# 9-PELRB-2026

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

**In re:**

**VILLAGE OF HATCH POLICE OFFICERS ASSOCIATION (POA),**

**Complainant,**

**v.** **PELRB No. 128-25**

**VILLAGE OF HATCH,**

**Respondent.**

## ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on March 18, 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 February 5, 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.

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Nan Nash
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Date: 3/19/2026

Nan Nash, Board Chair

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

**In Re:**

**VILLAGE OF HATCH POLICE OFFICERS ASSOCIATION (POA),**

**Complainant,** **PELRB Case No. 128-25**

**v.**

**VILLAGE OF HATCH POLICE, VILLAGE OF HATCH POLICE DEPARTMENT,**

**Respondent(s).**

# HEARING EXAMINER REPORT AND RECOMMENDED DECISION

This matter comes before the undersigned Hearing Examiner pursuant to a Prohibited Practice Complaint (PPC) filed by the Village of Hatch Police Officers Association (Union or Complainant) against the Village of Hatch (Village or Respondent) on September 18, 2025.

The Union alleges that the County violated Sections 17(A)(1)[1] and 19(F)[2] of the New Mexico Public Employee Bargaining Act (PEBA) and engaged in per se bad faith bargaining, by unilaterally revoking a take-home vehicle (THV) program or allowance without first providing the Union notice and opportunity to bargain over the matter. It asserts this was a term and condition of employment and mandatory subject of bargaining, although not covered in the CBA, because there was a past practice of allowing THVs that arose pursuant to a 2020 written procedure adopted by the Village Trustees.[3]

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[1] *See* 10-7E-17(A)(1), Scope of bargaining: "Except for retirement programs provided pursuant to the Public Employees Retirement Act … or the Educational Retirement Act …, public employers and exclusive representatives: (1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession…" (internal citations omitted).

[2] *See* 10-7E-19(F), Prohibited Practices, including to "refuse to bargain collectively in good faith with the exclusive representative".

[3] The PPC also included a claim concerning the directional placement of in-vehicle cameras but that claim was settled and/or resolved, and withdrawn at the hearing.

The Village filed its Answer on October 10, 2025, generally admitting jurisdictional allegations, and denying the substantive allegations based on lack of information and asserting common affirmative defenses. At the hearing and in its post hearing brief, it asserts its ownership and discretion; legitimate business justifications to change the policy (high fuel and maintenance costs for low benefit or gain regarding recruitment or retention); and that the 2020 THV procedure was a non-binding emergency measure enacted in response to COVID.

A Status and Scheduling Conference was held on October 14, 2025; and a Scheduling Order and Notice of Hearing was issued October 21, 2025. Pursuant to the Scheduling Order, the Parties exchanged witness and exhibit lists and exhibits in advance of the hearing, and an evidentiary hearing on the merits was conducted on December 30, 2025 by Zoom. There, the Parties stipulated to all exhibits; the witnesses testified under oath administered by the Hearing Examiner; and the proceedings were audio-recorded. 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, and both Parties filed post hearing briefs on January 14, 2021, after which this Report was timely issued under PELRB Rules.

The hearing and post-hearing briefs involved irregularities of note, including one of consequence, but they did not affect the merits or give rise to extra-judicial bias on the part of the undersigned.[4] The undersigned Hearing Examiner bases the following findings, analysis,

[4] First, during the hearing, at the start of a break before the sixth of six witnesses testified, the undersigned Hearing Examiner overheard and observed the Union's designated expert witness speaking to the Union Counsel negatively and unprofessionally about Counsel for the Village. The two gentlemen were evidently unaware that they could be heard and observed while others' (but not their own) mics and video were turned off. The undersigned found the brief bit she observed to be demeaning and harassing and therefore egregiously unprofessional, particularly given the two men's shared dominant gender status; their vastly greater years' experience and professional stature in labor law community; and their prior professional knowledge of the Hearing Examiner, to which Counsel for the Village had already objected as amounting to bias requiring recusal, which objection the undersigned had rejected and denied earlier that day.

Upon hearing this communication on her way out of the door on a break, the undersigned swiftly called everyone back, on the record. There, she corrected Union representatives; and she heard from Counsel for the Village before and after that brief break. The undersigned also solicited any remedy or cure requests Village Counsel may have, which she declined, stating her preference to move beyond this incident, which she said was a type that had been occurring throughout the hearing day. Mr. Broome is not a lawyer, and it appears from what the undersigned personally observed that Mr. Mowrer's offense was limited to failing to understand the Zoom technology and/or to control his witness during breaks from proceedings. As such, this did not appear to the undersigned to be a reportable incident under the NM Code of Professional Responsibility; and she believed and believes the matter had been adequately cured. Nonetheless, it will be disclosed to the State Bar as a result of the other incident of note.

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 Sections 17(A)(1) and 19(F) of PEBA. Accordingly, the undersigned recommends that the PPC be SUSTAINED and a remedy be provided as outlined below.

## APPEARANCES AND RECORD

| | |
|---|---|
| <u>For the Union</u> | |
| Frederick Mowrer, Esq. | Sanchez, Mowrer, & Desiderio, P.C. |
| Tobias Gallegos | POA State Labor Director and Witness |
| Richard Garcia | Local Vice President and Witness |
| Paul Broome | Albuquerque Labor Professional and Witness[5] |
| | |
| <u>For the Village</u>: | |
| Samantha R. Barncastle, Esq. | Barncastle Law Firm |
| John Rubio | Police Officer and Witness |
| Dennis Torres | Mayor and Witness |
| James A. Gimler, III | Chief of Police and Witness |

In addition to the sworn testimony of the foregoing six (6) witnesses, the following exhibits were admitted upon stipulation: Un. Ex. A, CBA; Un. Ex. B/Village Ex. 1, Administrative Directive for Use of Village Vehicles, dated 8/1/04; Un. Ex. C, Torres Administrative Directive dated 9/11/25; Village Ex. 2, Policy Resolution 985, dated 4/14/20; and Village Ex. 3, Village Letter to K9 Handler Garcia, dated 3/4/23.

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The second incident occurred during the post-hearing procedures. Counsel for the Village submitted a post hearing brief that cited eight separate cases, all incorrectly and/or falsely. It strongly appears to the undersigned that counsel may have used AI to generate her citations and failed to verify their accuracy as required under our rules of professional responsibility. Because every single case cited appears to be wildly inaccurate or fraudulent (*see* Appendix B), the undersigned determines that this is a reportable incident and the matter will be reported to the Disciplinary Board after this Report's issuance, along with the first instance, by way of providing this Report. *See* NMRA 16-803, mandatory reporting duty; 16-303, duty of candor; Rule 16-101, duty of competence.

[5] At the time he was tendered as an expert, he was accepted as a 50-year public sector labor professional whose testimony might be helpful. However, even aside from the issues in Note 4, *supra*, his testimony proved to not be terribly helpful to the undersigned because he had not read the governing policies and/or procedures at issue in preparation for his testimony, so spoke only in generalities. As such, his acceptance as an expert for purposes of this matter is deemed revoked.

## FINDINGS OF FACT

The following facts are found by a preponderance of the evidence:[6]

1. The Parties are working under a Collective Bargaining Agreement (CBA) and have been in a collective bargaining unit for many years. (Un. Ex. A, CBA, eff. 7/2024.)
2. The Parties' CBA is silent on the issue of take-home vehicles (THVs). (Un. Ex. A, CBA.)
3. The Village of Hatch Police Department has had a written policy or procedure governing THVs since at least 2004. (Un. Ex. B/Village Ex. Ex. 1, 2004 Administrative Directive dated 8/1/04). The 2004 Administrative Directive, approved by the Village Board of Trustees on August 1, 2004 and not expressly repealed since then, provides as follows:

> **STATEMENT OF PURPPOSE**
> The purpose of this policy is to establish the rules and procedures governing the assigning, use and reporting requirements of Village vehicles including take-home vehicles. This policy will implement both federal and state mandated regulations and Village policy and procedures.
>
> **DEFINITIONS**
> **"Take-Home Vehicle:** A take-home vehicle is any vehicle that is owned, leased, rented or otherwise under the care, custody or control of the Village of Hatch and is taken from the Village premises after normal working hours to remain in "home storage" overnight for the use of a Village employee or authorized representative for a bona fide Village purpose."
> **Bona Fide Village Purpose:**
> A bona fide Village purpose is conducting official Village business only. Bona fide Village purpose does not include personal use or assignment of a take-hone vehicle as a benefit or as compensation.
> **Exempt Vehicles:**
> According to Federal guidelines and for purposes of tax calculation only, certain vehicles [including marked and unmarked police vehicles] designated by Federal law are exempt for the purpose of increased tax liability. This exemption means that the taxable income of the employee assigned one of these vehicles will not be affected.
> …
> **GENERAL PROVISIONS**
> "Employees authorized to take a vehicle home must drive the vehicle to and from work by the most direct route, without any deviation. The location of home storage for a Village vehicle may not be further than 15 miles from the Village limits unless approved in writing by the Village Clerk. Vehicles must be lawfully parked off the street….Employees and supervisors who fail to comply with the requirements of this policy will be subject to positive disciplinary action."

[6] *See* Relevant Legal Standards, *infra*.

(Village Ex. 1/Un. Ex. B, emphases added.)

4. Under the 2020 Administrative Directive, only the Chief and the Lieutenant were eligible for a THV because they were the only two personnel that lived within the 15-mile limit. (Gimler testimony.)

5. On April 14, 2020, the Village instituted a new THV procedure effective May 1, 2020, by Resolution No. 985. In Resolution No. 985, the Village Board of Trustees "passed, approved and adopted" General Order 300.1, Take Home Vehicle Procedures. (Village Ex. 2.) It provides as follows:

**TAKE HOME VEHICLES**

**PURPOSE**

The purpose of take-home vehicles is intended to increase the number and readiness of available personnel for emergencies and the reduction of administrative costs through improved reliability, maintenance, and longevity of each vehicle.

**POLICY**

It is the policy of the Village of Hatch Police Department to assign police vehicles to designated police officers for use on duty and to take home.

**APPLICABILITY**

This General Order applies to all department employees assigned a take home police vehicle. This General Order supersedes all previous versions.

**DEFINITIONS**

Take Home Vehicle – Any city owned vehicle assigned to an employee that the employee is allowed use to commute to and from his/her work assignment.

**300.02 EMPLOYEE VEHICLE PROGRAM**

A. Employee participation in take home vehicle program shall be voluntary. The right to deny participation is reserved by the Chief of Police or his/her designee.
B. Any employee may be denied participation in this program regardless of assignment if, in the judgment of the Chief of Police, the employee's duties and responsibilities will not justify the assignment of a vehicle…
C. Those employees who volunteer to participate in this program agree to abide by all rules and regulations governing the program...

**300.03 VEHICLE ASSIGNMENTS**

A. The Chief of Police or his/her designee will assign vehicles to employees on an individual basis. Vehicles will be assigned to those employees who live within forty-five (45) miles of the Village of Hatch city limits. Employees who do not meet this requirement and who were employed prior to the inception of this program may be allowed to take their vehicle home at the discretion of the Chief.

…

**300.06 PROCEDURES**

A. All employees shall be responsible for the care and security of vehicles and vehicle equipment assigned to them, including equipment carried in the vehicles…

…

I. Employees will ensure the security of their take home vehicle by locking all doors and rolling up all windows whenever the vehicle is left unattended. When the vehicle is parked for the evening at the employee's residence, the keys will not be left in the ignition.

...

**300.08 OFF-DUTY LAW ENFORCEMENT ACTION**

A. Employees shall monitor their radio at all times while operating their take home vehicle…

B. In an employee is off-duty and operating a departmental vehicle, and learns of another employee in need of emergency assistance the off-duty employee will assist as appropriate…

C. Off-duty employees not in uniform will not initiate traffic stops, but if the violation is of a serious nature, the officer shall call for an on-duty officer to initiate the stop and take any enforcement action.

…

(Village Ex. 2, emphases added.)

6. On September 11, 2025, the prior Chief of Police issued a memo on Village Police Department letterhead, and also bearing the name of Mayor Torres. It purported to revoke the 2020 procedure or program effective immediately as of September 11, 2025. It stated that "[t]he take home vehicle allowance is to end immediately, with pending resolution approval from the Trustees in its next public meeting." (Un. Ex. C.)
7. The Village did not give the Union notice and opportunity to bargain over the change, which was effective immediately. (Un. Ex. C; testim.)
8. The THV program represents approximately one-quarter of the Village budget (Torres testim.) Neither the Mayor nor the current Chief of Police accept responsibility for the 2025 memo revoking the 2020 program came to be, but both approve of the unilateral change and believe it was justified.
9. The Mayor and Chief maintain both that the 2020 procedure was a non-binding emergency measure enacted in response to COVID, and also that it was a hiring and retention measure that proved to be of little HR benefit, yet very expensive beginning in or about 2024 due to high fuel and maintenance. Both witnesses also emphasized that the Union never contacted them to bargain over the THVs, although they claim the Union knew from September 2024 impasse arbitration hearings that the Village maintained it had operational finance issues. (Torres and Gimler testim.)[7]

[7] Asked if Union Secretary testimony at the arbitration hearing revealed a village surplus of $11 million that year, the Mayor did not dispute it and instead responded words to the effect that "I know we are doing well,

10. The Village has up to six Officers, all but two (2) of whom have a THV and were using these vehicles to commute to work. Some of the Officers are commuting more than 45 miles outside of the Village limits and in the evening they park their THVs at a N.M. Game and Fish office located near and within the edge of the 45 mile-radius. Management had not approved or been notified of such arrangements. (Gimler testim.)
11. The loss of their THVs created hardship to the Hatch Police Officers in the form of bearing increased fuel costs, as well as some indeterminate safety risks of traveling to/from work while not in uniform or in a police vehicle. For instance, a person known in their community as a police officer can be targeted or harassed by criminal offenders when they are observed out of uniform and/or in a personal vehicle, which has occurred at least once. (Gallegos and Garcia testim.)

**RELEVANT LEGAL STANDARDS**

The burden is on the Union as Complainant to establish by a preponderance of the evidence that the County's acts 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 on wages, hours, and all other terms and conditions of employment" that the Union must establish by a preponderance of the evidence. *See* NMSA § 10-7E-17(A)(1) and § 10-7E-19(F).

yes." Officer Rubio was called by the Village and testified that he learned indirectly from consulting with Officer Garcia during or about negotiations that the Village expressed financial concerns but that the Villages' finances were "strong" before the 2025 THV.

Notably, despite the name, the duty to bargain in good faith includes "per se" violations such as unilateral changes of terms and conditions of employment, e.g., without first giving the Union notice and opportunity to bargain.

In such *per se* case, the Employer's subjective good faith or intent, or legitimate business reasons or rationale are irrelevant. *See Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-31, ¶ 15, 123 NM 239, 938 P.2d 1384 ("[a]bsent cogent reasons to the contrary, we should interpret language of the PEBA in the manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted"); *NLRB v. Katz*, 369 U.S. 736 (1962) (that "the duty … may be violated without a general failure of subjective good faith" and "an employer's unilateral change in conditions of employment under negotiation is similarly a violation of § 8(a)(5)"); *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991) (that "[t]he Board has determined, with our acceptance, that an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment."); *Visiting Nurse Services of W. Mass., Inc. v. NLRB*, 177 F.3d 52, 57-59 (1st Cir. 1999).

Moreover, the duty to bargain over changes to terms and conditions of employment prior to unilateral imposition continues during the life of a collective bargaining agreement. *See IBEW v. NLRB*, 795 F.2d 150, 153 (D.C. Cir. 1986) ("making unilateral changes in the terms and conditions of employment during the pendency of an existing collective bargaining agreement … violates [the] duty to bargain."); *County of Los Alamos v. Martinez*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 1118; *Alwin Mfg. Co. v. NLRB*, 192 F.3d 133, 137-38 (D.C. Cir. 1999); *Duffy Tool & Stamping, LLC v. NLRB*, 233 F.3d 995, 996-97 (7th Cir. 2000), citing *Litton*, *supra* ("if there is no deadlock, no foot-dragging by the union, and no exigency requiring an immediate change in the terms or conditions of employment to stave off disaster, the employer may not make such a change unilaterally").

Lastly, new terms and conditions of employment that are not in conflict with the CBA can be created by mutually acceptable past practices of long standing. *See Steelworkers v. Warrior & Gulf Nav. Co*., 363 U.S. 574, 581-82 (1960) (that "...the practices of the industry and shop is equally a part of the collective bargaining agreement although not expressed in it"). To become an "established past practice", meaning a legally binding one, it must be shown to be clear and

unequivocal ("clarity") and consistently applied over a long period of time ("consistency" and "longevity") such as to demonstrate "mutuality". *See, e.g.*, Ed. Ray Schoonhoven, *Fairweather's Practice and Procedure in Arbitration* (4th ed. BNA, 1999) at 255-56; *see also* PELRB Case 150-07, *AFSCME v. Department of Corrections*, Hearing Examiner's Report (Feb. 6, 2008) (concluding a memorandum about use of union time constituted binding past practice and was therefore incorporated into the CBA, because it was widely disseminated and known to the parties; spoke to an issue not directly covered by the contract; and did not contradict the contract); and Ruben Miles, *Elkouri and Elkouri: How Arbitration Works* (6th ed. ABA, 2003) at 606-612.

**PARTIES' POSITIONS**

The Union argues that New Mexico, federal and other states' similar labor law applications support its position.

In a well-supported brief rife with genuine case citations, it makes the case that take-home vehicles became a binding, established past practice over the five years it was in effect, and that it is now a mandatory subject of bargaining. As a result, it argues, the Village violated PEBA by unilaterally revoking the policy effective "immediately."

The Union points to case law from the National Labor Relations Board on the duty to bargain over binding past practices; New Mexico precedent recognizing the applicability of federal labor law in interpreting New Mexico labor law; and State Labor Board decisions from Washington, New York State, Florida and Nebraska, which conclude that law enforcement take-home vehicles are a mandatory subject of bargaining.

The Village, in contrast, argues that

> This case turns on a narrow but dispositive question of New Mexico labor law: whether a public employer's temporary, discretionary accommodation-implemented during an unprecedented public health emergency and never bargained into a collective bargaining agreement-can be transformed into a permanent, protected term of employment. Under the Public Employee Bargaining Act ("PEBA"'), it cannot.
>
> The Union attempts to characterize a 2020 COVID-era procedure as a permanent policy granting officers a contractual right to take Village-owned police vehicles home for personal commuting. The evidentiary record squarely refutes that claim. The governing policy has always been the Village of Batch's 2004 Administrative Directive, which expressly provides that use of Village vehicles is discretionary and subject to revocation. The 2020 procedure was a temporary deviation enacted under emergency circumstances, never bargained, and never adopted by the Village's governing body as permanent policy.

> Because no policy was revoked, no bargained-for right existed, and no mandatory subject of bargaining was changed, the Union failed to establish an unfair labor practice.

(*Id*. at 1-2, citations omitted – see Note 1 and Appendix A.)

It asserts that the 2020 document represents a mere procedure not a policy, so does not supersede the 2004 policy; both THV documents are discretionary and conditional; the 2004 policy controls and has never been revoked; and the 2020 policy was discretionarily revoked in 2025 pending review by the Board of Trustees for its cost effectiveness.

## ANALYSIS AND CONCLUSIONS OF LAW

The facts are largely undisputed, although – as is quite common – the Parties disagree on how they should be interpreted.

First, we begin with the law because it sets the elements and standards. PEBA unequivocally requires Parties to a CBA to negotiate in good faith at all times, and obligates them to give notice and opportunity to bargain before effectuating unilateral change to mandatory subjects of bargaining, including past practices. *See* PEBA, Secs. 19(F) and 20(C); *see also Communication Workers of America (CWA), AFL-CIO v. State of New Mexico*, 2019-NMCA-031, No. D-202-CV-2015-03814 (J. Butkus, March 15, 2017) (In re: PELRB No. 122-14) (involving unilateral change of an alleged past practice related to work conditions, so an alleged mandatory subject of bargaining – matter was remanded back to the Board for additional findings related to establishment of a past practice); *NLRB v. Katz*, 369 U.S. 736 (1962) (that "the duty … may be violated without a general failure of subjective good faith" and "an employer's unilateral change in conditions of employment under negotiation is similarly a violation of § 8(a)(5)"); *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991) (that "[t]he Board has determined, with our acceptance, that an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment."); *Visiting Nurse Services of W. Mass., Inc. v. NLRB*, 177 F.3d 52, 57-59 (1st Cir. 1999); *IBEW v. NLRB*, 795 F.2d 150, 153 (D.C. Cir. 1986) (that "making unilateral changes in the terms and conditions of employment during the pendency of an existing collective bargaining agreement … violates [the] duty to bargain.").

Second, it is axiomatic in labor law that a policy or practice that does not conflict with the terms of a CBA can become a binding or established past practice that has the same weight and effect of a right guaranteed by the CBA. *See Steelworkers*, *supra* (that "...the practices of the

industry and shop is equally a part of the collective bargaining agreement although not expressed in it"); *see also CWA*, *supra* (recognizing the doctrine of past practice and remanding the matter back to the Board for additional findings about that).

If a past practice is established, it is very significant. Thereafter, it can only be amended with notice and opportunity to bargain the change, absent the existence of an emergency, which was not shown here.[8] In other words, it can only be terminated "at the bargaining table", like any other contractual right. *Fairweather's* at 266; *Elkouri* at 617-20.

There is no magic number to establish longevity, but the standard is that it endured "over such a period of time that the employees may rely and reasonably expect such practice to continue." *Fairweather's* at 256; *see also Elkouri* at 608. Here, there was written document supporting a five-year practice of allowing take-home vehicles provided that the individual Officer met their obligations to properly care for the vehicle.

On its face and under the clear weight of the evidence, the effect of the 2020 Resolution and General Order is to amend or modify the 2004 Policy as to police officers and the Village provides no legal authority for its distinction between the relative effects of policies versus procedures as they relate to the doctrine of past practices. The 2020 program or amendment extended the radius to 45 miles; and allowed the Chief, in his discretion, to either permit or acquiesce to variances or to revoke the benefit where its conditions were not met. That discretion does not extend to wholesale gutting or reversal of the binding past practice however – it only extends to terminating individual Officer's right based on failure to meet known conditions.

In this case, the clear weight of the evidence is that the THV practice has ripened into a binding "past practice" that it is enforceable under labor law and PEBA because it has endured for approximately five years and is a significant employee benefit, albeit a tax-exempt one, which officers have come to reasonably rely and expect to continue, provided they maintained the vehicle properly. *See*, e.g., *Steelworkers* (that "...the practices of the industry and shop is equally a part of the collective bargaining agreement although not expressed in it"); *see also Las Cruces Prof'l Fire*

[8] The Village emphasized the expense of the program and budget troubles, but the Mayor did not deny that the Village had a very large surplus and instead responded words to the effect that "I know we are doing well, yes." Another witness called by the Village, Officer Rubio, also testified that the Village's finances were "strong", based on what he learned of indirectly about bargaining. (Note 7, *supra*.) However, if the Village were in financial hardship, it could give the Union notice and opportunity to bargain over needed changes – this happens all the time in collective bargaining relationships.

*Fighters*, *supra* ("[a]bsent cogent reasons to the contrary, we should interpret language of the PEBA in the manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted").

Third, the evidence shows that a take-home vehicle involves working conditions, and is a mandatory subject of bargaining. All but two of the Officers utilize a take-home car pursuant to Village Policy, and although the policy states it is discretionary, the evidence shows the take-home vehicle allowance has only been removed on individual bases for failure to properly maintain the vehicle as also required under the policy. Additionally, the THV allowance is clearly a personal benefit to the Officers, as daily fuel cost savings from an extended commute is obviously a significant financial benefit. Indeed, it is viewed by the Village and IRS as a benefit required to be formally exempted from taxation. *See Elkouri* at 612-17 (comparing and contrasting practices that amount to "methods of operation", "direction of the workforce", or gratuities", which cannot become binding; and those "practice[s] involving a benefit of personal value to employees", which can become binding).

Moreover, this view is supported by a host of NLRB and other States' decisions on the subject. *See, e.g.*, *Omaha Polic Union Local 101, IUPA, AFL-CIO v City of Omaha et al.*, Case No. 1121 (NE CIR 20017); *City of Sunnyside*, Decision 11629 (Wash. PERC 2013); *Professional Managers and Supervisors Association (PMSA) v. City of West Palm Beach*, 35 FPER ¶ 24 (Fla. 2009) (that the city committed an unfair labor practice by unilaterally altering the take-home vehicle policy, which is a mandatory subject of bargaining).[9]

Here, as in those cases, the take-home vehicle allowance is a clear personal benefit to the employees and has safety implications; and it does not concern classic management rights of business operations, notwithstanding its budgetary impact. *Cf. Nebraska supra* (finding a binding past practice related to take-home vehicles after noting that "[a] condition of employment should normally have an effect and economic impact on the employee's job assignment" and "does not include certain subjects normally considered prerogative of mange, such as business schedule, company policy, plant locations or supervisors because management decisions lie at the core of management control").

[9] The Union also cited a case from the New York State PERB but the undersigned could not find it on-line.

Fourth, the evidence shows that the "underlying basis for the practice" has not changed such as to force the practice to lose its binding effect. *See, e.g.*, *Fairweather's* at 267; *see also Elkouri* at 610 (that "a practice is no broader than the circumstances out of which it has arisen…").

The Village argues and its Witnesses testified that the 2020 THV procedure was a COVID procedure, and also that it was to help with hiring and retention but failed to have appreciable hiring/retention effect compared to its costs. It cited these as justifications for its unilateral withdrawal or cancellation of the THV practice. However, the 2020 procedure states its purpose, which has nothing to do with either COVID or hiring and retention. Rather, as the 2020 document states very clearly,

> The purpose of take-home vehicles is intended to increase the number and readiness of available personnel for emergencies and the reduction of administrative costs through improved reliability, maintenance, and longevity of each vehicle.

*See* Village Ex. 2, General Order 300.01, as adopted by Village Resolution No. 985. In fact, Chief Gimler testified that it was intended to address/provide "community policing". If this purpose has changed, it was not averred or shown.[10] There was evidence that purpose is not met when the Officers live 45 miles away (Gimler testim.) but that is a matter for bargaining then.

Fifth and lastly, neither does any other language in the CBA save the Village here. On one hand, its CBA language contradicts the Village's arguments about policies versus procedures, given that it speaks only of rules and regulations. The undersign interprets "rules and regulations" to extend to Village policies, procedures and practices.

More importantly, the CBA specifies that Village amendments to its rules or regulations cannot conflict with the CBA:

> **Section 37 VILLAGE OF HATCH POLICE DEPARTMENT REGULATIONS**
>
> The Village of Hatch and the Village of Hatch Police Department may amend or expand current rules and regulations which directly affect or may affect bargaining unit employees provided such amendments or expansions do not violate the provisions of this agreement or any memorandum of understanding between the parties…

[10] The Mayor, who was an 11-year Trustee before becoming Mayor a year and a half ago, also testified that the 2020 procedure or program was never intended by the Trustees to be permanent, but that is not evident upon the face of the document and the undersigned does not credit this testimony. *See Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 32 (discussing the low evidentiary value of "statements of legislators, especially after the passage of legislation").

(Un. Ex. A, CBA.) In this case, as discussed above, the CBA has been modified by the Parties' mutually acceptable past practice of allowing THVs to all Officers who volunteer for it and meet the program's conditions. As such, the practice cannot be changed under Article 37. Nor does the "zipper clause" help the Village in this case.

The CBA's zipper clause provides as follows:

> **Section 38 COMPLETE AND ENTIRE AGREEMENT**
>
> This agreement represents a complete and entire agreement following negotiations at which both parties had the opportunity to negotiate on all issues identified for negotiations. This agreement is the only agreement between the parties and replaces any and all previous agreements. It is recognized that the parties by mutual written agreement may modify this agreement. Such written agreement requires the signatures of the President of the Association, the Village of Hatch Mayor, and the Village of Hatch Clerk. Each party will be provided a hand executed master copy and each party is responsible for reproduction and distribution to its constituents…

(*Id*.)

However, *Elkouri* teaches that zipper clauses must be very clear and unmistakable to constitute waiver of existing, binding past practices or other rights. For that reason, arbitrators typically reject as vague zipper clauses like the one above that only state such things as "this contract represents the whole agreement…" *Id*. at 620-22.

There does not appear to be a management rights clause, but the Village argued over its inherent rights to exercise control over its property. However, as the Nebraska Commission of Industrial Relations reasoned,

> Broad statements to the effect that the public employer maintains the right to manage all operations of that entity and maintains the right to change or discontinue any regulations or procedures do not override the requirement of bargaining in good faith regarding subjects of mandatory bargaining.
>
> Mandatory subjects of bargaining are not just topics for discussion during negotiations sessions. Unless clearly waived, mandatory subjects must be bargained for before, during, and after the expiration of collective bargaining agreements.

*Omaha Polic Union*, *supra* (regarding take-home vehicles and the management rights clause).

Based on the totality of the record, the Union does establish a binding past practice. Accordingly, the Village was required to provide notice of the change and an opportunity to bargain. Budget woes, or the failure of the Union to proactively seek to bargain over THVs before then are, therefore, not a valid defense under the law.

The appropriate remedies to make the injured bargaining unit members whole are immediate reinstatement of the take-home vehicle practice; a declaration of liability and public posting; and reimbursement within 30 days of mileage driven in their personal vehicles (up to 90-miles roundtrip but not to exceed actual miles driven), 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)." *See* PELRB 124-25, *MCFUSE v. Gallup McKinley County Schools*, H.E. Report and Recommended Decision dated 12/8/25;[11] *see also City of Sunnyside*, *supra* (remedying unilateral removal of THVs by a posting "and by reimbursing all affected bargaining unit employees any economic losses suffered as a result of the employer's unilateral act within 60 days following the date of this order"); and *Omaha*, *supra* (also ordering mileage reimbursement with interest under similar facts).

## 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; (c) an order to reimburse injured bargaining unit members for their mileage and interest as specified above, within 30 days of this Report if unappealed, or within 30 days of the Board's final Order if the Report is affirmed; and (d) an order directing the County to post a copy of the attached Notice in the usual location for posting notices to bargaining unit members regarding work conditions, for 30 days.

[11] As H.E. Huchmala explained there, these are the same remedies provided by the NLRB in deciding dues deduction cases.

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 5th day of February, 2026

Pilar Vaile,
Exec. Dir. and Hearing Examiner

**APPENDIX A**

**NOTICE FOR POSTING**

**THE NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE VILLAGE OF HATCH COMMITED A PROHIBITED PRACTICE AND ORDERED THE VILLAGE TO POST THIS NOTICE TO EMPLOYEES:**

We UNLAWFULLY disbanded the Village Police Department's take-home vehicle procedures established in General Order 300.1 and adopted in Village Resolution No. 395.

**TO REMEDY OUR PROHIBITED PRACTICE**:

WE WILL immediately reinstate the take home vehicle policy that existed for the affected bargaining unit members prior to the change found to be unlawful, AND within 30 days reimburse all affected bargaining unit employees any economic losses suffered as a result of the employer's unilateral act.

WE WILL give notice to and, upon request, negotiate in good faith with the Hatch Police Officers Association before making changes to the take-home vehicle policy for bargaining unit members.

**TO BE POSTED FOR 30 DAYS WHEREEVER SIMILAR NOTICES TO BARGAINING UNIT EMPLOYEES ARE POSTED**

## APPENDIX B

## MATERIAL MIS-CITATIONS AND MISTATEMENTS OF LAW BY VILLAGE COUNSEL

1. ~~AFSCME, Council 18 v. State~~ Mercer v. Reynolds, 2013-NMSC-002, ¶¶ 14–16~~, 293 P.3d 943~~ 292 P.3d 466.
   - Cited for multiple labor law/PEBA-related legal proposition but it concerns Rule 16-110(C) NMRA of the Rules of Professional Conduct.
2. Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers, 1998-NMSC-020, ¶ 16, ¶ 32, 125 N.M. 401, 962 P.2d 1236.
   - Also cited for multiple labor law/PEBA-related legal propositions. This citation is accurate but the case is mis-cited. It is cited for the propositions, among others, that "PEBA does not freeze employer policies absent bargaining"; and "the duty to bargain extends only to mandatory subjects that are bargained or otherwise legally established". However, the cited Para. 16 discusses the standard of review, and Para. 32 discusses legislative intent and the low evidentiary value of "statements of legislators, especially after the passage of legislation"; "statements from citizens who drafted early versions of legislation"; "descriptions by labor representatives of what their constituents desired from a particular piece of legislation"; and the exclusion of certain language.
3. ~~AFSCME v. City of Las Cruces, PELRB No. 124-08, slip op. at 7–8 (2008)~~
   - Cited for the proposition that "temporary emergency measures do not give rise to mandatory bargaining obligations". The PELRB has no record of a case by this name or number, and it appears that number was omitted in assigning cases.
4. ~~United Elec. Workers v. Univ. of N.M.~~ AFSCME and San Miguel, PELRB No. 311-10. (2010).
   - Cited for the propositions that "temporary or emergency measures do not create vested rights or binding past practices"; and "[s]hort-lived deviations from longstanding policy do not override written directives or create enforceable past practices". However, this matter was dismissed upon the Petitioner's withdrawal of the matter and no decision was issued to be cited.
5. ~~AFSCME v. State (HSD)~~ Ruidoso Educational Ass'n and Ruidoso Schools, PELRB No. 302-09 (2009).
   - Cited for the proposition that "[t]o establish a binding past practice under New Mexico law, the Union must demonstrate a practice that is clear, consistent, longstanding, and mutually accepted as a term and condition of employment." However, past practices are not relevant to Petitions; and no decision beyond a vote and certification was issued in this matter, to be cited.
6. ~~CWA v. City of Albuquerque~~ AFT v. Carlsbad, PELRB No. 117-07 (2007).

- Cited for the proposition that "[t]estimony lacking factual foundation cannot sustain an unfair labor practice finding." However, this case was administratively closed for lack of prosecution, and there is no decision to be cited.

7. ~~*IBEW v. City of Farmington*, PELRB No. 212-05 (2005)~~.
   - Cited for the proposition that "[d]isciplinary enforcement of existing policy is not a unilateral change to a mandatory subject of bargaining and falls outside this Board's jurisdiction". However, the 200 series cases only concerned Local Boards, not the duty to bargain, and the last of the 2005 200 series was Case 209-05.
8. *AFSCME v.* ~~*State (DOT)*~~ *Dept. of Health*, PELRB No. 305-09 (2009).
   - Cited for the propositions that "[s]peculative safety concerns cannot establish a mandatory bargaining obligation or override management prerogative"; and "[New Mexico law recognizes that public employers retain authority over fiscal decisions, allocation of resources, and control of employer-owned property." However, this was a representation case and the representation hearing only concerned unit composition, not subjects of bargaining.

(Note that the undersigned performed her inquiry working from only the case numbers. However, she is informed by Staff that all eight citations are still incorrect and/or inapposite if the reviewer begins with case names instead of case numbers.)