on the School Board are contested, deals a serious blow to their entire *raison d’etre*. I find and conclude that the District’s refusal to deduct the COPE funds interfered with the existence and administration of the Union in violation of §19(C) of the PEBA.

DECISION: Complainant has presented sufficient evidence to prove its claims for violations of Sections 19(B), 19(C), 19(F), and 19(H) of the PEBA by preponderance of the evidence. The Respondent is hereby ordered to:

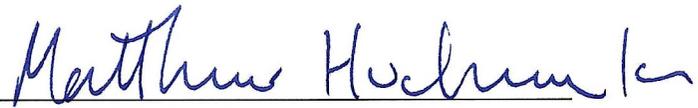
- 1) Resume the practice of deducting from employees’ paychecks all amounts indicated on the dues deduction authorization forms provided by the Union (including the COPE contributions) and remit those funds to the Union pursuant to the parties’ CBA;
- 2) Make the Union whole for any dues it would have received since February 24, 2025, with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),

compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and without recouping the money owed for past dues from employees¹; and

- 3) Post a Notice of Violation (Appendix A) in all places where employees usually receive notices for a period of at least 180 days.

If the parties cannot agree on a sum certain for the restitution described in 2), above, a further hearing on the amount of damages will be conducted.

Issued, Monday, December 08, 2025.



Matthew Huchmala
Hearing Officer
Public Employee Labor Relations Board
2929 Coors Blvd. N.W., Suite 303
Albuquerque, New Mexico 87120

¹ This is the same remedy provided by the NLRB when deciding a similar case where the employer unlawfully ceased dues deductions, holding that “the appropriate remedy is to require the Respondent to make the Union whole for dues it would have received” and that “because the union's loss of dues was caused by the employer's unlawful conduct...it was proper to allocate the financial obligation of making the union whole for the dues it would have received but for the unlawful conduct entirely to the employer and not the employees,” *Space Needle LLC*, 362 NLRB 11. I find this reasoning persuasive and adopt it here.

APPENDIX A



NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE PUBLIC EMPLOYEE
LABOR RELATIONS BOARD**

An Agency of the State of New Mexico

The Public Employee Labor Relations Board has found that we (Gallup-McKinley County Public School District) violated the Public Employee Bargaining Act (PEBA) and has ordered us to post and obey this notice.

You have the right under the Public Employee Bargaining Act to join or assist a labor organization for the purpose of collective bargaining through representatives chosen by you without interference, restraint or coercion. Your chosen representative (MCFUSE) has the right to represent you without interference in its formation, existence or administration.

The Collective Bargaining Agreement (CBA) agreed to between MCFUSE and the District required the District to deduct union dues from your paychecks in the amount authorized by you on the dues deduction authorization form.

By unilaterally ceasing, in February of 2025, the deduction of authorized COPE contributions indicated on your dues deduction authorization forms, the District did not comply with the CBA and violated PEBA Sections 10-7E-19(B), (C), (F), and (H). We have been ordered to make MCFUSE whole for the monies not deducted without recouping the same from you, the employees. We will resume making all authorized deductions immediately.

We acknowledge the above-described rights and responsibilities and will not in any like manner violate the PEBA, and we agree to honor our commitments under the CBA, including making all authorized deductions.

Michael Hyatt, Superintendent

Date: _____