

25-PELRB-2026

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

In re:

DR. JESUS A. RIVAS,

Complainant,

v.

PELRB No. 133-25

NEW MEXICO HIGHLANDS UNIVERSITY

and

NMHU FACULTY ASSOCIATION,

Respondents.

ORDER

THIS MATTER came before the Public Employee Labor Relations Board at its regularly scheduled meeting on July 7, 2026, upon a request for Board review of the Hearing Officer's Report and Recommended Decision issued in the above-named case on April 20, 2026. Having reviewed the record, heard the arguments of the parties, and being otherwise sufficiently informed, the Board, by unanimous vote, hereby adopts the Hearing Officers Recommended Decision.

DocuSigned by:

Nan Nash

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Date: 7/14/2026

Nan Nash, Board Chair

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

In re:

DR. JESUS RIVAS,

Complainant,

v.

PELRB Case No.: 133-25

**NEW MEXICO HIGHLANDS UNIVERSITY
(NMHU),**

and

**NEW MEXICO HIGHLANDS UNIVERSITY
FACULTY AND STAFF ASSOCIATION (FACULTY
ASSOCIATION),**

Respondents.

**ORDER ON CROSS-FILED MOTIONS TO DISMISS, FOR SUMMARY JUDGMENT,
AND TO COMPEL PRODUCTION OF EVIDENCE; AND RECOMMENDED
DISMISSAL OF THE PPC**

APPEARANCES

For the Complainant: Dr. Jose Rivas, a tenured Professor at NMHU and bargaining unit member, appearing pro se

For the Respondent Union/Faculty Association: Stephen Curtis, Esq.

For the Respondent NMHU: Doajo David Hicks, “JD, LLM”, “General Counsel, Counsel for Respondent” (*See* Appendix B.)

INTRODUCTION AND BACKGROUND

This matter comes before the undersigned upon four (4) separate but factually and legally overlapping motions, and a thick evidentiary record submitted by the Complainant. This Order is timely issued upon an extension of time, pursuant to NMAC 11.21.1.31.

The pending motions, three of which are dispositive, included the following:

- (a) a Motion for Partial Summary Judgment filed by Complainant (Dr. Jesus Rivas) on January 11, 2026;
- (b) a Motion to Compel Production of Evidence, filed by the Complainant on January 20, 2026;

- (c) a Motion to Dismiss (or for summary judgment, *see infra*), filed by Respondent New Mexico Highlands University (University or NMHU) on January 26, 2026;
- (d) a Motion to Dismiss filed by Respondent NMHU Faculty Association (Union or Faculty Association) on January 26, 2026; and
- (e) the Parties Responses, Replies, and Surreplies thereto.¹

The Complainant appears *pro se* or without legal counsel. He filed a Prohibited Practice Complaint on November 3, 2025, which was initially rejected by the undersigned as facially inadequate on November 10, 2025. The PPC was cured by an Amended PPC on November 14, 2025. Thereafter, Answers were filed by each Respondent, although the University's was filed late²; a Status and Scheduling Conference was held on December 22, 2025; and a Scheduling Order was issued on December 26, 2025.

¹ These were the various motions and responsive pleadings, which are decided herein in a single Order pursuant to Hearing Examiner emails dated 2-5-26 and 5-13-26 (the latter denied Dr. Rivas' request for reconsideration):

- a. 1-11-26 Rivas Motion for Partial Summary Judgement (MPSJ)
- b. 1-20-26 Rivas Motion to Compel Limited Disclosure
- c. 1-26-26 NMHU Motion to Dismiss (MTD)
- d. 1-26-26 Faculty Association (FA) MTD
- e. 1-27-26 NMHU Response to Rivas Motion to Compel
- f. 1-28-26 NMHU Response to Rivas MPSJ
- g. 2-10-26 Rivas Response to NMHU MTD
 - "Exhibit A" – "Chronology of Events and Statements of Facts"
 - "Exhibit B" – "Violation of the CBA and other policies"
 - "Exhibit C" – "Summary of Legas Status of Protected Activity Under PEBA and Other Laws"
 - "Exhibit D" – "Violation of PEBA and Other Laws"
 - "Exhibit E" – "Chronology of Adverse Actions (Fact-Only)"
 - "Exhibit H" – "Point-by-Point Rebuttal to NMHU's Claimed 'Disputed Issues' Jan 8th Communication"
 - "Exhibit I" – "Point-by-Point Rebuttal to NMHU's January 26 Factual Narrative"
- h. 2-13-26 Rivas Response to FA MTD
- i. 2-24-26 FA Response to Rivas MPSJ
- j. 2-25-26 Rivas Reply to FA Response to Rivas MPSJ
- k. 2-27-26 Rivas Rebuttal to Investigative Report (*see also* Rivas Ex. 17, submitted the same day and rendering moot part of his Motion to Compel Limited Discovery, *see infra*)
- l. 3-18-26 FA Reply on its Motion
- m. 3-19-26 Rivas Surreply to Union Motion

Although Dr. Rivas' attachments to his Reply to the University's Motion are styled as "Exhibits", they are not evidence, being various restatements of the Complainant's overarching theme, theory and narrative, together with a number of new factual allegations. Some of the documents represent statements of law or argument, and some represent statements of fact or Dr. Rivas' interpretation thereof. All are considered and treated herein as if part of Dr. Rivas' Motions and responsive pleadings. Any material, non-conclusory facts alleged therein are treated as true herein for purposes of resolving the pending motions, unless refuted by the Complainant's own evidence.

² Complainant's Motion for default judgment was denied. *See* Vaile email dated 1-9-26.

The Amended PPC (hereinafter PPC) alleges, in summary, that the Complainant was investigated and disciplined in retaliation for engaging in concerted and/or other activity protected under the Public Employee Bargaining Act (PEBA), NMSA 10-7E-1 et seq.; and that discipline was based, at least in part, on disclosure by Union representatives of confidential representation related information. The activity at issue is Dr. Rivas' sending of emails on March 27, April 25, and October 8, 2025, about which Dr. Rivas was disciplined. The PPC also alleges that Dr. Rivas was "chilled" from seeking Union representation for the second discipline, by the improper Union disclosure to management of his confidential representation information relayed in the April 25, 2025 email, when he faced additional retaliation for his having filed the instant PPC, and/or for his continuing to challenge Faculty Association and Senate Faculty leadership about a "T/TT Proposal", lack of transparency in "shared governance", and discrimination.

The PPC alleges that by these actions the University violated Sections 5³, 19(B)⁴, 19(E)⁵, and Article 39 (Discipline) and Article 16 (Employee investigations) of the Respondents' collective bargaining agreement (CBA)⁶; and that the Union violated Sections 5, 20(B)⁷, and 20(E)⁸ of the PEBA. Although the Complainant initially asserted violation by the Union of its duty to him of fair representation, the undersigned has informed him and the Respondents that she cannot hear DFR claims, pursuant to New Mexico Supreme Court authority. *See* Vaile email dated 1/6/26, citing *Callahan v. NM Federation of Teachers-TVI*, 2006-NMSC-010.

Upon consideration of the various pending motions, responses, replies and attachments thereto, and for the reasons stated below, the Complainant's Motion for Partial Summary Judgment

³ See Section 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"; and (B), giving public employees "the right to engage in other concerted activities for mutual aid or benefit").

⁴ See Section 19(B) (prohibiting public employer from "interfere[ing] with, restrain[ing] or coerc[ing] a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act ...").

⁵ See Section 19(E) (prohibiting public employers from "discharge[ing] or otherwise discriminat[ing] against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization").

⁶ See Section 19(H) (prohibiting public employers from "refus[ing] or fail[ing] to comply with a collective bargaining agreement").

⁷ See Section 20(B) (prohibiting labor organizations from "interfere[ing] with, restrain[ing] or coerc[ing] coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act").

⁸ See Section 2(E) (prohibiting labor organizations from "refus[ing] or fail[ing] to comply with a provision of the Public Employee Bargaining Act).

is hereby DENIED; the Union's Motion to Dismiss is hereby GRANTED; NMHU's Motion for Summary Judgement is hereby GRANTED; Complainant's Motion to Compel is hereby DENIED as moot and immaterial; and the undersigned further finds, concludes, and recommends that the PPC should be DISMISSED as a matter of law, there being no genuine dispute of material fact that could be resolved by conducting an evidentiary hearing.

Additionally, Mr. Hicks is hereby referred to the New Mexico Disciplinary Board for further investigation pursuant to the New Mexico Rules of Professional Conduct, because the undersigned is a subject to Rule 16-803 mandatory reporting requirements as a licensed attorney, and the information discovered as a matter of presiding over this matter evidences serious violation of the rules. (*See* Appendix B, and other references herein to University Counsel misconduct (pp. 4, 23-24, 56-61.) Furthermore, Mr. Hicks is also hereby BARRED from appearing before the undersigned and/or PELRB as legal counsel of any party in the future, except upon petition and demonstration of ability to practice law in New Mexico without impediment; or in appeal to the PELRB in this matter if alternative counsel cannot be obtained. (*See* Appendix B.)

Nonetheless, these irregularities (and those noted by the Complainant in his February 10, 2026 responsive pleading) did not affect the merits or give rise to extra-judicial bias on the part of the undersigned; and have not prejudiced the Complainant, the processing of this case, or other Parties. The undersigned Hearing Examiner bases the following conclusions and recommended disposition solely upon the text of the PEBA, well-established labor law principles, and the undisputed documentary evidence, of which there is a large quantity, almost entirely provided by the Complainant. Additionally, the undersigned reads the record in favor of the Complainant and makes all reasonable inferences in his favor that she is able, given the unrebutted evidence submitted by the Complainant himself, and the conclusory nature of many of his allegations.

STATEMENT OF THE RECORD, AND UNDISPUTED FACTS

The undersigned makes the following findings only for purposes of resolving the pending Motions. The following findings and inferences are based almost exclusively upon documents submitted by the Complainant, including but not limited to the March 27-28, April 25 and October 8, 2025 emails that were the subject of discipline challenged before the PELRB, and other Complainant emails concerning or related to those three emails. A small number of facts are supported by an affidavit provided by the Union.

1. Complainant is a tenured professor at New Mexico Highlands University and a member of the NMHU Faculty Association, which is the certified exclusive bargaining representative

for tenure and tenure track (T/TT) faculty at the University. (PPC and Answers; *see also* NMHU Ex. 6, CBA, Art. 2.1.1. defining bargaining unit members; and CBA Art. 3, recognition clause.)

2. At the time of the events at issue, Complainant also Chaired the Faculty Affairs Committee (FAC), members of which are elected by their College faculty members. (Rivas Ex. 9.)
3. Art. 3 of the CBA “acknowledges the Faculty, through the Faculty Senate, as a partner in shared governance with the University's Administration and Board of Regents”. (CBA.) The FAC that Dr. Rivas chaired is separate and/or independent from the Faculty Senate, and it is not referenced in the CBA as a part of shared governance.
4. On March 27, 2025, “writing on behalf of” the FAC, Complaint sent out a mass or global email regarding a proposal drafted by the FAC “to diversify the options for Tenure/Tenure Track faculty (T/TT)”, by extending T/TT positions on an individual or “couple” basis to part-time faculty with children or family obligations who would otherwise face an obstacle of meeting both T/TT requirements child- and/or family-care needs. (Rivas Ex. 7 at 6-8.)
5. Other emails ensued on this topic, and to some of them Dr. Rivas attached still other emails on the topic. Dr. Rivas submitted these emails to the PELRB, along with his PPC and request for an “investigation”. Besides the March 2025 emails, other on-topic emails that are before the PELRB date back to January and August 2024, and January and February 2025. (Rivas Exs. 7-10.)
6. The collections of emails submitted show that Dr. Rivas, in his capacity as the FAC Chair, wanted to submit the T/TT Diversity Proposal, “to the faculty in general” as far back as January 2024, although he was aware that the Faculty Association is the exclusive bargaining representative, and that the Faculty Senate is the conduit for Staff partnership in shared governance. (Rivas Exs. 7-10; NMHU Ex. 6, CBA, Arts. 2-3.) The emails also show that he has been aware since January 2024 that: (a) the T/TT Proposal addresses or is “about working conditions”; (b) the Faculty Senate had accepted the Proposal and presented it to the Faculty Association; and (c) the Faculty Association ultimately determined that it related to parental leave (Art. 18.3) and declined to pursue the T/TT proposal through collective bargaining. (Rivas Ex. 10, pp. 1-2, 7-8.)
7. Dr. Rivas expresses blame toward leaders of the Faculty Senate and the Union for the failure of the FAC’s T/TT Proposal to advance. However, the emails show that he misapprehends the relationship between the Faculty Association and the Faculty Senate. He incorrectly believes the Faculty Senate or its General Faculty Meeting was responsible for obtaining Faculty approval for the FAC T/TT and/or for bargaining for it thereafter. Dr.

- Rivas also mistakenly believes that he or the FAC can dictate to the Union (and/or the Faculty Senate) how and when to solicit member feedback and to engage in bargaining, and about what subjects the Union shall bargain. (Rivas Exs. 7-10.)
8. The Union President sought at least as far back as January 2024 to correct Dr. Rivas' mistaken belief. At that time, Jenkins explained to him that "the [FA] has its own general meeting. That is the avenue that we used with parental leave. Our faculty support comes from our meetings, not the Senate's. But regardless, it is up to the EC of the FA [the Union] to decide the next steps..." (Rivas Ex. 10; *see also* CBA Art. 3 (that faculty input is provided through the Faculty Senate), and Art. 4.2 (that "wages, hours, all other terms and conditions of employment, and other issues agreed to by both parties[,] shall be negotiated through collective bargaining").)
 9. Nonetheless, on August 24, 2024, Dr. Rivas emailed some members of the Faculty Senate Executive Committee about the issue again. He accused the Executive Committee of the Faculty Senate of "concealing or vetoing a proposal that derives [from] our committees". He stated the intent of the Faculty Affair Committee (FAC) he chaired was to "bypass[] the faculty Senate, should the Faculty Senate insist on concealing it from the faculty" (Rivas Ex. 9, emphasis added; Jenkins Aff. ¶ 4, identifying the FAEC.)
 10. In February 2025 – more than a year after this earlier back-and-forth about the rejected Proposal first began – Dr. Rivas again submitted the T/TT Proposal to the Faculty Senate. The Senate again acknowledged receipt of the Proposal. (Rivas Ex. 8.)
 11. On March 27, 2025, Dr. Rivas sent a global email, initiating the events that would give rise to Dr. Rivas' first Letter of Reprimand, and the instant PPC. In his March 27 email, Dr. Rivas stated that he was writing on behalf of the FAC, attached the T/TT Proposal, and stated that "[t]he Faculty Affairs Committee believes that this proposal needs to be considered, and discussed (and possibly revised) by all faculty" and that "if approved then...the Faculty Association will bring it to the bargaining table...." (Rivas Ex. 7 at pp. 6-8, emphasis added.)
 12. The same day (March 27, 2025), Dr. Katherine (Kathy) Jenkins, President of the Faculty Association responded to Dr. Rivas and the other global recipients, telling Dr. Rivas to "[p]lease go through channels" and follow the "expected process in governance", and that "only the Faculty Senate...should be communicating with us on the issue." (Rivas Ex. 7 at 6.)
 13. When directed to go through proper channels, Dr. Rivas replied to Dr. Jenkins and the other global recipients as follows:

As you know the FAC [Faculty Affairs Committee] submitted this proposal repeated times to the Faculty Senate...

Faculty governance needs more transparency and participation of more faculty. When, a small group (the Executive Committee of FS) blocks information...it actually hurts the university...

...As I type these lines I am receiving messages from faculty who feel this is an important matter that they would like to pursue. This shows that trying to gut the work of the committees is not what best serves the faculty or faculty governance.

...

Nowhere does the Handbook say that the committees can only communicate with the faculty senate. Limiting access to information is NOT the bet way to obtain transparency, quite the opposite.

Faculty governance means that the faculty discuss and consider[] different ways to contribute to the university. The Faculty Affairs committee is not elected by the FS. We were elected by our respective colleges and thus we have the mandate from our constitutions.

I look forward to hav[ing] more conversations on this matter with interested faculty.

(Rivas Ex. 7 at p. 4, emphasis added.)

14. The following day, on March 28, 2025, Dr. Rivas sent another email to Dr. Jenkins and a much smaller but still large group of people, attaching the January and August 2024 and February 2025 emails discussed above. In the March 28, 2025 email, he justified his March 27, 2025 global email as follows:

... Anyone can read through the back and forth we had but there are two points that must be clear. First [is] that we did try several times to get the FS to share this proposal with the faculty using the regular channels. The other one is that the FS Executive committee had no intention of sharing it with anybody.

The other point...is that I did not just “went rogue” ...The Faculty Affairs Committee decided unanimously to try one more time to have the FS share it with the faculty, but we also decided to share it via email with Chairs and the rest of the faculty if the Executive Committee insisted on concealing it...

The FAC felt that a small group of faculty (2 or 3) should not have the right [to] block the discussion of a proposal that could benefit the whole university...

(Rivas Ex. 7 at 1-2, emphasis added.)

15. Global emails such as Dr. Rivas sent on March 27, 2025, are prohibited under NMHU’s IT Policy and Global Email Policy. Although the Global Email Policy has been circulated to

employees by email several times over the years, it and the IT policy were not published by NMHU online at the time. The policies were reiterated to Mr. Rivas by email in response to this incident. (Rivas Ex. 14 – April 14-15, 2025 emails between Dr. Rivas and Dr. Neil Woolf, President of NMHU, and Todd Lekan; includes link to IT Policy and global email instructions; Rivas Ex. 6/NMHU Ex. 1, Global Email Policy excerpt and March 31, 2024 directive to desist sending global emails.)

16. Specifically, on March 31, 2025, Dr. Brandon Kempner (NMHU Acting Provost and Vice President of Academic Affairs) emailed Dr. Rivas with the subject line, “Global Policy Reminder and Directive to Send No More E-mails on FA Proposal.” On April 2, 2025, Dr. Rivas asked for “the actual text of the policy” that his global email violated, an excerpt of which Dr. Kempner provided on April 4, reiterating the March 31, 2025 directive. The Policy directs that all requests to send out a global email must be sent to universityrelations@nmhu.edu, which is not what Dr. Rivas did in March 2025. (Rivas Ex. 6.)
17. The undisputed evidence is that the Global Email policy was informal, and neither it nor the IT policy were widely accessible or well published. Dr. Rivas professed to be unaware of either, which the undersigned credits for purposes of this motion. (*Id.*; Rivas Reply at 5.)⁹ It is also undisputed that Dr. Rivas abided by the policy(ies) and/or the Kempner directive against using global emails improperly, from that day forward.
18. On April 14, 2025, Acting Provost Kempner, informed Complainant that an investigation had been initiated against him based on allegations from Dr. Jenkins and others, and that the Complainant was entitled to union representation. The investigation was into the following:
 - (1) “Alleged violations of the CBA [Arts. 3 and 4.6] in regard to exclusive representation and shared governance, by falsely claiming that governance processes were not followed and acting outside of agreed bargaining and governance processes in the 3/27/25 e-mails and preceding and following actions related to that issue...”
 - (2) “Alleged violations of the CBA [Arts. 29.2.1.1, 29.4, 29.3.8] in regard to the grievance process, for attempt[ing] to publicly grieve complaints outside of NMHU CBA and handbook policy related to the Faculty Senate, Faculty Association, and NMHU administration [Handbook pages 5-6 to 5-10]...”

⁹ Dr. Rivas also asserted others violated the policy by sending global emails but he provided no details or examples, so those claims are disregarded as being unsupported and conclusory.

- (3) “Alleged violations of the NMHU Personnel Policies and Procedures Manual and Faculty Handbook, as the contents of the “Diversified Faculty” proposal are alleged by other members of the faculty to be heteronormative, misogynistic, racist, and unfairly biased towards NMHU couples, thus creating a hostile work environment for said faculty; that the presentation of the proposal on March 27 and previous and subsequent e-mails related to the proposal continue a pattern of harassment, disrespectful conduct, and threatening behavior, that violates both the faculty code of ethics and university policies in regard to harassment and conduct (see Faculty Handbook pages 6-6 to 6-7; NMHU Personnel Policies 300 and 400); [and] that these actions were accomplished through violations of CBA Article 7, the university global policy, and the ITS Policy.”
 - (4) “Alleged failures to fulfill the CBA and Faculty Handbook requirements and duties with regard to chairing the Faculty Affairs committee, by allegedly not holding meetings of that committee or not running those meetings in accordance with Faculty Handbook requirements (see CBA Article [4] for current role of Faculty Affairs in CBA processes; see Faculty Handbook page 5-1 and 5-2) for the 2024-2025 academic year; and of not adhering to the scope of duties defined for the Faculty Affairs committee in the Faculty Handbook (pages 5-10 and 5-11).”
 - (5) “Alleged dishonesty towards the university community by misrepresenting NMHU shared governance agreements, misrepresenting grievances against faculty members and others, and for misrepresenting the actions of the Faculty Affairs committee in regard to the “Diversified Faculty” proposal (Personnel Policy 425), in the March 27 e-mail and related documents.”
 - (6) “Alleged harassment of faculty after being told not to, including an allegedly public and physical attack against Dr. Michael Remke.”
 - (7) “Alleged sexual harassment of Dr. Michael Remke.”
 - (8) “Alleged sending of offensive, harassing, and unwanted emails to faculty and other NMHU employees.”
(Rivas Ex. 5/NMHU Ex. 2, emphasis added.)
19. That same day, April 14, 2025, Dr. Rivas forwarded the Notice of Investigation to Dr. Neil Woolf, NMHU President, writing as follows:
- This is a bit of what I said about the folks in faculty governance being thugs.
- They have Brandon be their pitbull attacking me when I challenged them. Then because I exposed the corruption of faculty senate and duplicity of Dr. Jenkins, they are coming after, me bogging me down with a flurry of false bogus accusation to exact revenge against those that stand up to them.
- ...
- I am of a mind of sharing these accusations with everybody...
- (Rivas Ex. 14 at p. 7, emphases added.) President Woolf, in reply, encouraged Dr. Rivas to “please allow for due process (that is afforded both you and those who have filed the

allegations)...” He also “recommend[ed] against ‘sharing the allegations with everybody’...and recommend[ed] compliance and cooperation with the CBA, faculty handbook, and university policies.” (*Id.* at 6, emphasis added.)

20. In these exchanges, Dr. Rivas described the allegations against him as ludicrous, bogus, and retaliatory “for me exposing corruptions and lack of transparency in Faculty Governance.” He stated “[t]his is the FS [Faculty Senate] weaponizing the CBA and the administrative processes against someone who displeases them.” (Rivas. Ex. 14 at 4-5.) He also alleged that Dr. Jenkins and Dr. Lindline had previously falsely accused him of wrong doing in 2017. (*Id.* at 2.) At one point in the exchange, President Woolf also advised Dr. Rivas that “[a] conversation with me at this stage would be unwise as we need to let the process play out...”, and reminded Dr. Rivas several times of the Universities duty and obligation to investigate complaints. (*Id.* at 3, 6, emphasis added.)
21. Eleven (11) days later, on April 25, 2025, using NMHU email system and NMHU email addresses for all, Complainant forwarded the April 14, 2025 email notice of investigation to some but not all members of the Faculty Association Executive Committee (FAEC or Union EC) members, and one student sharing a last name of another Committee member. The Union EC member recipients were Todd Christensen, Daniel Chadborn, and Bilgesu Summer. (Union Motion to Dismiss at 2; Complainant MPSJ at 3; Rivas Ex. 4.) Dr. Rivas omitted FAEC members involved in complaints by or against him; and he inadvertently added the student in place of one EC member as a result of “auto-fill”.
22. The FAEC is the executive board of the faculty portion of the Union. As of April 25, 2025, the members of the FAEC were: Kathy Jenkins (President), Daniel Chadborn (Vice-President), Bilgesu Sumer (Secretary), Gloria Gadsden (Treasurer), Todd Christiansen (at-large member), Gil Gallegos (at-large member) and Jennifer Lindline (Chair of the Faculty Senate). Dr. Rivas did not send this email to FAEC members Kathy Jenkins, Gloria Gadsden, Jess Goldberg, Gil Gallegos and Jennifer Lindline. (Jenkins Aff., ¶ 4.)¹⁰
23. Under the IT Policy, NMHU email system and emails are subject to IPRA and other inspections. Therefore, there is no reasonable expectation of privacy in them. (Rivas Ex. 16 Sections 1.6(D), (F) and (G) (privacy cannot be guaranteed, emails are subject to access

¹⁰ Dr. Jenkins stated in her Affidavit that Jess Goldnberg, for whom Dr. Jenkins uses “they” pronouns, was also an at-large member. Dr. Rivas denies this, writing that “Dr. Goldberg was **not** an FAEC member in April 2025. He became one on August. I have provided an email exchange with him bearing that fact.” (Rivas 3-12-25 pleading at 2, emphasis in original.)

- and examination upon complaints of NMHU policy violation, and they are subject to IPRA.) Moreover, in this April 25 email Dr. Rivas here expresses knowledge or awareness of the email's lack of privacy or confidentiality, by accusing President Jenkins therein of filing frequent IPRA requests. (Rivas Ex. 4, Rivas 4-25-25 email.)
24. Dr. Rivas' April 25, 2025 email complained that he was being subject to an HR investigation for his March 27, 2025 communications related to the T/TT Proposal, which he describes variously as a proposal to "provide diversity of opportunities for the T/TT" and a Diversity Equity and Inclusion (DEI) plan. He also wrote that the investigation arose from complaints by "Dr. Jenkins along with all the major players of the Faculty Governance and Faculty Association". (Rivas Ex. 4, a.k.a. "Ex. F", emphasis added.)
25. In his April 25 email, Dr. Rivas copied the third allegation against him and "invite[d]" the recipients to "read...and assess" all the charges. About Charge 3, he wrote that it was "nothing less tha[n] the **criminalization of discussion**" (emphasis in original). He encouraged the recipients to reach him at his private email "if you want to talk to me but are worried that Kathy [Dr. Jenkins, the Union President] will find out (because she IPRA documents all the time)." At the end of a page and a half, Complainant concluded by saying "Also, if you would like to help me fight off these allegations drop me a line too, I will tell you how you can help." (Rivas Ex. 4, emphasis added.)
26. At the time of the April 25, 2025 email, Dr. Rivas had been and/or was being represented by State and Local Union representatives Bryan Evans (Uniserv Director for NEA-NM) and Daniel Chadborn (the Faculty Association Vice-President.) (Jenkins Aff. ¶ 5.)
27. In his PPC and/or other pleadings, Dr. Rivas has stated that the third charge amounted to a claim that supporting DEI initiatives create a hostile workplace. He asserts that the charge thus "resemble[s] the language of white supremacist groups when they say that DEI initiatives discriminate against white people (Exhibit F)." (See, e.g., Rivas Reply, "Ex. A" at Para. 21, emphasis added.)
28. Later that day (April 25, 2025), Complainant was placed on administrative leave, and the University warned that any further "retaliation or violation of confidentiality" would result in disciplinary action. (Rivas Ex. 3.)
29. On June 5, 2025, Ben Thomas, an outside investigator, interviewed Dr. Rivas with a Union representative present, although Dr. Rivas complains that he did not receive a "Garrrity statement in violation of the CBA 16.5." (Rivas Reply, "Ex. A", Para. 5.)

30. In early August, as the investigation was ongoing, Dr. Rivas emailed colleagues with a complaint about one of his accusers, the Faculty Senate Chair, Dr. Lindline. Specifically, after,

noticing that Dr. Lindline continued acting as chair of the FS, [Dr. Rivas] sent a message to the Provost, HR, the Dean, and the president informing them that she was in violation of the Faculty Handbook that sets a limit of 9 years for faculty members to serve and she was starting in her 10th year. (Rivas Reply, “Ex. A”, Para. 6, emphasis added.)

31. Dr. Rivas maintains that he reported this violation off policy “in good faith” because Dr. Lindline had previously stated as Faculty Senate Chair, that following policies is important. (*See, e.g., Id.* at Para. 7.)

32. On an unidentified date, “Dr. Brown, current VPAA, responded with a message threatening to cut off [Dr. Rivas’] email communication”. (*Id.*)

33. On September 11, 2025, Daniel A. Brown, Ph.D., the new Provost & Vice President for Academic Affairs, issued Dr. Rivas a letter memorializing the following investigation results, “regarding incidents occurring in January and March 2025” and April 2025:

- (1) the “[c]omplaint that [Dr. Rivas] inappropriately hugged Dr. Michael Remke did not rise to the level of sexual harassment...and did not appear pervasive enough to create a hostile work environment”;
- (2) the “[c]omplaint that [Dr. Rivas] improperly utilized global faculty email” was “sustained”, both as to the March 27, 2028 email because he “circumvented and violated the University’s governance process” and “violated the [CBA]...”; and as to the April 25, 2025 email, which “constitutes retaliation against Drs. Kempner and Jenkins...[f]ollowing [his]...having been given a directive not to retaliate...”;
- (3) there was “inconclusive” evidence as to the claim that Dr. Rivas’ “submission of a Proposal to Support Diversity” violated NMHU policies or handbook and/or created, but “as the proposal was not adopted the issue is moot”; and
- (4) Dr. Rivas’ complaints against Drs. Lindline, Jenkins, Remke, Petronis, Gadsden, and Kempner, and his claim that the investigation was instigated to harm him, were not sustained.

In particular, and relevant here, the Provost determined that,

[w]ith respect to the complaints you filed against Drs. Lindline, Jenkins, Remeke, Petronis, Gadsden, and Kempner, it was concluded that said complaints were not based on any factual evidence but were unsupported accusations that this investigation was instigated to harm you. Your presentation of historical grievances and complaint was insufficient to support a claim of retaliation by the faculty identified herein against you.

(Rivas Ex. 2, emphasis added.)

34. On September 15, 2025, Complainant received a formal letter of reprimand (LOR) for his March 27 and April 25, 2025 emails, consistent with the investigation summary. The LOR stated the following:

- “You sent an e-mail that violated the university’s global e-mail policy. That e-mail circumvented the university’s governance process and violated NMHU's faculty collective bargaining agreement (Faculty CBA, Article 29).”
- “Your e-mail constituted retaliation (Faculty CBA, Article 29, Policy 29.3.5).”
- “After being informed of the investigation and being directed not to retaliate, you continued to do so (Faculty CBA, Article 16, Policy 16.1.2), which was said constituted retaliation against Mr. Kempner and Dr. Jenkins.

(Rivas Ex. 1.)

35. In “early October”, Dr. Rivas

...sent a message to the Secretary of the FA reporting the violation that Dr. Lindline was committing as she was not even allowed to be a member of the FS anymore, and there she was being the chair. Mrs. Gray, the secretary of the FSEC responded to me saying they were going to discuss it and copying the rest of the FSEC, Dr. Jenkins, Lindline, and Gallegos.

(Rivas Reply to NMHU, “Ex. A” at Para. 9, emphasis added.)

36. On October 8, 2025, after not receiving a response, Dr. Rivas “sent another message inquiring about their discussion.” (PPC; Rivas Reply, “Ex. A”, Para. 10.) In this email he complained to the leadership of the Faculty Senate that they were practicing a discriminatory double standard on the application of the handbook. (Rivas Reply, “Ex. A”, Paras. 9-10.) He was specifically complaining again about how Dr. Lindline had exceeded the nine (9) year term limit to serve on the Faculty Senate. He wrote the following statement about Drs. Lindline and/or Jenkins: “Did they conclude that the Handbook does not apply to white folks? That it is only needed to put pressure on brown people that they dislike.” (Rivas Ex. 12-b, HR Letter dated 11/13/25, signature timestamp of 9:57:33, emphasis added.)

37. Dr. Jenkins obtained a copy of Dr. Rivas’ October 8, 2025 email. This email was also sent to and from University emails, on the University’s email server, and lacked reasonable expectations of privacy, like all of the emails in the record here. Dr. Jenkins forwarded this email to Provost Brown the same day, copying others from the Union, the Faculty Senate, and/or NMHU administration stating,

...I am offended. It is racist. And he is sending this again on the University email system. I demand to be protected. I’m also fearful of his attacks against Dr. Lindline...this must stop as it is retaliation. But now he has taken it to a new level of racism...I do not feel protected...This is racism because I am white....

(Rivas Ex. 19.)

38. On October 9, 2025, Dr. Rivas,
...was informed that Drs. Jenkins, Lindline and Petronis had filed no contact orders against [him] arguing that they did not feel safe on campus.

[He] pointed out that it was the second time that Dr. Jenkins and Lindline did something similar while in the middle of an investigation against [him]. [He] also pointed out that Dr. Petronis is some 6 inches taller than [Dr. Rivas], some 20 years [Rivas'] junior and a former marine trained in all sorts of military combat. [Dr. Rivas] indicated that it was ludicrous that [Petronis] might feel unsafe because of [Rivas]. [Dr. Rivas] was under the impression that they were practicing lawfare against [him] but using rules and regulations to attack those that displease them, thus creating a hostile working environment for [Dr. Rivas].

(Rivas Reply to Faculty Ass'n. Resp., "Ex. A", at Para. 11, emphasis added.)

39. On October 21, 2025, Dr. Rivas was notified of a new investigation, in response to complaints filed by Faculty Association President Drs. Jenkins and Faculty Senate Chair Lindline, based upon his October 8, 2025 email, which they allege constituted continued retaliation and discrimination on Dr. Rivas' part. (PPC; Rivas Reply, "Ex. A" at Para. 12.)
40. On October 23, 2025, Dr. Rivas "was invited to an interview with the investigator, Josh Hanna from HR." There, Dr. Rivas reiterated his complaints about his September LOR for his April 25, 2025 email and the consequent "chilling" of his right to Union representation. Dr. Rivas attended this October 23 interview without Union representation because of this chilling effect. At the October 23 interview, Dr. Rivas alleges,

... Mr. Hanna had several well-prepared questions aiming to prove that [Dr. Rivas] had retaliated against Dr. Lindline, which [Rivas] answered to the best of [his] abilities. Mr. Hanna did not ask [Dr. Rivas] a single question regarding the allegations of discrimination, which led [Rivas] to think that [Hanna] did not see any merit to them and he did not feel worth it exploring those allegations.

(Rivas Reply to NMHU Resp., "Ex. A" at Para. 13, emphasis added.)

41. On November 3, 2025, Dr. Rivas filed his initial PPC. (It was determined to be facially inadequate but cured by an amended PPC filed on November 14, 2025.)
42. Before his PPC was cured, on November 6, 2026, a member of the Faculty Association Executive Committee (Jess Goldberg) forwarded to the Faculty Association President (Jenkins) an email Dr. Rivas sent her on October 27, 2025, saying "I know a lot of people are afraid of the FA leadership." (Rivas Ex. 20 at 2.) President Jenkins forwarded it to NMHU HR Specialist and Investigator Joshua Hanna, saying:

"[i]t is clearly a violation of the no contact order...It is retaliation. It is trying to undermine my leadership as president of the association...It is also using the Highlands email to retry an investigation and the results and reprimand that the university put in place against him.

You told me that Jesus was not allowed to email me directly or go around me and email others about me. This clearly does that. He is stating that people are afraid of me...

Additionally, he emailed on the employer's email, which is a public email system...

Dr. Goldberg discussed this with the Faculty Association leadership today and sent it to me so that I could file this complaint with you officially. Dr. Goldberg is vulnerable, as they are a tenure-track faculty member.

(*Id.* at 1.)

43. On November 12, 2025, Dr. Rivas received a letter from HR Spec./Investigator Hanna, apprising Dr. Rivas of the following allegations and investigation results related to Dr. Rivas' October 8, 202 email:

(1) That Dr. Rivas "engaged in retaliation against Professor of Exercise Physiology Dr. Kathy Jenkins and Professor of Natural Resources Dr. Jennifer Lindline." – UNSUBSTANTIATED: "The evidence was not sufficient to show that you violated the law with respect to retaliation."

(2) That Dr. Rivas engaged in discriminatory conduct in his October 8, 2025 email to Professors Jenkins and Lindline – SUBSTANTIATED: "The evidence was sufficient to show that you violated the law and university policy with respect to discriminatory conduct against Professors Jenkins and Lindline."

(Rivas Ex. 13, a.k.a. "Exhibit G" to Complainant's 2/10/25 Resp. to NMHU's pleadings, emphasis added.) The Investigator added that they were referring the matter to HR.

44. The following day, on November 13, 2025, Complainant received "Notice of a Written Reprimand statement pursuant to Policy 425...as well as the [CBA]..." (Rivas Ex. 12.) This letter informed him of a new reprimand, along with other measures, as follows:

Conduct constituting violations include:

- You sent an e-mail on October 8, 2025, that constituted **discrimination**. Your conduct violates the University's Equal Employment Opportunity and Non-Discrimination Policy (Employee Handbook Policy 300) and, to the extent your conduct created a hostile work environment, the Sexual Harassment Policy (Employee Handbook Policy 350).

- Your **continued disruptive behavior**, even after being issued the prior written reprimand on September 16, 2025, which **demonstrates a disregard for University policies governing collegial and ethical conduct, including expectations for professional use of University resources and communications** (Faculty CBA Art. 7.1-7.3.5; see also the University's IT Resources Policy regarding email and electronic communications).

- Your conduct was contrary to the responsibilities that accompany academic freedom to exercise appropriate restraint and to show respect for the opinions of others (Faculty CBA Art. 15.2).

You hereby are receiving a written reprimand for your actions. Your conduct and performance must improve.

1. You are hereby removed as Chair of Biology Department.
2. You will be placed on a Performance Improvement Plan. If you fail to complete the Performance Improvement Plan, then you will be terminated from employment.
3. You will be provided with a Last Chance Agreement.
4. Your email access will be restricted to the extent possible for you to maintain professional communications.

You are mandated to complete Discrimination and Harassment in the Workplace Training.

You are mandated to complete Professional Communications Training.

Failure to improve your conduct may result in further disciplinary action under the faculty CBA, Article 39, up to and including termination of employment.

(Rivas Ex. 12-a, dated/time-stamped 11/13/25 at 09:57:02, emphasis added.)

45. Dr. Rivas received three other related documents with it or near in time:
 - a. 12-a: LOR, signature time stamp of 9:50:02;
 - b. 12-b: Letter from Josh Hanna, Employee Relations Specialist, with the subject of “Response to Missed Disciplinary Meeting and Leave Claim, signature time stamp of 9:9:5733;
 - c. 12-c: Last Chance Agreement, signature time stamp of 9:56:15; and
 - d. 12-d: Faculty Professional Development and Corrective Action Plan, signature time stamp of 9:55:36.

(Rivas Ex. 12-b through 12-d.)

46. Dr. Rivas complains in his PPC that, although he had originally been told he would have 72 hours to respond to the allegations against him that were identified in the November 12, 2025 letter, the November 13, 2025 letter was issued without affording him an opportunity to respond to those allegations. He also believes the November 13, 2025 meeting was designed to be on short notice, to interfere with the deadline set for him to timely cure his initial PPC. (PPC.)¹¹
47. Complainant alleges “many violations” of the CBA and NMHU Personnel, Policies and Procedures Manual indicate (Policy 425)”, in the November 13, 2025 letter. He said the letter should have been issued by the HR Director rather than the Dean under Policy 425; and that it improperly removed him from his position of Department Chair, in violation of Article 39 of the CBA, which does not list such removal as a permitted disciplinary action. (Rivas Ex. 15, NMHU Policies & Procedures; Rivas Ex. 11, CBA.) He also alleges

¹¹ Dr. Rivas is also upset by Mr. Hanna’s statement that “[t]he timing and manner of your leave request raise concerns regarding its legitimacy and potential misuse.” (Rivas. Ex. 12-b.)

violations of “Title VII” anti-discrimination laws, and EEOC rules or precedent. (Rivas Reply at 8-9; Rivas Reply, “Ex. D” at 2; Rivas Reply, “Ex. B” at 2.)

48. Complainant also alleges that “[b]etween September and December 2025”, he “filed various grievances” against the University “over the various disciplinary actions.” During these grievance processes, Dr. Rivas alleges, the University has “grossly violated the timelines to respond to them and when they did they did not do due diligence following the CBA.” One or more of these grievances have advanced through Step 3, and all have been denied at each step thus far. On December 9, 2025, Dr. Rivas received a response from the University about a grievance for the September LOR, in which the University stated “that the CBA protected [Dr. Rivas’] right to union representation but not [his] communication with the Union...” (Rivas Reply to NMHU Resp., “Ex. A”, at Paras. 16-17.)
49. Dr. Rivas would like the PLEB to consider CBA-related allegations, delays or denials of his grievances filed under the CBA, and/or violation of Title VII and other laws as evidence of bad faith on NMHU’s part, if not as independent bases for Dr. Rivas’ PPC.
50. Investigator Hanna’s Formal Investigative Report into the October 2025 complaints against Dr. Rivas evidences that Dr. Rivas has expressed heated animosity and antagonism toward Dr. Jenkins and Dr. Lindline for at least a decade, and that it is likely mutual. Those prior disputes also reportedly involved or related to Dr. Rivas’ complaints about Union and/or Faculty Senate leadership or their actions, and interpretation of the collective bargaining. (Rivas Ex. 17)¹² Although Dr. Rivas disputes the appropriateness of the

¹² The Investigative Report opens with the following “background” description of the long-running interpersonal disputes between Dr. Rivas and other Faculty at NMHU:

The first known documented issue in Human Resources files between Biology Professor Dr. Jesus Rivas (“Rivas”) and Natural Resources Professor Dr. Jennifer Lindline (“Lindline”) occurred in August of 2016. It is not believed that the Human Resources files contain all material related to Rivas. The 2016 dispute involved Lindline sending a memorandum stating that Rivas’s email to a student was a breach of ethical standards in the Faculty Handbook. The dispute occurred over Rivas’s email that he sent to a student.

In December of 2016, Rivas sent an email proclaiming “I know for a fact that Jennifer [Lindline] is quite capable of bending the truth in a mat[t]er like this.” Rivas stated that Lindline has abused her position as chair presenting her opinion as if it was the position of the department and says that he “can go to court.”

In December of 2016, Rivas sent an email complaining about then Dean of Arts Dr. Stokes. Rivas claims that he has been the subject of constant hostility and discriminatory double standard from the dean at that time. Rivas listed eight different points with his concerns. Rivas stated that Lindline filed “an accusatory memo against me.” Rivas stated that there were two slanderous

NMHU Investigator's reference to this lengthy interpersonal history, he does not deny it either. He complains of bias in the investigation, however, especially based on the Investigator's consideration of dated material and his failure to credit the favorable interview testimony of former-Provost Gonzales-Walker, for Dr. Rivas and against Rivas' accusers, above that of the testimony of Rivas' accusers.¹³ (Rivas Rebuttal to Investigative Report, filed 2-27-26; *see also* Appendix A, with full text of interview summaries.)

51. Notwithstanding past issues between Dr. Rivas and Faculty Association leadership, the Complainant had been previously provided assistance from the Union at both local and state levels. This has included representation from Bryan Evans, Uniserv Director for NEA-NM; and Daniel Chadborn, the Local Vice-President and Executive Committee Member. At no time during his various disciplinary issues with NMHU was Dr. Rivas without a Union representation; and he has also been represented in at least three of his

accusations, and the memo pretended to be to protect the interest of a graduate student. Rivas stated that Lindline's main interest was to hurt his career.

In January of 2017, Rivas engages in a dispute with Professor of Exercise Physiology Dr. Katherine Jenkins ("Jenkins") regarding his ability to attend meetings while on sabbatical. The email chain is extensive with Rivas and Jenkins disagreeing on the language of the Collective Bargaining Agreement. Rivas comments in his email to Jenkins, "There is a reason why the oppressor always loses in the end. The oppressed cares more!"

In March of 2017, an investigation into Rivas's conduct is concluded. The investigation was formally sought by Lindline into Rivas's conduct. The investigator noted that there was a history of interpersonal conflicts over office space, questionable employee relations treatment of a graduate student, a conflict with another professor about students missing a class because of how Rivas scheduled a test in his class, actions taken by the faculty executive team pertaining to Rivas and the treatment and handling of his sabbatical requests. It was determined that Rivas did not violate university policies. The investigator made several recommendations.

...

(Rivas Ex. 20 at 1, emphasis added.) The Investigative Report also references interpersonal disputes between Dr. Rivas and others in 2022 and 2024, that turned on claims of discrimination. (*Id.* at 2.)

¹³ Dr. Rivas asserts that use of dated information for disciplinary purposes is contrary to the CBA because it is too old or stale, and that it is "irrelevant and prejudicial". *See* Rivas Rebuttal to Formal Investigative Report at 1. He also evidently believes the Investigator should have given greater weight to the favorable testimony of Gonzales-Walker. As to the first point, it is axiomatic that an employer may and should consider an employee's entire work history when assessing an appropriate penalty. Although not generally relevant to the charge of misconduct, it will often be highly relevant issues of penalty assessment, including mitigation or aggravation). *See, e.g.,* Brand and Biren, *Discipline and Discharge in Arbitration* at 2-30, 2-87; Hill and Sinicropi, *Evidence at Arbitration* (2d Ed., 1987), pp. 51-54. As to the second point, it is regrettable that the Investigator did not state expressly why he was discounting Gonzales-Walker's interview. Nonetheless, the record provides sufficient basis from which to infer that Gonzales-Walker's testimony was simply rejected as being against the weight of Dr. Rivas' own lengthy communications, which instead confirmed or corroborated the statements of the witnesses against Dr. Rivas. (*See* Appendix A, text of interview summaries.)

four separate grievances. (Jenkins Aff., ¶ 5¹⁴; *see also* Rivas Ex. 18, 4-25-25 email, D. Chadborn to Rivas, suggesting Rivas work with NEA or AFT staff representatives “as they work outside of the current university structure and are better suited to advise on this matter”).

52. As remedy for the alleged violations by the Union or Faculty Association, Dr. Rivas asks the Board to issue a cease-and-desist order prohibiting further interference or retaliation; “order the FA to post a public notice acknowledging each violation committed and affirming employees’ PEBA rights”; “order the FA to inform all the bargaining unit, using internal means, of each violat[ion] committed and affirm employee’s PEBA rights”; “[e]ncourage union leadership to get training in rights under PEBA so this does not happen again”; and “[g]rant such further relief as the Board deems just and proper.” (Rivas Reply to FA Response to Rivas MPSJ, at p. 3.)
53. As remedy for the alleged violations by NMHU, and across several documents, Dr. Rivas asks the PELRB to order the NMHU as follows: rescind the two LOR’s against him; reinstate him as Department Chair, or provide “an 11.1% salary increase to compensate for the yearly loss of income resulting of the illegitimate demotion”; remove all references from him personnel file, issue a cease-and-desist order; direct “training for administrators on PEBA obligations, and any additional relief the Board deems appropriate to restore [his] rights and prevent future violations.” (*See, e.g.,* Rivas Resp. to NMHU MTD at p. 10.)

PARTIES’ POSITIONS

Complainant’s Opening Motions

Dr. Rivas moves (a) for partial summary judgment and (b) to compel disclosure of certain documents that he argues are needed to successfully prosecute his PPC.

In the first motion, the Complainant “seek[s] a[]...limited ruling on a threshold legal issue that does not depend on credibility, motive or disputed facts.”¹⁵ Specifically, he asserts that his April 25, 2025 email constituted concerted activity protected under Section 5 of PEBA, because it

¹⁴ Dr. Rivas quibbles with some of Dr. Jenkin’s statements in her affidavit but none or few of his observations are material. The possible exceptions are those related to the composition of the Union’s Executive Committee, which is in some doubt. However, since Dr. Rivas avers that he specifically omitted EC members between who he had complaints, even that slim materiality is made moot.

¹⁵ As noted above, Dr. Rivas sought an early ruling which was denied, as was the motion for consideration, upon a determination that efficiency dictated all the motions be resolved together.

addressed some of the Union leadership, raised concerns about how the Union was responding to matters affecting its members, and critiqued Union and/or Union leadership actions and priorities; and invited collective discussion and engagement about his T/TT proposal, which he describes as a “DEI initiative”. He also argues that it is otherwise protected under Sections 19(B) and 19(E), because related to his request for Union representation against the complaints about his March 2025 email(s).

Dr. Rivas argues that, although the PELRB does not deal with matters of Title VII or DEI, his complaints of racial, ethnic, gender, etc. discrimination fall within our jurisdiction because “[he] was discussing matters about the working of the union and the direction that some of its leaders had taken” and “[t]he April 25 message concludes with a direct request for assistance in responding to the allegations” then pending against him. (*Id.*, emphasis added.)

In his second motion, Complainant seeks disclosure of “[a]ll communications, including emails and electronic messages, sent or received by Dr. Kempner on April 25, 2025, that reference or concern Jesus A. Rivas, whether directly or indirectly”; and [c]ommunications between the University and the investigator related to that investigation.”¹⁶ He also asserts that the University relied on an altered version of his April 25, 2025 letter, and that the requested disclosures are necessary to determine how, why, and/or by whom it was altered. The alteration involved removing his yellow highlighting of certain words or phrases (which the undersigned does not find or determine to be material or relevant).

The Union’s Motion to Dismiss and Reply, and Union’s Response to Rivas’ Motions

The Faculty Association moves for dismissal of PPC claims against it for failure to state a claim.

The Union notes that “the bulk of the Amended PPC’s focus i[s] on disciplinary action taken by the University” and that “[t]he Union is not a proper respondent for such allegations.” *See E.E.O.C. v. Pipefitters Ass’n Local Union 597*, 334 F.3d 656, 659 (7th Cir. 2003) (“[t]he company, not the union, controls the workplace” and “[t]he union is not the company, but the workers’ agent in dealing with the company”).

¹⁶ Dr. Rivas’ Motion to Compel Limited Discovery also sought “[t]he investigative report concerning the investigation against [him]” but NMHU has since provided him the Formal Investigative Report, which Dr. Rivas has submitted into the record along with a written rebuttal. That portion of the Motion seeking the Hanna investigative report is accordingly hereby DISMISSED as moot.

It also points to the undersigned's email of January 6, 2025, where she stated that the PELRB does not hear DFR claims so the PPC is not construed as asserting one.

It further argues that,

[t]hus, the only remaining claim against the Union—which, because this is a Motion to Dismiss, must be taken as true for the purposes of this motion only—is that the Union violated PEBA by providing NMHU with an email that Complaint sent from his University email account to other Employees at their University email address.. All that it is alleged that the Union did is disclose to the University an email sent by a University employee to other University employees (and one student) from a University email account to other University email accounts. That cannot be a prohibited practice under PEBA.

(*Id.* at 2-3, emphasis added; *see also* Union Reply at ¶¶ 1, 8.)

The Union also argues in its Reply that retaliation, as the LOR(s) show(s) Dr. Rivas committed, is not protected activity. (Union Reply at 7.) It further argues that Dr. Rivas' communications would have lost any protection because they were "scurrilous". (Union Reply at ¶¶ 6-8.)¹⁷

In response to the Complainant's Motion for Partial Summary Judgment, the Union denies again that the April 25, 2025 email was a request for Union representation, and asserts it is a disputed fact question whether it was concerted activity. The Union also attaches an Affidavit from Dr. Jenkins, the Faculty Association/Union President.

In her affidavit, Dr. Jenkins attests that the email was not sent to the corporate body of the FA Executive Committee; the email was not a request for representation so far as the Union would recognize; the Complainant had been previously provided assistance from the Union at both local and state levels; he had not been without Union representation during his disciplinary proceedings; and he was also being represented by the Union in at least three of his four grievances pending against NMHU. (Union Resp. to MPSJ, and attached Jenkins Aff., ¶¶ 4-5.)

The Union argues that because the concerted or protected nature of the April 25, 2025 email is a question of fact, it cannot be resolved by summary judgment. (Resp. at 4-5, citing *Brown & Root, Inc. v. NLRB*, 634 F.2d 816, 818 (5th Cir. 1981) (that under Section 7 of the NLRA, "[e]mployees' activities are protected by Section 7 if they might reasonably be expected to affect terms or conditions of employment"), and *OPEIU v. NLRB*, 981 F.2d 76, 81-82 (2d Cir. 1992) ("[w]hether an action is so related is a factual inquiry".) It argues that, "[w]ithout testimony

¹⁷ In its Reply, the Union also argues that Dr. Rivas' responsive document, styled as a Reply to the Union's Answer, was not proper. (*Id.* at ¶¶ 3-4.)

regarding why Complainant sent that message and only sent it to half of the FAEC, it is impossible to say on this record that the email constitutes protected concerted activity.” (*Id.* at 5.)

In contrast, the Union argues that the undersigned may consider the evidence attached by the Complainant to his PPC, in resolving the Union’s Motion to Dismiss. (Union Reply at p. 2, note 2, citing *Ruegsegger v. Board of Regents*, 2007-NMCA-030, ¶ 41, 141 N.M. 306, 154 P.3d 681 (noting that “[i]n a breach of contract action, provisions that are integral to the contract may be attached to the pleadings without converting the motion to one for summary judgment.”); *Beddall v. State St. Bank and Trust Co.*, 137 F.3d 12, 17 (1st Cir. 1998) (“[w]hen ... a complaint's factual allegations are expressly linked to and admittedly dependent upon a document (the authenticity of which is not challenged), that document effectively merges into the pleadings, and the trial court can review it in deciding a motion to dismiss under Rule 12(b) (6)"); and *Fudge v. Penthouse Int’l Ltd.*, 840 F.2d 1012, 1015 (1st Cir.1988) (that when a document has been “incorporated by reference” into the pleadings, a defendant may introduce the document in support of its motion to dismiss”).

Lastly, the Union declined to respond to Dr. Rivas’ Motion to Compel because the Motion does not seek to compel activity of the Union. (Union Counsel email dated 2/2/26)

The Universities’ Response to Rivas’ Motion, and the University’s Own Motion to Dismiss

The University opposes both of the Complainant’s Motions, and it also asserts its own Motion to Dismiss.

Most of the Response to the Motion to Compel concerns the Investigative Report, and that part of the Motion is now moot, as noted. As to the remaining evidence, the University asks the undersigned to deny Dr. Rivas’ Motion to Compel “as baseless and moot” and to deny it on privilege grounds; or, in the alternative, to “order a narrow privilege-log-and-in-camera procedure limited to confirming the privileged nature of the withheld attorney report/materials” before ordering disclosure to Complainant.

Regarding Dr. Rivas’ Motion for Partial Summary Judgment, NMHU also argues that the PPC’s claims are fact dependent so not amenable to summary judgement. It argues that,

[t]he determination of whether activity is “protected” under PEBA requires analysis of whether the activity was: (1) concerted; (2) for the purpose of mutual aid or protection; and (3) not rendered unprotected by the manner of exercise... These determinations are inherently fact-intensive and context-dependent. Moreover, even if activity is facially protected, the employer may establish legitimate, non-discriminatory reasons for its actions, creating a mixed-motive analysis inappropriate for summary judgment.

See University Response to MPSJ at 5, emphasis added (citations omitted, *see* Appendix B).

The University argues that Dr. Rivas “seeks an advisory, partial ruling that does not resolve the real issues and would prejudice this matter” through piecemeal litigation; that genuine issues of material fact remain regarding the April 25 message’s recipients, purpose, concerted nature, and consequences. It further argues that not all of Dr. Rivas’ conduct was protected, because his communications were discriminatory/harassing and used racially charged framing and inflammatory accusations” that had to be addressed by the University “to prevent a hostile environment”.

The University also argues that Dr. Rivas’ mis-sending, forwarding, or third-party disclosure of his April 25 email are material to “confidentiality, email-use compliance, workplace disruption, and the reasonableness of NMHU’s responses”. As such, it asserts, Dr. Riva’s handling of the email must be considered – along with Rivas’ other conduct – in conjunction with his concerted activity claims.

Lastly in its Response(s) on its own Motion to Dismiss, the University argues that, [t]he pleading fails to state a claim upon which relief can be granted for four independent reasons: (a) it asserts claims that are not cognizable prohibited practices under the Public Employee Bargaining Act (“PEBA”), NMSA 1978, 10-7E-1 to -26; (b) it improperly attempts to convert alleged CBA/grievance/shared governance disputes into unfair labor practices without alleging facts connecting these disputes to statutory violations; (c) it seeks categories of relief that exceed the PELRB’s remedial authority in prohibited practice cases; and (d) it fails to allege sufficient non-conclusory facts that, if proven, would establish that NMHU interfered with protected rights or retaliated against Complainant because of protected activity, as opposed to legitimate workplace-policy enforcement and investigation of alleged misconduct.

(University Motion to Dismiss at 1-2, emphasis added.)

The University correctly notes the burden shifting standard that would apply were the matter to go to an evidentiary hearing, although most of its legal or case citations wildly off-point, being wholly unrelated to the issues or propositions for which they are cited. (Motion at 6; and Appendix B, *infra*.) The University also argues that the undersigned should reject any request to reinstate Dr. Rivas to “department chair” because, it asserts, this was non-disciplinary administrative action.

Lastly, the University argues that the PELRB should not hear general breach of CBA claims that do not have deeper or broader implications for rights arising under PEBA. (Motion at 10.)

Rivas' Replies to the University's Motion Responses

Dr. Rivas responded first to the University's filings, attaching seven (7) documents created by him that are treated herein as one with his Brief. *See* Note 1, *supra*.

Dr. Rivas argues that he has presented a prima facie case of discriminatory or retaliatory discipline under the PEBA, and he cites *Wright Line* for the proposition that the burden is now on the Employer "to demonstrate that it would have taken the same action absent the protected activity (*Wright Line*)". (Rivas Reply at 3; *see also* Rivas Reply, "Ex. H", at No. 16.) Specifically, he argues, the LORs were based on protected communications or activity.

He argues that the first LOR (issued September 11, 2025) was based on two protected emails. He argues that the March emails were protected because sent in his capacity as Chair of the Faculty Affairs Committee, with a "role in shared governance", and for purposes of mutual aid and support concerning DEI initiatives. He argues that the April 25, 2025 was protected activity in two respects. First, he argues, it is protected, concerted activity because he was denouncing racism and promoting continued support of DEI initiatives. Second, he argues it is protected activity because he was seeking Union representation.

Next, Dr. Rivas argues that the Second LOR (November 13, 2025) was also based on concerted activity, because based on his October 8, 2025 email, in which he was exercising his right "to report violations of the Faculty Handbook and to raise concerns about inconsistent application of policies"; and asking "[m]ay be this can be brought as information point in today's general faculty meeting", "indicating that [he] was ready 'to initiate, induce, or prepare for group action' (281 Meyers II NLRB at 887)." (Rivas Reply at 3-4; *see also Id.* at 6-7.)

Dr. Rivas observes that, "[r]eporting discriminatory practices" and "good faith" reports of misconduct are generally protected activities. He further argues that the "ethnic descriptors are not discriminatory, per se, when they are used to talk about discrimination." (Rivas Reply at 4, citing *Kilborn v. Amiridis*, No. 23-3196 (7th Cir. 2025)¹⁸; *see also* Rivas Reply, "Ex. C", at 2-7.)

Dr. Rivas also points out that the University acknowledged that the Global email policy was not readily accessible. He further avers, without giving examples of proffers of evidence, that

¹⁸ This case reversed the dismissal of Kilborn's First Amendment retaliation claim under 42 U.S.C. § 1983, "[b]ecause a university professor's academic speech receives qualified First Amendment protection under the Supreme Court's decisions in *Connick v. Myers*, 461 U.S. 138 (1983), and *Pickering v. Board of Education*, 391 U.S. 563 (1968)". (The court affirmed the dismissal of Kilborn's other § 1983 claims, for violations of his Fifth and Fourteenth Amendment rights). *Id.*, located at [23-3196-2025-03-12.pdf](#) (last accessed 2/11/26).) Thereafter, the University's request for rehearing *en banc* was denied. *See* [23-3196-2025-05-02.pdf](#).

the policy is often violated and not consistently enforced. (Rivas Reply at 5; Rivas Reply, “Ex. B”, 1-3; Reply “Ex. D” “Violation of PEBA and Other Laws” at 2; Reply “Ex. H” at No. 20(a); *see also* Notes 1, 9, regarding rejection of conclusory allegations without objective support.)

Dr. Rivas also argues that the University committed many CBA and internal Policy violations throughout the course of processing the complaints against him, and he did not know all those issues could be raised before the PELRB. He seeks to assert them now.

He essentially concedes the University’s point that “[t]he Board does not adjudicate general contract disputes”, as a matter of course. However, Dr. Rivas maintains that “when an employer uses CBA violations, procedural irregularities, or fabricated policy violations as tools to retaliate against protected activity or to chill the exercise of protected rights, those actions fall squarely within PEBA’s prohibitions.” (Rivas Reply at 3, 10.) He further alleges that is what occurred here:

My PPC alleges precisely this: that NMHU used investigations, reprimands, demotion, and procedural violations as retaliation for my protected activity and in ways that chilled my ability to exercise my rights under PEBA.

(Rivas Reply at 3, 10.)

Dr. Rivas also accuses the University of making “false statements” and “distortions” in its pleadings by confusing timelines, including those of the two investigations; and “altering evidence” by removing yellow highlight he used in his original April 25, 2025 email. (Rivas Reply at 5-6; Rivas Reply, “Ex. I”, Nos. 5, 6, 9.)

Dr. Rivas also argues that the University has presented “shifting” explanations for his discipline. He points out that the University argued in its Motion to Dismiss that Dr. Rivas’s discipline was warranted on grounds of professionalism, confidentiality and “institutional decorum”, but Dr. Rivas asserts that those were not charged offenses. (Rivas Reply, “Ex. I”, No. 4; Reply “Ex. E” at 2.)

He emphasizes the seriousness of the harm he has suffered:

NMHU took significant adverse actions after my protected activity, including formal reprimands, threats to restrict my communication, procedurally flawed investigations, removal from my position as Department Chair, mandatory Performance Improvement Plan and Last Chance Agreement. Each materially affected my working conditions and would deter a reasonable employee from exercising protected rights.

(Rivas Reply at 4.)

Lastly, Dr. Rivas asserts that the University has violated Title VII, EEOC rules or precedent; just cause; and Dr. Rivas’ rights of free speech. (Rivas Reply at 8-9; Reply “Ex. B”, 1-3; Reply “Ex. C” at 1-3; Reply “Ex. H” at Nos. 19-20.) He acknowledges that the PELRB does

not enforce those laws or doctrines, but he maintains that those allegations are still relevant to his claims of concerted action.

Rivas' Response and Surreply to the Union's Motion to Dismiss and Rivas' Reply to the Union's Response to Rivas' Motion for Partial Summary Judgment

As briefing continued pursuant to Scheduling Order, Dr. Rivas responded to the Union's pleadings by reiterating more forcefully that he was seeking Union representation on April 25, 2025, and was engaged in concerted activity in all his emails by attempting to engender support among the other Faculty Association Executive Committee members in his ongoing challenge to FAEC leadership. (Dr. Rivas also objects that the Union does not respond to his proffered evidence, to which the Union replies that it is not required to since Dr. Rivas was responding to the Union's Motion to Dismiss for failure to state a claim, which does not depend on any facts other than those that are integral to the PPC.)

Dr. Rivas argues first that Bryan Evans is not part of the NMHU Faculty Association or its Executive Committee. He also asserts, without supporting affidavit or pointing to other corroborating evidence, that Mr. Evans advised him to seek local support from the FAEC Officers, suggesting the April 25, 2025 email was sent upon this guidance.

Next, Dr. Rivas denies that his April 25, 2025 email had to be sent to the whole Faculty Association Executive Committee to be protected, and he quibbles with the EC composition as described by Dr. Jenkins in her affidavits. He also denies that he was seeking representation against Dr. Jenkins, and he says that instead he was seeking representation for the charges against him, which just happened to be brought by Dr. Jenkins. Dr. Rivas also argues that "criticism of Union leadership is protected activity", although he does not provide legal citation or authority illustrating or defining the situations in which such a right may arise.

Lastly, Dr. Rivas argues that the case is amenable for pre-hearing disposition because "Courts and labor boards routinely determine protected activity from the face of the communication itself". In this case, he again fails to cite to authority but it is consistent with the undersigned's experience that presence or absence of protected communications can be derived from the face of the communication itself, depending on the case.

In his closing Surreply to the Union, Dr. Rivas disputes that he acted in retaliation on April 25, 2025. He further argues that the Union improperly aligns itself with the University against Dr. Rivas, which he asserts raises a question of Union interference with Dr. Rivas' protected activities. He also argues that his "concerns are corroborated by" the interview of former-Provost Gonzales-

Walker, which support his version of events and causation. (See Note 13, *supra*; and Appendix A, *infra* – the full text of all five interviews, including that of Dr. Rivas, are copied therein.)

RELEVANT LEGAL STANDARDS

We begin with a statement of the relevant legal standards. This is particularly helpful here, given that the Complainant seeks to improperly place the ultimate burden of proof on the University to establish that the discipline was not pretextual, although PELRB rules impose that burden on him as the Complainant. (Rivas Reply at 3; *see also* Rivas Reply, “Ex. H”, at No. 16¹⁹.)

A. Procedural Standards Applicable to Motions to Dismiss and Motions for Summary Judgement

A basic Motion to Dismiss test the legal sufficiency of the Complaint. When deciding Motions to Dismiss, the Hearing Officer accepts all well-pleaded factual allegations as true and resolves all doubts in favor of the non-moving party. *See, e.g., In Re: Rhonda Goodenough, Appellant/Complainant vs. N.M. Children, Youth and Families Dept., Appellee/Respondent*, 20-PELRB-2019, 2019 WL 6013079 (Sept. 17, 2019) at *2 (citing *Herrera v. Quality Pontiac*, 2003-NMSC-18 at ¶2 (regarding Rule 12(B)(6) motions); *see also Madrid v. Village of Chama*, 2012-NMCA-71 (rejecting the federal plausibility standard in favor of New Mexico’s traditional notice pleading standard).

Additionally, a motion to dismiss may be based upon documents that are “integral” to the Complaint, such as Dr. Rivas’ March 27, April 25, and October 8, 2025 emails in this case. *See, e.g., Ruegsegger v. Board of Regents*, 2007-NMCA-030, ¶ 41, 141 N.M. 306, 154 P.3d 681 (noting that “[i]n a breach of contract action, provisions that are integral to the contract may be attached to the pleadings without converting the motion to one for summary judgment”); *Beddall v. State St. Bank and Trust Co.*, 137 F.3d 12, 17 (1st Cir. 1998) (that when a complaint’s factual allegations are expressly linked to and admittedly dependent upon a document whose authenticity is not challenged, that document effectively merges into the pleadings, and the trial court can review it in deciding a motion to dismiss under Rule 12(b) (6)”); and *Fudge v. Penthouse Int’l Ltd.*, 840

¹⁹ *See* Rivas Reply at 3: “Under *Wright Line*, once Complainant shows protected activity was a motivating factor, the burden shifts to NMHU to prove it would have taken the same action absent that activity. NMHU has not met this burden, or even tried.” However, as explained herein, the PEBA is different from the NLRA in imposing the ultimate burden in this case on the Complainant.

F.2d 1012, 1015 (1st Cir.1988) (that when a document has been “incorporated by reference” into the pleadings, a defendant may introduce the document in support of its motion to dismiss).

Where a motion to dismiss relies on matters outside of the pleadings, moreover, it may be treated as a Motion for Summary Judgment and processed pursuant to Rule 1-056. *See* Rule 1-012(C) (“[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 1-056 NMRA”); *see also Protection and Advocacy System v. City of Albuquerque*, 2008-NMCA-149, ¶ 17.

In either case, the standard of review always remains the same: “that no material issue of fact remains to be resolved and the party is entitled to judgment as a matter of law”. *Park Univ. Enterprises, Inc. v. Am. Cas. Co.*, 442 F.3d 1239, 1244 (10th Cir. 2006); *see also* Rule 1-056 NMRA, and *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 2 (abrogated on other grounds).

Both types of dispositive motions are extraordinary remedies, so generally viewed with disfavor unless warranted under the undisputed material facts and relevant law. *See, e.g., Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 8, 148 N.M. 713 (regarding summary judgment).

Nonetheless, they serve vital functions. In the case of summary judgment in particular, it promotes administrative efficiency by avoiding unnecessary litigation and expense associated with full-blown trials over claims or defenses that are without merit or that cannot be proven even with a trial. *Goodman v. Brock*, 1972-NMSC-043, ¶ 11, 83 N.M. 789; *see also* Rule 1-056(C) NMRA (that summary judgment “shall be rendered forthwith if the pleadings...together with affidavits, if any, show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law”) (emphasis added). Similarly, motions to dismiss are also vital to avoiding a waste of litigation resources where a Complainant fails to state a claim, even assuming he could prove it.

Lastly, in applying the motion for summary judgment standard, one must remain cognizant of the elements and standards that would apply if the matter were to go to trial, because that is what measure sufficiency and relevance. Here, analysis will have to consider the elements of concerted and protected activity in the workplace. Then, if there is sufficient pleadings and/or material evidence to proceed on that claim, we will have to apply the *Wright Line* burden shifting analysis.

B. Substantive Legal Standards That Would Apply at Trial

(1) Concerted Activity for Mutual Aid and Protection

Although the Section 5(B) protection for concerted activity for mutual aid and protection is relatively new to the PEBA (*see* 2020 amendments), it is a well-established right under the National Labor Relations Act (NLRA), and that law is persuasive and unless “cogent reasons” exist to distinguish it. *See Las Cruces Prof’l Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, 123 N.M. 239 (NLRB precedent should generally be followed when dealing with the “same or closely similar” language); *see also Regents of UNM v. NM Federation of Teachers*, 1998-NMSC-020, ¶ 18, 125 N.M. 401, 408 (citing and endorsing this language in *Fire Fighters*, in dicta), and *Santa Fe County and AFSCME*, 1 PELRB No. 1 at 43 (Nov. 18, 1993).

Like under PEBA, “concerted activity” and “mutual aid” are not defined under the NLRA itself. *See, e.g., Miller Plastic Products Inc v. NLRB*, No. 23-2689, slip op. at 15 (3d Cir., Jun. 23, 2025).

However, federal “Board decisions and case law make clear” that it means “activities of employees who have joined together in order to achieve common goals” about workplace terms and conditions. *Id.*, citing 68 NLRB No. 73, pp. 496-97 (1984) (“*Meyers I*”) (that “the Board and courts...generally analyzed the concept of protected concerted activity by first considering whether some kind of group action occurred and only then considering whether that action was for the purpose of mutual aid or protection”; and that “concerted” means to “engage in with or on the authority of other employees”) and *Meyers Industries, Inc.*, 281 NLRB No. 118 (1986) (“*Meyers II*”) (reaffirming *Meyers I* upon remand for reconsideration in consideration of *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 at 830-37 (1984), stating that in these cases, “[t]he emphasis on collective, as distinct from purely individual activity is made clear” under the law; that “an essential component of Section 7 is its collective nature”).

Additionally, there are notable exceptions to the general rules. For instance, when a sole employee asserts a CBA right, that is deemed to have been done on behalf of all with their consent because it is “unquestionably an integral part of the process that gave rise to the agreement.” *See NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 at 830-37 (1984). Conversely, enforcing general employment laws will not necessarily be given the same rights or weight, because they are not a “continuation of bargaining”. *See Meyers II* at 888 (noting courts’ widespread rejection of the “doctrine of constructive concerted activity stemming from an employee’s invocation of a statute”, involving a workplace safety statute). Despite the labor Board’s “duty to construe the

labor laws so as to accommodate the purpose of other...laws...that is quite a different matter from taking it upon ourselves to assist in the enforcement of other statutes”, as *Meyers II* observed. *Id.* at 888.

Additionally, “concerted activity” can include a conversation with a single speaker and listener if “it was engaged in with the object of initiating or inducing or preparing for group action, or that it had some relation to group action in the interest of the employees”. *Meyers II* at 887, citing *Vought Corp.*, 273 NLRB 1290, 1294 (1984). The Board also held in *Fresh & Easy Neighborhood Market, Inc.* that motive is not relevant to whether the activity is for mutual aid and protection. *Id.*, 361 NLRB No. 12, pp. 152-53 (2014). Rather the analysis focuses on whether there is a link between the activity and matters concerning the workplace or employees’ interests as employees. *Id.* at 153.

Additionally, it is not required that other employees agree or that the effort is successful. The doctrine only “requires some activity or discussion that imbues the concern with a truly group character”. See John E. Higgins, Ed., *The Developing Labor Law* at 6-146 (7th ed., 2017) (hereinafter “DLL”) (emphasis added), quoting *Miller Plastics* at 29-30; see also DLLL at 6-DLL at 6-139 - 6-141, citing *Salisbury Hotel*, 283 NLRB 685 (1987) and other cases (that a lone individual’s actions can be concerted where it is the “logical outgrowth” of group activity that it builds upon, and is related to enforcement of wage and hour laws).

There are also notable limitations on the right of concerted activity for mutual aid and benefit.

First, as already alluded, it must concern terms and conditions of employment or the collective bargaining relationship. See *Meyers II* (that the Board and the Supreme Court in *City Disposal* “separated[] the concepts of ‘concerted activities’ and ‘mutual aid or protection’”); and *Fresh & Easy* at 152-53 (noting the two “elements are closely related” but “analytically distinct”).

While “concerted depends on the manner in which the employees actions may be linked to those of his co-workers” (exercised on behalf of, to induce, etc.), “the concept of ‘mutual aid and protection’ focuses on the *goal* of concerted action” and “chiefly whether the employee or employees involved are seeking to ‘improve terms and conditions of employment or otherwise improve their lot as employees.’” *Fresh & Easy* at 153 (emphasis in original). As observed in *Fresh & Easy*, “[t]he Board has found a broad range of employee activities” that “fall within the scope of the ‘mutual aid or protection’ clause”, *Id.* at 155, but this element does not include conduct that is in violation of the CBA or policy as discussed.

Second, the protections may be lost: “[t]he fact that the activity is concerted does not necessarily mean that an employee may engage in the activity with impunity. If an employee

engages in concerted activity in a manner that is overly abusive or violative of his [CBA], his actions would be unprotected.” See *City Disposal* at 837. Opprobrious communications are also not protected

The NLRB’s *Atlantic Steel* factors assess whether conduct or communications is “opprobrious” and thus not be protected. See DLL at 6-148 – 6-155. Factors include place, subject matter, nature of outburst, and whether outburst was provoked by employer misconduct. Notably, these factors recognize that what is “beyond the pale” will vary based upon the workplace culture. For instance, a fabrication shop floor or oil rig will have different standards of civility and professionalism than will a University’s academic department. See, e.g., DLL at 6-191 – 6-195 (disruptive, profane or vulgar behavior are not protected but “animal exuberance” in the heat of a labor dispute will often be acceptable under the *Atlantic Steel* factors); *Timekeeping Systems*, 323 NLRB 244, 248 (1997) (protection lost where the activity is “so violent or of such serious character as to render the employee unfit for future service”, or “so opprobrious as to remove him from the protection offered by the Act”, or “truly insubordinate or disruptive of the work process”) (emphasis added).

Ultimately, determining whether activity is both concerted and for mutual aid depends upon the “totality of circumstances” because of the “highly circumstantial nature of the inquiry”. *Miller Plastic* at 28.

(2) *Wright Line* Burden Shifting

“Once the activity is found to be concerted and protected, “a[] ... violation will be found if, in addition, the employer knew...and was motivated by...” that activity. *Timekeeping* citing *Meyers I* and *Meyers II*; see also *Miller Plastic* at 41 and *Timekeeping* at 250, citing *Wright Line*.

At that point, we move to a burden shifting analysis if, as here, there are competing explanations for the disputed employment action, or if the employee “engaged in other unrelated and indefensible conduct which would demonstrate that the same action would have taken place even in the absence of the protected conduct.” *Miller Plastic* (any internal quotations omitted).

Under PEBA and PELRB precedent, retaliation/interference cases involving “dual motives” as alleged here require the Complainant to rebut the proffered justification for the disciplinary action (here an LOR for violation of the Global Email Policy and retaliation, and a second LOR for discriminatory conduct), by showing it was “pretextual”, and that the employer would not have imposed the chosen discipline “but for” Dr. Rivas’ “concerted action” of sending

an email to some members of the Executive Board and, inadvertently, to one student, using his and their University emails.

As explained recently by the undersigned in another interference/retaliation case, under the *Wright Line* test or analysis,

... the [Complainant] does not have a heavy initial burden. It must first only make a “make a *prima facie* showing sufficient to support the inference that protected conduct was a ‘**motivating factor**’ in the employer’s decision” to take certain adverse employment action”...

See Case 102-25, *MCFUSE v Gallup-McKinley County Schools*, H.E. Order dated 1-27-26, at p. 5, citing Oct. 2025 Order at 32, emphases added 1/27/26;

To make a prima facie case, a Complainant must meet the *Wright Line* standard, showing as follows:

[the employee] did engage in protected union activity by participating in School Board meetings and addressing the School Board; (2) the employer... knew of this protected union activity, as demonstrated by [the evidence]; (3) [management] demonstrated anti-union animus against union [or employee or other protected activity; and (4) there is a causal connection between [the employer’s] anti-union animus and her decision to terminate the employ[ee]...”

Peñasco Federation of United School Employees v. Peñasco Independent School District, D-820-CV-2021-00029 (9/10/21, J. Felts-Salazar) (emphasis added); see also *In Wright Line*, 251 NLRB 1083, 1089 (1980). Animus, moreover, can be inferred from circumstantial evidence, such as the timing of events. See *Carpenters Health & Welfare Fund*, 327 NLRB 262, 265 (1998); see also *Peñasco* (prima facie case established based where some Union members’ contracts were not renewed for various school board policy violation after the Union members discussed the removal of the School’s Superintendent at a few public school board meetings while wearing Union insignia)

However, the Complainant’s burden is not necessarily complete at that point, simply for satisfying a prima facie case. Specifically,

... if the Employer produces evidence that it acted for legitimate business purposes (including issuing discipline for proven misconduct), the burden will shift back to the Union to demonstrate by a preponderance of the evidence that the proffered justification is actually pretextual, and that the employer would not have taken the action it did “but for” the employee’s protected status or activity.

See Case 102-25, *MCFUSE v Gallup-McKinley County Schools*, H.E. Order dated 1-27-26, at p. 5, citing Oct. 2025 Order at 32, emphases added 1/27/26; see also *Wright Line*; *CWA v. Dept. of Health*, PELRB Case No. 108-08, Hearing Examiner’s Report (Jul. 15, 2008); *Goodenough v. State of New Mexico*, No. D-101-CV-2020-01743 (B. Biedscheid; April 30, 2021); *Peñasco*

Federation of United School Employees v. Peñasco Independent School District, D-820-CV-2021-00029 (Felts-Salazar; Sep. 10, 2021) (2021) (all adopting and applying the *Wright Line* analysis).

Importantly, to show pretext,

a Claimant must produce evidence of “such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable fact-finder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non[retaliatory] reasons.” See, e.g., *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006) (emphasis added), quoting *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997) (quoting *Olson v. Gen. Elec. Astrospace*, 101 F.3d 947, 951-52 (3rd Cir. 1996)); see also *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515, (1993) (a reason is not a “pretext for [retaliation]’ unless it is shown both that the reason was false, and that discrimination was the real reason”), and *Randle v. City of Aurora*, 69 F.3d 441, 451 n.14 (10th Cir. 1995) (an employer is entitled to judgment if the employee “could not offer evidence tending to show the defendant’s innocent explanation for his employment decision was false”).

See Case 102-25, *MCFUSE* Jan. 2026 Order at 9, citing Oct. 2025 Order at 32 (emphasis in original), quoting *AFSCME Local 2499 v. Bernalillo County*, PELRB Case No. 106-25, Hearing Examiner Report (Huchmala 2025).

As noted above, this is different from what Dr. Rivas states. Citing NLRB case law, Dr. Rivas states only the standards of the Complainant’s *prima facie* case, and he overlooks or misapprehends that he retains the ultimate burden of proof here, under the PEBA.

Notably, the PEBA is distinguishable from the NLRA in this respect. The federal NLRA expressly imposes the burden of proof on the employer to establish just cause. In contrast, the Complainant always retains the burden of proof under the PEBA. Compare NLRA, Section 10(C), (that “[n]o order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause”) to NMAC 11.21.1.22(C) (burden of proof on Complainant under the PEBA); and *Goodenough* at 16, citing 11.21.1.22(B) NMAC .

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

To summarize the foregoing, the ultimate procedural questions pending before the undersigned right now are whether, applying the relevant substantive legal standards, (a) the PPC states a claim against either Respondent; and (b) whether there are genuine issues of material fact in dispute that are provable by any available evidence; and, if not, whether any Party is entitled to judgment as a matter of law, on any issue.

Recall that:

- Dr. Rivas seeks partial summary judgment that he engaged in concerted and/or other protected activity in his April 25, 2025 email, and he argues that the evidence he seeks will help him prove his case;
- the Union seeks dismissal of the claims against it, for failure to state a claim under the PEBA; and
- the University seeks dismissal of the PPC in its entirety, on a variety of grounds.

Recall that the claims include:

- (1) CBA claims against the University – PEBA § 19(F), Arts. 39 and 16 of the CBA;
- (2) claims against the University of interference and retaliatory investigation and/or discipline, for Dr. Rivas’ allegedly concerted and/or protected communications of March 27-28, April 25, and/or October 8, 2025 – PEBA § 5, § 19(B), 19(E); and
- (3) claims against the Union of interference with Dr. Rivas’ allegedly concerted and/or protected activity, by improperly disclosing the April 25, 2025 email and Rivas’ confidential representation information therein – PEBA § 5, § 19(B), 19(E).

All Parties argue that no material issues remain in dispute as to their motion, while arguing in their responsive pleadings that such issues remain. The material facts, however, are not in dispute here. The only dispute is a legal one: the Parties’ respective interpretation of the facts under the PEBA, which is a matter for the undersigned to determine herein.

We first address the Union’s Motion to Dismiss and Dr. Rivas’ Motion for Partial Summary Judgment concerning his April 25, 2025 email, as the simplest issues, and we address them together because intertwined. Then, we will address the University’s dispositive Motion, which is more complicated because it involves multiple standards and elements, as discussed above. Lastly, we will address that part of Dr. Rivas’ Motion to Compel that has not been rendered moot by the University’s production of the Investigative Report.

A. The PPC Against the Union is Dismissed for Failure to State a Claim, and Dr. Rivas’ Request for Partial Summary Judgment concerning his April 25, 2025 email is Denied for Lack of Genuine Dispute of Material Fact and as a Matter of Law

First, we address Dr. Rivas’ claim against the Union based on his April 25, 2025 email, and the Parties’ dispositive motions on that claim. This claim fails for the reason identified by the Union in its Motion to Dismiss, as well on other grounds.

On the one hand, because Dr. Rivas sent the April 25, 2025 email to some members of the Union Executive Committee and one student using his and their school email addresses, there was no reasonable expectation of privacy or confidence to be maintained, and any confidential information lost that character by Dr. Rivas' publishing of it, as a matter of law. (Rivas Ex. 11/NMHU Ex. 3, CBA, Art. 7.3.6, Individual Faculty Rights – “[u]sers should be aware that internal or external audits or other needs may require examination of use of University resources and should not expect such uses to be free from inspection; and Rivas Ex. 4 - that Jenkins “IPRA documents all the time”).)

On the other hand, it would be impossible to prove any breach of confidence, even if an evidentiary hearing were provided on that basis. Specifically, there is no way for Dr. Rivas to prove a Union Executive Committee member improperly disclosed the email to management or gave it to President Jenkins to give to management, given that the emails were subject to public inspection and given that one of the recipients was a student who would not be appropriately subpoenaed in this matter. *See e.g., Goffe v. Pharmaseal Labs., Inc.*, 1976-NMCA-123, *rev'd in part on other grounds*, 1977-NMSC-071 (the purpose of summary judgment proceeding is to expedite litigation by determining whether a party possesses competent evidence to support his pleadings so as to raise genuine issues of material fact and, if he has not, then to dispose of the matters at that state of the proceeding); *Stake v. Woman's Div. of Christian Serv. of Bd. of Missions*, 1963-NMSC-221 (the purpose of summary judgment is to search out the evidentiary facts and determine the existence of a material issue from them); *Jelso v. World Balloon Corp.*, 1981-NMCA-138 (the purpose of this rule is to eliminate a trial in cases where there is no genuine issue of fact although such an issue is raised by the formal pleadings); *Agnew v. Libby*, 1949-NMSC-004 (that this rule is obviously designed to expedite litigation by eliminating needless trials and by avoiding frivolous defenses delaying determination of the legitimate issues).

Next, even if there was available proof that the Union disclosed confidential representation information for which Dr. Rivas had a reasonable expectation of privacy, the email was neither concerted action nor an appeal for Union representation.

On the face of the email, Dr. Rivas seeks or “invites” the Union Executive Committee member recipients to get interested in the various issues he has been pressing and that face him; he seeks sympathy for the charges against him; he wants to boost and continue to argue for the previously rejected T/TT Proposal in his chosen manner; and he also seeks the Union Official recipients’ “review” and “assess[ment]” on the third charge (unsubstantiated), that his March 2025 emails and/or proposal were harassing and/or created a hostile workplace. In the same email Dr.

Rivas was disparaging the Union President to the Executive Board and he complained about the negotiated process for shared governance. (Rivas Ex. 4, April 25, 2025 email.)

At the time of the April 25, 2025 email, the Faculty Association President had arranged from him to be represented by the Uniserv Director, and Dr. Rivas also obtained assistance from the Local Steward, so he was never without Union assistance for his pending grievances and disciplinary matter(s). (Jenkins Aff., ¶ 5.)

Based upon the totality of circumstances, it is clear that as a matter of law and based on Dr. Rivas' emails that this was not protected concerted activity. This was Dr. Rivas' personal grievances about (a) about Union and/or Faculty Senate leadership/policies, negotiation choices, or processes; and (b) complaints against him by some of those leaders that were fairly and reasonably investigated and substantiated, based upon the record provided by the Complainant. Dr. Rivas is presumably free to air his issues about faculty personalities, leaders and governance in a non-harassing fashion that is consistent with the CBA and University policies. Here, however – according to the undisputed evidence submitted by Dr. Rivas himself – Dr. Rivas' overall conduct/communications were harassing, because vexatious, unwanted, persistent and frequently in opprobrious language or subtext; as well as being contrary to the assignment of bargaining roles and responsibilities that exist under the CBA and the PEBA. In fact, he was “beating a dead horse” as they say, and disregarding the exclusive bargaining agent's statutory role and authority, and the terms of the CBA.

Notably, the T/TT Proposal represented or included terms and conditions of employment that must be bargained through the exclusive bargaining agent, the Faculty Association. Moreover, the exclusive Bargaining representative had already determined, as is their right, that they will only receive proposals such as the T/TT Proposal through the Faculty Senate; and they previously rejected the T/TT Proposal in 2024, when submitted through the Faculty Senate in 2024. (Rivas Exs. 8-10; Rivas Ex. 11/NMHU Ex. 3, CBA, Art. 2.1.1 defining T/TT employees; Art. 3, recognizing the Faculty association as the exclusive bargaining agent and acknowledge Faculty Senate as a “partner” to the Union; Art. 18.3, governing parental leave.) That was the end of the matter via this route, and every act/email/communication by Dr. Rivas since then expresses retaliatory and harassing intent or effect by Dr. Rivas to obtain what he wants in the manner he desires – *e.g.*, when he was unable to “let go”, as one HR investigation witness against him recounted. (See Appendix A, Petronis interview.)

Instead of concerted action by Dr. Rivas for the purpose of bargaining over terms and conditions of employment, this was an attempt by him to bypass negotiating procedures, existing CBA provisions, and the exclusive bargaining representative, all in violation of the CBA. (CBA

Arts. 3-5 (respectively, Recognition, Agreement Control(s), and Future Negotiating Procedures).) It also appears to be an effort by Dr. Rivas to cause strife among the elected Union officials, against the President – that certainly could be fairly inferred from the Complainant’s own communications, even if he sees it different, as he evidently does. Dr. Rivas’ exact motivations are unknown, but that is not material. It is abundantly clear that – as a matter of law – his concerns did not involve the concerns, rights, or policies of PEBA or the PELRB, because they concern nothing more than an ugly and long-running power struggle between the bargaining unit and one of its members about subjects of bargaining. As such, this is something left to the internal Union political process. (And it is presumably for that reason that all of the concerted activity case citations submitted involved communications directed to management, not to the employee’s exclusive representative.)

In this case, the change(s) that the T/TT Proposal seeks has already been rejected by the designated bargaining representatives. Dr. Rivas disagrees with this decision, and believes the Union’s functional denial of his request to advance/promote (or whatever) the Proposal is rooted in racial, ethnic, gender or other discrimination. However, his recourse is to seek to change Union leadership’s mind and actions through the internal Union process, *e.g.*, running for a Union Officer position, getting on the bargaining team, becoming a Steward, voting in new elected officials, etc. Alternatively, Dr. Rivas could become involved in University management to seek change that route. Either way, however, PEBA and the PELRB do not have jurisdiction over internal Union affairs or its legitimate policy choices as the bargaining representative; or over matters on non-PEBA-related or Title VII discrimination.

Nor was the April 25, 2025 email a representation-related communication, or a communication that could be reasonably understood as seeking union representation from the email recipients.

This was an offer for the recipients to contact him if they were interested in “help[ing] [him] fight off these allegations”, in which case he stated “I will tell you how you can help.” On its face, this language does not ask for representation and does not reflect any reliance or expectation on Dr. Rivas’ part regarding the creation of a representation-related relationship. In fact, even Dr. Rivas’ offer to be represented if the recipients are interested is conditional, because Dr. Rivas only wants them to do what he tells them to do to help him. Additionally, as noted, he was already in in communication with regional and local Union Stewards.²⁰

²⁰ Such requests usually go to Stewards or, if there is inadequate or conflicted local representation, a regional or “outside” representative: *e.g.*, the people Dr. Rivas was already in contact with, Mr. Chadborn and Mr. Evans.

Lastly, there is no appropriate remedy that could be awarded by the PELRB against the Union, even assuming the PPC stated a claim against it. To the extent Dr. Rivas seeks reversal of the discipline, it is management and not the Union that is responsible for the discipline. *See E.E.O.C. v. Pipefitters Ass'n Loe. Union 597*, 334 F.3d 656, 659 (7th Cir. 2003) (“[t]he company, not the union, controls the workplace” and “[t]he union is not the company, but the workers’ agent in dealing with the company”). Additionally, to the extent Dr. Rivas seeks any remedy beyond a determination of Union violation of PEBA, he must seek recourse from the Courts, such as through a civil suit for breach of the duty of fair representation. *See Callahan, supra*.

Accordingly, based upon the record of Dr. Rivas’ communications, he fails to state a claim against the Union. Additionally, there are no disputes of material fact that could be resolved by a hearing on the merits, on the claims against the Union; and the Union is entitled to judgment as a matter of law. Nor would granting Dr. Rivas’ motion to compel affect this determination, since the emails were subject to public inspection and there is a right to report misconduct in good faith.

For all of these reasons, the Union’s Motion to Dismiss the claims against them is hereby GRANTED . Similarly, Dr. Rivas’ Motion for Partial Summary Judgment on the question of whether he had been engaged in PEBA-protected concerted activity in the April 25, 2025 email, is also hereby DENIED based on the foregoing reasons.

B. Claims Against the University Are Dismissed in Their Entirety as a Matter of Law, For Failure to State a Claim and/or Lack of Genuine Dispute of Material Fact

We next turn to the claims against the University – (1) breach of the CBA, and (2) retaliation/interference.

The University styles its Motion as one to dismiss the PPC and it only relies on documents put into the record by the Complainant, Dr. Rivas. Nonetheless, the Motion reads more like one for summary judgment and so it is treated as such. As noted, though, the standard will be the same in either case: whether, based upon the relevant substantive legal standards or elements, there are genuine disputes of material fact to be determined – or able to be determined under available evidence; and whether the movant is entitled to judgment as a matter of law.

1) Breach of CBA Claims

We first turn to Dr. Rivas’ CBA claims against the University, as the easier issue.

As an initial and threshold matter, the undersigned rejects the University’s argument that the PELRB does not or should not address breach of CBA claims, as a general rule.

This argument is directly contradicted by the plain language of Sections 19(H) and 20(D). Both sections make it an express prohibited practice for public employers, public employees or labor organizations to violate a CBA. *See* Section 19(H) (prohibiting public employers from “refus[ing] or fail[ing] to comply with a collective bargaining agreement”); Section 20(D) (prohibiting public employees and labor organizations from “refus[ing] or fail[ing] to comply with a collective bargaining agreement”; *see also* NMAC 11.21.3.22, providing for deferral to grievance arbitration if timelines and other procedural impediments are waived in writing.

Nonetheless, Dr. Rivas implicitly concedes that the PELRB does not exist for the purposes of general contract enforcement, by arguing that “[t]hese violations are not mere contract disputes; they constitute prohibited practices under PEBA because they were used as tools of retaliation.” (Rivas Reply to NMHU at 2.) Additionally, the undersigned herself has made that point before, although her decision has depended on how the issue was presented. *See, e.g.*, Case 140-25, *Wilson v. Los Lunas School District*, H.E. Order dated 3-16-26 (noting the principle in dicta where the matter was not briefed and the Complainant appeared pro se); and Case 168-06, *AFSCME Council 18 v DOH*, H.E. Decision dated 7-16-07 at pp. 17-19, and citations therein (dismissing CBA claims upon a fully briefed motion to dismiss for failure to exhaust contract remedies, where the CBA expressly included an obligation to do so).

In this case, however, the CBA claims do not survive on more basic grounds. First, Dr. Rivas does not explain to how Article 39 (Discipline) or Article 16 (Investigations) were violated in any way other than the most *de minimis*. Second, Dr. Rivas’ larger claims of bias in the investigation and/or discipline are simply not born out by the record he has submitted in support of his claims, as discussed in more detail below. Lastly, Dr. Rivas points to no facts and only speculation and conclusory allegations in support of his claims that the CBA is being used as a “tool” to violate his PEBA and civil rights.

Accordingly, the breach of CBA claim against the University is hereby DISMISSED.

2) Retaliation/Interference Claims

We turn next to Dr. Rivas’ retaliation/interference claims against the University.

Resolving the University’s dispositive motion as to the retaliation/interference claims requires us to consider whether any of the emails for which Dr. Rivas was disciplined (March 27-28, April 25, and October 8, 2025) constituted concerted action and, if so, whether Dr. Rivas points to or proffers evidence that creates a genuine doubt or issue of material fact under the *Wright Line* “but for” burden shifting analysis.

However, it is axiomatic that the party opposing a motion for summary judgment may not rely on conclusory allegations. As the undersigned has recently ruled in another matter involving interference and/or retaliation claims,

... the party opposing a motion for summary judgment cannot rely on the allegations in the Complaint, and it must instead demonstrate the existence of genuine issues of material fact by way of sworn affidavits, depositions, and similar evidence. *Juneau v. Intel Corp.*, 2006-NMSC-002, ¶ 15, 139 N.M. 12. Additionally, “[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010) (emphasis added), citing *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *see also Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979) (finding no material question of fact where the plaintiff relied on affidavit that averred general facts based on “common knowledge”).

See MCFUSE v. Gallup McKinley County Schools, 125-25, Hearing Examiner Report dated 1/27/26, at p. 8 (emphasis in original).

(a) Protected, Concerted Action

Because the April 25, 2025 email has been already been determined to not be protected concerted activity, any allegations against the University based on that email are hereby DISMISSED.

Accordingly, we examine the March 27 and October 8, 2025 emails to determine if they constituted protected, concerned activity or communications.

In contrast to his April 25, 2025 email, Dr. Rivas’ global circulation of the T/TT Proposal on March 27, 2025, and his continued discussion of it on March 28, 2025 through non-global emails, was concerted activity.

He was acting as Chair and per unanimous vote of the of the Faculty Affairs Committee. Additionally, the Proposal concerned terms and conditions of employment; and, as found above, the policies prohibiting global emails were not available to Dr. Rivas, so he was not shown to be aware of those policies at the time of sending. *See Theodore St. Antoine, The Common Law of the Workplace* (2d ed., 2005), at 213-14 (a determination of a rule violation requires notice of rules and likely consequences of their violation). He was also civil in the March 27, 2025 email.

However, the March 27, 2025 email was still not protected concerted activity under the totality of the circumstances because the Proposal implicated terms and conditions already bargained for under Articles 2.1.1 and 18.3 of the CBA, as discussed.

These provisions define bargaining unit members as T/TT employees and provide them parental leave, and the Proposal would expand Tenure and Tenure Track to include part-time employees using parental or family leave to care for children or parents. Additionally, Dr. Rivas' chosen route to push the proposal contravenes the CBA, which provides that the input of Faculty is to come to the Union through the Faculty Senate. *See, e.g.*, DLL at 6-132 (emphasis added) (concerted activities or communications lose protection if they are “unlawful, violent, in breach of contract, or indefensibly injurious to the employer’s interests”); DLL 6-174, citing *Emporium Capwell Co. v. Western Addition Cmty. Org.*, 420 US 50 (1975) (emphasis added) (that protests related to employment discrimination are protected but only if not “...in derogation of the collective bargaining representative’s role as exclusive representative of all the employees in the bargaining unit”); DLL at 6-195 – 6-206 (concerted activity is not protected if in violation of reasonable work rules and/or employer handbook).

Dr. Rivas does not like the present terms of parental leave, or the definition of Tenure/Tenure Track faculty, and he seeks to incite others in his cause. Additionally, at least a majority of the Faculty Affairs Committee agreed with him, and he asserts there are other employees engaged in or concerned with his issues as well. He also objects to what he sees as his and other Faculty’s lack of effective input into how and for what the Union bargains.

However, the undisputed evidence is that this is the bargaining process that the University and Union negotiated and agreed to, including limiting Faculty partnership in governance through the Faculty Senate. *See* Arts 5 (detailing the process to negotiate new or amended provisions); and Art. 3 (recognition clause, identifying the Union as the exclusive bargaining representative, with acknowledgment by the Union that “partners” with the Faculty “through the Faculty Senate”). Moreover, his continued, unwanted, persistent, and steadily more unpleasant pressing of the matter ultimately amounted to harassment.

As such, the March 27, 2025 email was not protected, concerted activity, and any claims against the University based on that email are also hereby DISMISSED.

Nor was the October 8, 2025 email protected, although for different reasons. It, like the April 25, 2025 email, is more about Dr. Rivas’ personal and long-running grievances against individual members of the Union and/or Faculty Senate leadership, although he attempts to style it as an issue of workplace welfare. Additionally, as with the April 5, 2025 email, the October 8, 2025 email lost any protection it might have had because of its retaliatory, opprobrious, and scurrilous nature and/or language. It is also patently evident on the face of the documents submitted by Dr. Rivas that he reported a completely unrelated policy violation by Dr. Lindline,

in direct response to her having reported him for alleged discrimination and retaliation. Indeed, Dr. Rivas admits as much, although he seems to think it is a factor in his favor.²¹

It is also relevant and notable that the entire course of Dr. Rivas' communications on the same subjects reflect a similar nature, and similar deterioration of language and demeanor/tone as Dr. Rivas' demands or advances are rejected. This shows that it was no accident and that this is simply how Dr. Rivas communicates – even if one University Staff member, a former Provost, did not find his communication style objectionable and agreed with Rivas that Jenkins was the problem, as discussed below. (*See infra*, and Appendix A – excerpted Investigative Report Interview of Gonzales-Walker, from Rivas Ex. 17.)

As discussed above, the determination of whether activity is both concerted and for mutual aid depends upon the “totality of circumstances” because of the “highly circumstantial nature of the inquiry”. *Miller Plastic* at 28. However, “[o]bviously, the legislature did not intend to make the proverbial federal case out of every dispute...Rather...the focus is...[on the] nexus between employee complaint or action and the terms and conditions of employment”. *Miller Plastic* at 25-26. As the U.S. Supreme Court observed and emphasized about the NLRA, “the Act was intended as a shield and not as a sword to bludgeon” management or others. *Id.* at 29.

Here, it is overwhelmingly obvious based on his own communications at issue that Dr. Rivas seeks to use PEBA and claims of collective action as a sword. Specifically, no evidence besides Dr. Rivas' own assertions is proffered to demonstrate that his activities at issue were concerted, related to employment terms and conditions, and remained protected. Instead, all the proffered evidence from Dr. Rivas shows that his various actions were contrary to the CBA, in his own interests, not related to for truly common goals, deteriorated in tone and professionalism with each iteration, and ultimately lost any protections they might have had as discussed above. Additionally, the totality of circumstances of all Dr. Rivas' emails show he acted with retaliatory intent, such as when he attempted three separate times, including his October 8, 2025 email, to have Dr. Lindline subject to investigation for unrelated policy infractions.

²¹ Dr. Rivas evidently believes he is highlighting inconsistent or disparate enforcement of University Policies, not understanding that consistent application and disparate impact are only measured as to the same or similar violations under traditional labor law principles. Here he accused the FS Chair of having served on the Senate or in the Chair role too long under policy, but that has no nexus or relationship to the discipline he challenges for retaliation and unprofessional conduct and communications. *See Theodore St. Antoine, The Common Law of the Workplace* (2d ed., 2005), at 214 (that “employees should not have to suffer *disparate treatment*; that is, there should be equal treatment for like offenses”) (italics in original, underlined emphasis added). To put it another way, it is not an adequate defense to charges of specific misconduct – retaliation and policy violation – to say, “Other people have engaged in unrelated rule violations without receiving a LOR”.

Accordingly, the October 8, 2025 email was also not protected, concerted activity, and any claims against the University based on it are hereby DISMISSED.

Nor is the determination that the emails are not protected, concerted activity undermined in any way by the case citations Dr. Rivas provides, although they may seem superficially on point.

On one hand, many of the principles and standards Dr. Rivas cites simply do not apply to him because he is not acting as Steward or on behalf of other employees. Notably, in the cases that tolerate aggressive or defamatory statements, the statements concern a labor-management dispute or were otherwise directed toward management, rather than towards co-workers. For instance, an employer may not discipline or otherwise penalize a union steward for statements, demeanor and/or certain conduct while engaged in union business. *See Union Fork and Hoe Company*, 241 NLRB 907, 908 (1979) (“a steward is protected ... when fulfilling his role in processing a grievance” under substantially identical provisions of the NLRA); *United States Postal Service and San Angelo Local (San Angelo)*, 251 NLRB 252, 258 (1980) (stewards “are essentially insulated from discipline for statements made to management representatives which, if made in another context, would constitute insubordination”).

However, that right is based on the need for labor representatives and management representatives to meet as equals when engaged in bargaining and that principle does not apply here.

On the other hand, even if Dr. Rivas somehow stands in a role akin to a Union representative, they do not have unlimited immunity, or a carte blanche, when acting as a steward. As discussed, any employee, including a Union representative may be disciplined for excessive or “opprobrious” conduct that is not part of the collective bargaining or grievance processing of a grievance, or for disobeying policy or a direct order while processing a grievance. *See, e.g., AFSCME v. Dept of Corrections*, Case No. 150-07, Hearing Examiner Report (Feb. 6, 2008); *see also Clara Barton Terrace Convalescent Center*, 225 NLRB 1028, 1034 (1976) (a steward may be disciplined for excessive or “opprobrious” conduct in processing a grievance, if “the excess is extraordinary, obnoxious, wholly unjustified, and departs from the res gestae of the grievance procedure”); *San Angelo*, 251 NLRB at 259, *citing Atlantic Steel Company*, 245 NLRB No. 107 (1979) (a steward loses protection for “opprobrious conduct,” meaning conduct that is extreme, occurs outside the context of grievance processing, occurs in a location where grievances are not usually processed, and/or is not provoked by any unfair labor practices on the employer’s part); and *United States Postal Service and National Assoc. of Letter Carriers, Sunshine Branch 504 (Sunshine Branch)*, 350 NLRB 3, 5 (2007) (a steward may be disciplined for “clearly insubordinate

conduct,” such as disobeying a direct order, provided that the employer takes the same action “that it would have taken toward any other employee committing similar insubordinate acts”).

Here, Dr. Rivas’ undisputed emails were not made as a part of the collective bargaining process and were objectively retaliatory and opprobrious in nature. Recall, he told management that his colleagues who are members of the Faculty Senate and Faculty association are like thugs, use language like white supremacist’s, etc. and he continued to agitate and retaliate after being warned to stop. Nor, under those circumstances, can he be said to have been “provoked” or acting “in the heat of the moment”. Accordingly, his activity does not meet the *Atlantic Steel* factors, or other standards observed in Dr. Rivas’ legal authorities. See also *Intertape Polymer* at 13.

(b) *Wright Line* Analysis

The Hearing Examiner has found that none of the emails on which discipline was based constituted concerted, protected activity.

Nonetheless, the Hearing Examiner determines additionally and/or in the alternative that, even if we were to assume that Dr. Rivas was engaged in activity protected under the PEBA – or if the Board or other reviewing authority were to disagree with the undersigned about that – Dr. Rivas still fails to identify the existence of material facts that could meet his burden under *Wright Line*.

Recall that to make a *prima facie* case, in addition to establishing employer knowledge of protected activity, a Complainant must showing employer animus to that protected activity and a causal connection between the alleged animus and the adverse employment action. See, e.g., *Wright Line*; and *Peñasco*. Here, Dr. Rivas proffers no evidence of either animus or nexus, although it is evident that he assumes and speculates as much. In particular, timing alone is insufficient to support an inference of animus or nexus in a case like this one, where complaints and reactions have been reciprocal and ongoing for quite some time.

If a Complainant fails to make a *prima facie* case for violation of § 19(B), “[t]he burden does not shift to the employer to establish that the same action would have taken place even in the absence of the protected conduct.” *Goodenough* at 16; citing 11.21.1.22(B) NMAC (“[i]n a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence”); and *Duke City Lumber Co. v. N.M. Envtl. Improvement Bd.*, 1980-NMCA-160, ¶ 7, 95 N.M. 401 (“[o]nce the party who bears the burden of proof has made a *prima facie* showing the burden of going forward with the evidence shifts to the opposing party” (citation omitted)).

However, even if we were to assume or over-generously infer all the elements of a *prima facie* case, the undisputed evidence submitted by the Complainant still supports and fails to rebut the University's legitimate business justification.

That justification, recall, is Dr. Rivas' alleged misconduct in violating the global email policy and his proven misconduct in engaging in retaliatory and harassing communications with other members of the Union Executive Committee and/or the Faculty Senate in an attempt to get the Union to reconsider its 2024 position about the T/TT Proposal. The undersigned has determined that the global email policy violation of March 27, 2025 cannot be substantiated because Dr. Rivas lacked notice of the policy. Nonetheless, she has also determined that the April 25 and October 8, 2025 emails do provide legitimate business justification for the charges of retaliation and unprofessional communications/conduct.

To counter that, Dr. Rivas must point to evidence that would show that, "but for" his protected active (assumed here for the sake of argument), the University would not have issued him two LORs or taken other adverse employment action. However, he proffers no evidence or argument that excessive discipline was selected in retaliation for Dr. Rivas engaging in protected activity. There is also no evidence that similarly situated employees engaged in the same conduct received less discipline. Additionally, as already discussed and determined, this was not concerted activity. This was instead grousing over leadership, personalities, internal Union matters, the terms of the CBA, and the negotiated bargaining process. That is still a right, but only if not communicated in a harassing fashion or contrary to the CBA or University policies.

Nor is there any evidence that the initial investigation was biased or inadequate, as Dr. Rivas avers. Investigation was warranted based upon the allegations. Additionally, the undersigned reviewed the Investigative Report and did not find it to be facially biased or fatally flawed.

One witness interviewed thought Dr. Rivas was the innocent party and that either President Jenkins or Chair Lindline were the aggressors or "problems", over the years. (See Appendix A, Gonzales-Walker interview.) The Investigator obviously discredited that witness' evidence and he should have stated his reasons or doing so, to be thorough. Nonetheless, any error was harmless given that reasons for discounting it are apparent on the face of the document – it was the sole piece of evidence in Dr. Rivas' favor besides his own unreliable and unpersuasive representations; and that witness was contradicted by a witness with less evidence of bias or self-interest (since the latter witness had not sought to file a complaint against Dr. Rivas). Additionally, it is axiomatic that the "fair and adequate investigation" element does not require an employee to interview *all* possible witnesses or the witnesses identified by the employee if not relevant or necessary. See, e.g., Brand and Biren, *Discipline and Discharge in Arbitration* at 2-14 – 2-21 (investigations

should be “careful and unbiased” and “reasonable, meaning adequate to demonstrate misconduct without ignoring relevant evidence, but we “do not require that the investigation be exhaustive” or that all witnesses be interviewed).

Here, the argument Dr. Rivas proffers against the Investigative Report and the University’s determination of misconduct on October 8, 2025 are emblematic of his entire case: they are entirely conclusory in nature. Specifically, Dr. Rivas complains the Investigative Report “treats subjective feelings as established facts”; “uncritically accepts Jenkins’ and Lindline’s Statements”; “mischaracterizes” Dr. Rivas’ October 8, 2025 email; ; “ignores exculpatory evidence”; “misapplies retaliation law” and “misapplies discrimination law”; “fails to apply the required first amendment analysis” of *Pickering* and *Garcetti*; “ignores comparator evidence and double standards”; “contains internal contradictions”; “contains statements that support [Dr. Rivas’] claims”, in particular the interview statements of Former Provost Gonzales-Walker, who expressed that Lindline and Jenkins were more the problem, and that Dr. Rivas was their victim, but the Investigator “ignored” that information; and “demonstrates pretext, bias, and procedural irregularities.” (Rivas Rebuttal to Investigative Reported, filed 2-27-26.)

As indicated above, the undersigned is not entertaining the Complainant’s First Amendment claims, but all of Dr. Rivas’ complaints about the investigation are as conclusory his other complaints and allegations. As such, they are inadequate to meet his burden to demonstrate the existence of genuine disputes of material fact, for which evidence exists and could be produced at a hearing on the merits.

The undersigned takes care here to note that investigating and/or disciplining an employee for complaining to their co-workers and/or elected bargaining representatives, for the purpose of inciting their interest, support, involvement, etc. in a proposed extension or amendment of existing terms and conditions could state a claim under PEBA.

Here, however, Dr. Rivas’ communications were harassing and retaliatory, and contrary to the CBA; and his retaliatory and/or discriminatory email of October 8, 2025²² came after prior discipline and warning against such. As such, even if he were afforded an evidentiary hearing, Dr. Rivas would not be able to produce any reliable, admissible evince that, “but for” protected activity, he would not have been disciplined. Instead, the undisputed evidence provided by Dr.

²² The record before the undersigned shows, in her judgment, retaliation rather than discriminatory conduct by Dr. Rivas in his October 8, 2025 email, just as in his March and/or April emails. The Investigative Report, in contrast, concluded retaliation was not substantiated but discriminatory conduct was. This is not material, however, because it is sufficient under the *Wright Line* “but for” analysis that there as a legitimate justification. This, in the undersigned’s interpretation, includes cases where the facts support the chosen discipline, even if reasonable people could disagree over the charge settled upon.

Rivas himself supports Dr. Rivas' investigation and discipline, even if Dr. Rivas himself disagrees. (CBA Art. 16.1 – “[t]he University ...has the right and obligation to investigate good faith allegations of faculty misconduct”; *compare AFSCME Local 2499 v. Bernalillo County*, PELRB Case No. 106-25, H.E. Report dated 9/22/25 (Huchmala) (noting that “[t]he question is whether the investigation is *because of* his union activity, not whether it is *about* his union activity”) (emphasis in original).

Nor does Dr. Rivas' dispute the allegations against him with concrete, specific allegations, or levy concrete, specific allegations against his named nemeses. Instead, he bases his conclusory claims of retaliation on immaterial fact, or speculation as observed by the Provost in the Formal Communication of Investigation Results. (Rivas Ex. 2.)

Additionally, even assuming the emails for which he was disciplined were concerted activity or Union-related activity, the investigations and eventual reprimands were warranted because they were initiated when one or more recipients complained because they found Dr. Rivas' emails to be retaliatory and/or harassing. In some cases, not all the charges were ultimately sustained, but his colleagues have the right to be free from and report harassing workplace communications, and the University has an obligation to investigate such claims of misconduct. (CBA, Art. 16.1.) Moreover, these rights apply even where the Complainants are Union officials or representatives and the speaker is seeking Union representation in an investigation or disciplinary matter.

Most notably, the discipline that was sustained was supported by creditable and undisputed evidence – in fact, almost all of it is Dr. Rivas' own words. This required Dr. Rivas to proffer evidence that his disciplines were instead pretextual. He proffers no proof of that, such as that the others committing similar offenses have either not been disciplined, or not as seriously; or that case against him was implausible, incoherent, inconsistent, etc.

Despite the many flaws in the University's case citations, it is right on the basic governing law that the Complainant must show he would not have been disciplined “but for” protected activity, and Dr. Rivas cannot show that here with existing, identifiable, proffered evidence. *See Wright Line, etc., supra*. The University is also correct that the PEBA and PELRB do not address matters of mere internal governance or internal Union affairs.

Nor does Dr. Rivas make a persuasive claim for compelling the production of additional documents that might save his case, as a matter of law. First, discovery is not a right under the PEBA, PELRB rules, or even administrative law generally. Second, the Investigative Report ultimately was provided and it does not reveal indicia of bias or inadequacy such as to support compelling all the other documents and emails that Dr. Rivas also seeks. Third, the University is

not required to produce internal work-product material not otherwise available under IPRA. Fourth, the request for emails is impermissibly broad and vague, and does not appear calculated to the discovery of material information. Under the totality of the undisputed record, the face of the Motion to Compel indicates that it is filed for vexatious or harassing purposes. Additionally, because of all the legal deficiencies associated with that claim (described above), the emails sought would still not be sufficient to withstand the pending dispositive Motions.

Lastly, Dr. Rivas' allegations concerning actions occurring after he filed his PPC are similarly flawed. Specifically, he offers and purports to have no evidence in support of these allegations, which are again conclusory in nature and based on speculation and timing. Ultimately, the amended PPC was filed, for instance. Additionally, timing alone is never sufficient and it is even less material here, where Dr. Rivas has been engaged in a continuing the course of oppositional, harassing/vexatious, and retaliatory conduct for which he was previously reprimanded.

3) Conclusion

Because there are no genuine disputes of material fact as to either the unprotected and/or un-concerted nature of the emails at issue, or the legitimacy of the University's justification for imposing the discipline upon Dr. Rivas, the University is also entitled to judgment as a matter of law; and the PPC against it is also hereby DISMISSED.

C. Motion to Compel is Denied as Moot or Immaterial/Unduly Burdensome

Lastly, we address the Complainant's Motion to Compel.

As already determined, the request for the Investigative Report is DENIED as moot, because that Report had already been provided before briefing on the Motion concluded.

Now, the remainder of the Motion is also DENIED. It is denied as moot in the first instance because the PPC is now dismissed in its entirety.

Additionally and/or in the alternative, Dr. Rivas' Motion to Compel is denied as immaterial and/or unduly burdensome on its own merits. First, Dr. Rivas offers no persuasive basis to compel internal discussions work- and work-product about an investigation. Second, identifying who sent the April 25, 2025 email to management would be insufficient to resolve the other issues with that claim as discussed above. (Among other these include, recall, that the communication was not regarding representation or concerted activity, and that if a Union Official recipient believed the

email violated University standards, they had a right to report it, as a matter of public policy.) Third, the removal of certain highlighting by Dr. Rivas from one of his emails was immaterial because the presence or lack of highlight did not materially alter or affect the email's meaning or consequences.

The undersigned acknowledges Dr. Rivas' email of February 10, 2026, in which he renews his arguments in favor of compelling production, and requests reconsideration of the undersigned's February 5, 2026 decision to defer her ruling on the Motion to Compel. He argues therein that he "need[s] that information to better make [his] case for [his] defense" and that his case "will be lacking" if the Motion to Compel is not granted before final disposition. However, the undersigned is not persuaded, for the reasons already given.

Dr. Rivas has expended much time, energy and resources on his case but at the end of the day all his allegations are conclusory, immaterial, and/or based on unprovable speculation. As discussed above, even if members of the Faculty Association Executive Committee reported or disclosed Dr. Rivas' harassing conduct that they witnessed as he was seeking their representation, that would not insulate him from their reporting their good faith beliefs of misconduct, or the University investigating their complaints against Dr. Rivas. Notably, Dr. Rivas' communications that are in the record are often offensive, aggressive, hectoring, and/or bullying in tone, and it appears to be entirely intentional although it is certainly possible that he is not fully aware of his effect and presentation. Importantly, the remaining documents sought would not rebut the legitimacy of the most severe counts or charges against Dr. Rivas; or otherwise support a creditable defense to the charges against him.

As such, Dr. Rivas' discovery requests are unnecessary, irrelevant, duplicative, and/or represent an overbroad fishing expedition. Accordingly, Dr. Rivas' Motion to Compel is hereby DENIED as immaterial and an abuse of process of process.

FINAL ORDER

For the foregoing reasons, the Complainant's Motion for Partial Summary Judgment is hereby DENIED; the Union's Motion to Dismiss is hereby GRANTED; the University's Motion to Dismiss is hereby GRANTED; and Complainant's Motion to Compel is hereby DENIED as moot and/or immaterial. The undersigned additionally finds, concludes and recommends that the PPC should hereby be DISMISSED.

Accordingly, the previously issued Scheduling Order and Notice of Hearing in this matter is hereby VACATED.

This is a final order and Board Review may be requested pursuant to NMSA 11.21.3.19, which provides as follows:

- A. 11.21.3.19 APPEAL TO BOARD OF HEARING EXAMINER'S RECOMMENDATION: A. Any party aggrieved by the hearing officer's recommendation may obtain board review by filing with the board and serving on the other parties a notice of appeal within 10 days following service of the hearing officer's report. The notice of appeal shall specify which findings, conclusions, or recommendations to which exception is taken and shall identify the specific evidence presented or offered at the hearing that supports each exception.
- B. B. Any other party may file a response to notice of appeal within 10 days of service of the notice of appeal.
- C. The board may determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The board shall decide the appeal and issue its decision within 60 days of the notice of appeal. The board may issue a decision adopting, modifying, or reversing the hearing examiner's recommendations or taking other appropriate action. The board may incorporate all or part of the hearing examiner's report in its decision.
- D. If notice of appeal is not filed within the time set out in Subsection A of 11.21.3.19 NMAC, the hearing examiner's report and recommended decision shall be transmitted immediately to the board which may pro forma adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent.

Id.; see also NMAC 11.21.1.8 (regarding computation of time in business days).

Issued this 20th day of April, 2026

A handwritten signature in blue ink, appearing to read 'P. Vaile', is written over a horizontal line.

Pilar Vaile
Exec. Dir. and Hearing Examiner

APPENDIX A

EXHIBITS AND SUMMARY OF INVESTIGATIVE INTERVIEWS²³

Exhibits

1. Rivas Ex. 1/NMHU Letter of Reprimand (aka “Attachment 7”), September 15, 2025 Letter of Reprimand for violation of the Global Email Policy; retaliation by way of April 25, 2025 email to Faculty
2. Rivas Ex. 2 (aka “Attachment 6”), September 11, 2025 Formal Communication of Investigation Results
3. Rivas Ex. 3 (aka “Attachment 5”) – April 25, 2025 email Notice of Administrative Leave With Pay pending investigation
4. Rivas Ex. 4/NMHU Ex. 4 (aka “Ex. F”) – April 25, 2025 Rivas email to some of the Faculty Association’s (Union’s) Executive Committee regarding his receipt of the attached Notice of Article 16 Investigation, and regarding his Faculty Affairs Committee T/TT Proposal (“T/TT Proposal”)
5. Rivas Ex.5/NMHU Ex. 6 – April 14, 2025 Kempner email to Rivas, Notice of Article 16 Investigation
6. Rivas Ex. 6/NMHU Ex. 2 – April 3, 2025 Kempner email to Rivas, “Global Policy Reminder and Directive to Send No More E-mails on FA Proposal” [e.g. T/TT Proposal], reiterating March 31, 2025 or thereabouts Directive from Provost Kempner and excerpt of NMHU Global Email Policy
7. Rivas Ex. 7 – March 27-28, 2025 Rivas global or mass emails and responses regarding the T/TT Proposal
8. Rivas Ex. 8 – February 5-7, 2025 emails (attached to Rivas’ March 28, 2025 email) of Rivas submitting the T/TT Proposal to the Dr. Jennifer Lindline (Faculty Senate Chair) and Kathleen Gray (Secretary of the FSEC according to Rivas), stating the Union could vote on it after it was first voted on through “faculty governance”
9. Rivas Ex. 9 – August 24, 2024 Rivas email (also attached to Rivas’ March 28, 2025 email), to some or all members of the Faculty Senate Executive Committee, stating the Faculty Affair Committee’s intent to “bypass[] the faculty Senate, should the faculty Senate insist on concealing it from the faculty”

²³ For Complainant’s exhibits, the undersigned has numbered and in some cases perhaps re-numbered them for consistency; and she cross-referenced them to University exhibits where relevant. Dr. Rivas’ documents attached to his Response to NMHU and titled “Exhibits” labeled A-I are argument so are treated as such. *See* Note 1, *supra*. (The exhibits are out of chronological sequence because some documents were received after the drafting of this Order had commenced.)

10. Rivas Ex. 10 – January 22-24, 2024 emails (also attached to Rivas’ March 28, 2025 email), between Rivas and Dr. Lauren Fath (then Faculty Senate Chair) and Dr. Kathy Jenkins (Union President), that the T/TT Proposal is a matter of parental leave, which is a term and condition of employment, so addressed under the collective bargaining agreement and through the Faculty Association’s General Meeting
11. Rivas Ex. 11/NMHU Ex. 3 – CBA
12. Rivas Ex. 12 – November 13, 2025 Letter of Written Reprimand and Related Document
 - a. 12-a: LOR, signature time stamp of 9:50:02;
 - b. 12-b: Letter from Josh Hanna, Employee Relations Specialist, with the subject of “Response to Missed Disciplinary Meeting and Leave Claim, signature time stamp of 9:9:5733;
 - c. 12-c: Last Chance Agreement, signature time stamp of 9:56:15; and
 - d. 12-d: Faculty Professional Development and Corrective Action Plan, signature time stamp of 9:55:36.
13. Rivas Ex. 13 (a.k.a. “Exhibit G”) – November 12, 2025 letter notifying Complainant of results of investigation into his October 2025 conduct and/or statements
14. Rivas Ex. 14 – April 14-15, 2025 emails between Dr. Rivas and Dr. Neil Woolf, President of NMHU, and Dean Todd Lekan; includes link to IT Policy and global email instructions
15. Rivas Ex. 15 – NMHU Personnel Policies and Procedures Manual (rev. 12/2/16)
16. Rivas. Ex. 16 – NMHU IT Policy
17. Rivas Ex. 17 – NMHU Formal Investigative Report (undated; no objection raised)
18. Rivas Ex. 18 (aka Ex. A to Resp. to Un.) – April 25, 2025 emails between Daniel Chadborn, Local Vice-President and Rivas, in response to Rivas/NMHU Ex. 4, suggesting he work with NEA or AFT staff representatives “as they work outside of the current university structure and are better suited to advise on this matter”
19. Rivas Ex. 19 (aka Ex. C to Resp. to Un.) – September 24 - October 20, 2025 emails, including email from FA President Jenkins to Provost Daniel Brown, forwarding Rivas’s October 8, 2025 email inquiring about Dr. Lindline serving and alleged disparate treatment of “white” versus “brown” people
20. Rivas Ex. 20 (aka Ex. B to Resp. to Un.) – October 27 - November 6, 2025 emails, including an October email from Rivas to a member of the FAEC (Jess Goldberg) saying “I know a lot of people of afraid of the FA leadership”, and a November email from Pres. Jenkins forwarding that Rivas-Goldberg email to the NMHU ER Specialist, saying “[i]t is clearly a violation of the no contact order...It is retaliation. It is trying to undermine my leadership as president of the association...”, among other things
21. Union Ex. 1 – Jenkins Affidavit

Summary of Investigative Interviews

Below is the full text of the Investigative Interviews, as summarized by HR Specialist and Investigator Hann. (*Id.* at pp. 4-7.)

It is provided here because material to the undersigned's ultimate determination that this is a he-said-she-said case for which no additional material evidence is available that could meet the Complainant's burden of proof, non-duplicative, and submitted into the record by the Complainant.

Petronis Interview

On October 1, 2025, Hanna interviewed Petronis in-person. Petronis stated that he never requested investigation and didn't understand how his complaint against Rivas in March of 2025 became part of a formal investigation. Petronis stated that he didn't know whose idea it was to lump all the complaints against Rivas into one matter. Petronis stated that Rivas's conduct has been problematic for fifteen years and it is due to Rivas's inability to "let go." Petronis described a series of past issues with Rivas that were similar to those involved in the 2025 investigation.

Petronis stated that he is aware of what Rivas is saying in the most recent emails. Specifically, that Rivas is describing the conflict as "brown and white." Petronis stated that Rivas's emails are structured to lay the foundation for a discrimination claim, "they set up for a hostile work environment." Petronis expressed shock that Rivas is profiling people based on the color of their skin. Petronis stated that in the specific email, Rivas is "silencing these white people." Petronis stated that Rivas seems to feel that everyone is out to get him for the color of skin. Petronis stated that Rivas "should be above that." Petronis expressed that he was shocked that Rivas would say this on paper about his colleagues. Finally, Petronis said that Rivas seems to have a problem with female faculty on the Faculty Senate.

Jenkins Interview

On October 9, 2025, Hanna interviewed Jenkins via Zoom. Jenkins also stated that the conflicts with Rivas have gone back over ten years. Jenkins stated that it is "always about me being white and it is offensive." Jenkins described that the chair vote of Rivas was marred by nepotism because Rivas's wife, Professor of Biology Dr. Sarah Corey-Rivas ("Corey-Rivas"), voted for him when she should have recused herself.

Jenkins denied that white people have possessed all power at NMHU. Jenkins pointed out that the Executive Committee of the Faculty Senate consisted of: Dr. Jennifer Lindline ("Lindline"), Dr. Gloria Gadsden ("Gadsden"), Professor of Marketing Dr. Gerardo Moreira ("Moreira") and Dr. Gil Gallegos ("Gallegos"). Jenkins noted that "3/5th of the committee

“was not white.” Jenkins stated that for Rivas to make that blanket comment about “white people in power” was inaccurate.

Jenkins stated that she is an adult and expects Rivas to be an adult. Jenkins stated Rivas’s use of the phrase white folk” was offensive and brought to mind images of slavery. Jenkins asserted that Rivas’s email was meant to suggest that she and other white people enslaving him. Jenkins stated, “how dare he say something like that.”

Jenkins voiced that Rivas’s emails are retaliatory. Jenkins expressed that it is concerning that Rivas’s accusations may harm professional reputations. Jenkins said that it was problematic that Rivas is sending these emails on the university’s email system. Jenkins also expressed that she is scared because she knows Lindline’s opinion is that Rivas is fixated on Lindline. Jenkins made a direct request for the administration to intervene and stated, “I am at your mercy.” Jenkins also described witnessing that Lindline was in tears and shaking due to fear brought on by Rivas’s conduct. Jenkins stated that she is aware that Lindline believes that Rivas is fixated on her.

Jenkins noted that Rivas did not object to Lindline’s election at the time. Jenkins explained that Rivas would have had a certain number of the days to make a complaint about term limits at the time of the elections. Jenkins directed Hanna to the Faculty Senate minutes to review the circumstances. Jenkins stated that Lindline was unanimously voted as Faculty Senate Chair and Rivas’s department was represented.

Jenkins denied that Lindline had served in excess of maximum allowed terms in the Faculty Senate and this had been the Faculty Senate’s practice. Jenkins stated that it was determined that Lindline’s term started over when the Geology Department split from Forestry Department.

Lindline Interview

On October 20, 2025, Hanna interviewed Lindline in-person. Gadsden was also present during the interview as a support person. Lindline stated that her conflicts with Rivas have been going on for a period of time. Lindline stated that there will usually be “a little bit of Human Resources intervention” into Rivas’s conduct.

Lindline stated that her complaint to Provost Brown and Lovato about Rivas’s email was his words were inflammatory and “were beyond racism.” Lindline stated she wants to know when “enough is enough.” Lindline stated that this is not “sparring” through email and “this is way more than that.”

Lindline stated that she thought that NMHU did not tolerate harassment or bullying. Lindline stated that she wants the university to do something about Rivas’s conduct. Lindline stated that she has changed where she parks and how she comes to campus due to her fear of Rivas. Lindline stated that “Rivas scares her and hurts her.”

Lindline stated that “this is a continuation and retaliation and hyper fixation” on her by Rivas. Lindline added that “it is libel, slander, and racist remarks.” Lindline asserted that Rivas’s intention is to retaliate against her but it is “cloaked” in it being a Faculty Senate issue. Lindline stated that it that Rivas targeted her for a reason when making the complaint.

Gonzales-Walker Interview

On October 28, 2025, Hanna interviewed Gonzales-Walker via Zoom. Gonzales-Walker had extensive knowledge of issues between Rivas, Petronis, Gadsden, Jenkins, and Lindline. Gonzales-Walker served as Provost from approximately 2017 through February of 2025. Gonzales-Walker stated that on the day that she started at NMHU that there was already a grievance filed by Jenkins against Rivas for her to address. Gonzales-Walker stated that Jenkins has filed many grievances against Rivas and many other people.

Gonzales-Walker stated that she had spoken to a lawyer who felt that there was prejudice and a pattern of discrimination by Jenkins. Gonzales-Walker recalled an incident in which Jenkins called an African American employee an “underling.” Gonzales-Walker stated that she decided to not move forward with the complaint because NMHU “would have been in the papers.”

Gonzales-Walker stated that Jenkins has a history of “going at faculty members” and “digging dirt.” Gonzales-Walker stated that on two different occasions that Jenkins searched the internet for negative information about faculty members and used it as a basis for complaints to Gonzales-Walker. Gonzales-Walker stated that in each case that Jenkins wanted the faculty members terminated from employment based on the information that she gathered, which did not pertain to their current employment.

Gonzales-Walker described Rivas as “very student-centered” and concerned about equity. Gonzales-Walker opined that there has been many misinterpretations of policy by leadership in the Faculty Senate “which is sad.” Gonzales-Walker stated that both Jenkins and Rivas are very talented professionals.

Gonzales-Walker stated that Petronis and Jenkins are amongst the most egregious faculty members for engaging in retaliation. Gonzales-Walker expressed that Jenkins structures her conduct carefully so that she is protected through the union and the Faculty Collective Bargaining Agreement. Gonzales-Walker disagreed Rivas has ever engaged in retaliation but will “escalate his point.” Gonzales-Walker described Rivas is a kind soul, and he “will escalate a conversation.” Gonzales-Walker stated that she would ignore all his “grumbling” and pay attention to the actions that Rivas is seeking.

Rivas Interview

Rivas asserted that starting in Fall of 2025, that Lindline surpassed the nine-year maximum term limit for service in the Faculty Senate. Rivas stated that he did not know the process

for objecting and reported his concerns to the the Faculty Senate and to the administration. Rivas articulated that he was “charged” for violating the Faculty Handbook in a prior investigation. Rivas stated that Lindline and Jenkins filed allegations against him to the administration, so he assumed that was the correct process for him to file his own complaint.

Rivas said that Lindline has taken a leadership position in the Faculty Senate but her term has expired. Rivas characterized it as a serious violation of the Faculty Handbook. Rivas explained that he reported the violation to Human Resources and everyone that he could report it to. Rivas stated that he assumed that he should follow the same procedure that he was subjected to, referring to the prior investigation. Rivas confirmed that he did send an email to Gray bringing up the issue that Lindline was serving in the Faculty Senate since 2016.

Hanna showed Rivas the email that he sent in February of 2025, where he is asking for a list of how long each member has been serving in the Faculty Senate. Rivas stated that he did not make a complaint at that time because Lindline was still in her ninth year in the Faculty Senate. Rivas stated that the term limits of various committees and the Faculty Senate are not taken seriously. Rivas stated that the fact that someone attacks him “doesn’t give them immunity.”

Rivas denied engaging in retaliation and was raising a legitimate policy violation. Rivas said that he followed the Faculty Handbook and that he was informed that his concern will be discussed. Rivas stated that when he was elected for chair of Biology and Lindline that the Faculty Handbook procedures had to be followed. Rivas explained that his wife, Corey-Rivas, had voted for him the two prior chair elections and he didn’t know that was improper. Rivas stated that members of the Faculty Senate were adamant that the Faculty Handbook had to be followed in his chair election.

Rivas denied that his email was racist rather Rivas was denouncing racism. Rivas stated that Dean Lekan punished him for violating the Faculty Handbook following the prior investigation. Rivas explained that he was accused of circumventing faculty governance and reprimanded. Rivas reiterated that he is treated differently.

Rivas stated that members of the Faculty Senate, “Are are trying to shut me up and that they know they are violating the handbook.” Rivas stated that this is the third time that they have used policies as a weapon. Rivas stated that everyone is afraid of Jenkins, commenting “look at what they do to attack you.” Rivas expressed that his Faculty Senate Representative doesn’t want to upset Jenkins.

Rivas stated that Jenkins is very feared and that should concern Human Resources. Rivas stated that his speech cannot be retaliation because it is “protected speech.” Rivas stated that Jenkins and Lindline allegations against him are retaliation, and they are using his words as a weapon. Rivas wanted Jenkins and Lindline investigated for retaliation by making these claims against him. Rivas stated that he fears about what may happen to him with the conclusion of this investigation.

APPENDIX B

STATEMENT OF PROFESSIONAL MISCONDUCT OBSERVED AND/OR LEARNED OF IN THE COURSE OF PROCESSING NM-PELRB CASE NO. 133-25, RIVAS v. NMHU ET AL

The Hearing Examiner in this matter (Pilar Vaile) is a licensed attorney in New Mexico, although on Inactive Status.

Upon review of the pleadings submitted by Counsel for Respondent New Mexico Highlands University, Mr. Doajo David Hicks, the undersigned learned of facts and evidence that Mr. Hicks has engaged in misconduct that raises substantial questions as to his honesty, trustworthiness, and fitness as a lawyer, including the unauthorized practice of law, and lack of candor and competence in a legal adjudication.

As such, the undersigned is required under Rule 16-803 of New Mexico Rules of Professional Conduct to report the conduct/evidence at issue to the New Mexico Disciplinary Board.²⁴ *See* New Mexico Rules of Professional Conduct, Rule 16-803. Accordingly, she does so by way of sharing this Report and Recommendation, Appendix B herein of which details or describes the observed or discovered misconduct. Additionally, the undersigned also orders a cessation or ban of future appearances of Mr. Hicks as legal counsel before the PELRB and undersigned Hearing Examiner until his authority to practice law in New Mexico is confirmed.

The bases for this ban and reporting are as follows.

First, Mr. Hicks is holding himself out as an attorney licensed to practice law in New Mexico to the extent he is holding himself out as “General Counsel, Counsel for Respondent” in the multiple pleadings filed, and on the New Mexico Highlands University website. *See* Pleadings; and <https://www.nmhu.edu/new-mexico-highlands-university-welcomes-inaugural-general-counsel-doajo-hicks/> (last accessed 2/6/26). However, he is not listed in the New Mexico directory of licensed attorneys.

²⁴ In the alternative, the misconduct identified herein may be reported, and the undersigned exercises this discretion to protect the integrity of the forum.

Find a Lawyer ▸ Online Bar Directory

Find a Lawyer - 9 Match(es)

Name	Status	Phone	County	Admission Date
Andrea M. Hicks	Active Attorney	(949) 622-2419	Orange	3/1/2018
Brendan D. Hicks	Inactive Attorney	(503) 480-0521	Marion	
Ian T. Hicks	Former Attorney	(720) 215-1458	Denver	4/27/2012
James B. Hicks III	Inactive Attorney	(325) 674-1261	Taylor	
Janetta B. Hicks	Withdrawn			9/29/1989
Koury L. Hicks	Inactive Attorney	(919) 286-1695	Durham	
Larry W. Hicks	Inactive Attorney	(915) 204-3030	Bell	
Ryan M. Hicks	Active Attorney	(720) 795-8478	Douglas	8/16/2023
Virginia Louise Hicks	Active Attorney	(575) 894-9033	Sierra	4/27/2012

Nor does he appear to be presently authorized to practice in another U.S. jurisdiction. *See* NMRA, Rule 16-505(E)-(F), unauthorized practice of law (temporary or in-house counsel roles allowed if authorized to practice law elsewhere).

His LinkedIn bio represents that he is or has been “General Counsel” of two (2) entities other than NMHU, one in Arizona (Strong Mind) and one in California (California Lutheran University). However, he is not currently listed among California Attorneys.²⁵ *See* <https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=d+hicks> (last accessed 3-5-26). Additionally, his Arizona law license is presently suspended due to MCLE issues. *See* <https://www.azbar.org/for-legal-professionals/practice-tools-management/member-directory/> (last accessed 3-5-26, 4-16-26).

Screenshots of the foregoing Internet information follows:

²⁵ Although I am also licensed in California (inactive), I do not read that State’s rules as requiring reporting because I do not know whether Mr. Hicks ever “...maintained a resident office or other systematic or continuous presence in California for the practice of law”. *See* California Rules of Professional Conduct, Rule 5.5 and Rule 8.3.



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Doajo D. Hicks · 2nd
 General Counsel
 Las Vegas, New Mexico, United States · [Contact info](#)
 500+ connections
 Robert A. is a mutual connection

 New Mexico Highlands University

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Doajo D. Hicks
 General Counsel

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Experience


General Counsel
 New Mexico Highlands University · Full-time
 Sep 2025 - Present · 7 mos


Assistant General Counsel
 California Lutheran University · Full-time
 Jun 2025 - Present · 10 mos


Senior Vice President & General Counsel
 StrongMind · Full-time
 Oct 2022 - Jun 2025 · 2 yrs 9 mos
 Arizona, United States
 Federal & State Regulatory Compliance

Your search for *d hicks* returned 12 results.

Click any column heading to sort on that column. Hold shift and click multiple headings to sort on multiple columns.

Name	Status	Number	City	Admission Date
Hicks, Dwight Glenn	Deceased	52468	Hemet	June 1972
Hicks, David Keith	Active	53750	Dunsmuir	December 1972
Hicks, Donald Gene	Deceased	95005	Santa Clara	December 1980
Hicks, Donald L.	Inactive	114173	Tucson	August 1984
Hicks, Delanee Wijesekera	Active	237084	Los Angeles	June 2005
Hicks, Jonathan Devon	Active	236981	Los Gatos	June 2005
Hicks, Thomas Dana	Active	238545	San Francisco	December 2005
Hicks, Danielle Christine	Active	264661	San Diego	November 2009
Hicks, Tanya Denise	Inactive	266499		December 2009
Hicks, Douglas Lowell	Active	270480	San Diego	June 2010
Hicks, Diamond M.	Active	287300	Pasadena	December 2012
Hicks, DJon Bryce	Active	361291	San Francisco	May 2025

Showing 1 to 12 of 12 entries

Previous 1 Next

See <https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=d+hicks>
(last accessed 3-5-26).



Doajo Hicks

Suspended: MCLE Related Issue

View Profile

Strongmind

2501 N ARIZONA AVE

CHANDLER, AZ 85225-1385

doajoaz@msn.com

Showing 1 through 1 of 1 record(s)

See <https://www.azbar.org/for-legal-professionals/practice-tools-management/member-directory/> (last accessed 3-5-26, 4-16-26).

Second, the undersigned additionally reports Mr. Hicks to the New Mexico Disciplinary Board for significant and serious violations observed regarding the duties of candor and competence, in the event he is authorized to practice law in New Mexico after all. See NMRA, Rule 16-803, mandatory reporting duty; Rule 16-303, duty of candor; Rule 16-101, duty of competence.

Specifically, Mr. Hicks filed a post-hearing brief in which case many of the legal citations were fabricated and/or completely irrelevant and off-point to issue for which they were proffered. This was not mere zealous advocacy or a questionable stretching of the relevance of dicta.

The undersigned was first alerted to the issue when she observed that Mr. Hicks had cited a case for the proposition that New Mexico courts routinely resolve privilege disputes through procedures such as in camera review where appropriate, *ACLU of N.M. v. Duran*, 2016-NMCA-063, but that case instead concerned the responsiveness of documents, “success”, and attorneys fees under NM IPRA.

One mis-citation or even an overzealous “stretch” would not necessarily give pause. However, a clear pattern emerged. Instead of citing authorities well known to the PELRB and the instant Hearing Examiner, Mr. Hicks cited many new ones. Once those cases were looked up, most citations were observed to be fabricated or completely unrelated to the issue offered for, evidencing that they were false and therefore hallucinated or otherwise “made-up”, either by Mr. Hicks directly or through other means.

Specifically, at least eight other cases were cited across the University’s pleadings do not address the issue they were offered for: *State v. Wilson*, 248 P.3d 315 (N.M. 2010) (regarding the *corpus delecti* rule, not privilege); and *Henry v. Gauman*, 536 P.3d 498 (N.M. Ct. App. 2023) (about IPRA and exempt documents but not speaking to any of the principles Respondent cites it for); *Self v. United Parcel Serv., Inc.*, 109 N.M. 676, 680 (Ct. App. 1990) (offered to support claim that “questions of intent and motive generally preclude summary judgment”, but it was review of a dismissal on grounds of federal preemption and did not concern intent or motive); *Silva v. Lovelace Health Sys., Inc.*, 131 N.M. 326, 335, 35 P.3d 1252, 1261 (2001) (offered as “applying mixed-motive analysis in employment discrimination cases, but the case concerned intervening causation in a wrongful death case); *Envtl. Improvement Div. v. Rio Grande Chapter of Sierra Club*, 2006-NMSC-034, 13 (cited for the Rule 12(b)(6) standard but the citation is to *Cobb v. N.M. State Canvassing Board* and did not address that standard); *Fanning v. Brown*, 2004-NMSC-030 (cited for the claim that NM has adopted the federal Rule 12(b)(6) plausibility standard, but citation is actually to *State v. Alvarez-Lopez*, while *Madrid v. Chama*, 2012-NMCA-071, the NM Court of Appeals expressly rejected that standard in favor of the notice pleading standard, which Counsel correctly noted elsewhere in the same document); *Alarid v. Bd. of Educ. of Hatch Valley Pub. Sch.*, 2000-NMCA-032, 13 (cited as requiring a causal nexus as an element of a *prima facie* case of interference/retaliation under PEBA but the citation is instead to *Graubard v. Balcov Co.*, a personal injury case); *AFSCME v. Bd. of Cty. Comm’rs of Bernalillo Cty.*, 2016-NMSC-017 (N.M.

2016) (offered proposition that the PELRB does not handle breach of CBA claims, but the case deals with jurisdiction, justiciability, and ripeness of AFSCME’s declaratory-judgment action).

Mr. Hicks also grossly miscited new sections of the NM Public Bargaining Act (PEBA) itself in its Motion to Dismiss, and PELRB Rules, either providing obviously incorrect citations, or making up whole new provisions of the Statute and the regulations.

For instance, he cited NMSA 10-7E-4(G) as the definition of scope of bargaining and that it includes management rights. Section 4(G) however, is the definition of “confidential employee”, while Section 17 governs scope of bargaining and Section 6 governs employer or management rights. He also cited 10-7E-18(A) as “preserving management rights” and prohibiting strikes/lockouts, but Section 18 instead deals with bargaining impasse resolution. (It is instead Section 6 that deals with management rights and Sections 5(B) and 21 that address strikes/lockouts.) Mr. Hicks also included references to non-existent sections of PEBA (19(I) and 5(I)), and a non-existent PELRB rule (NMAC 11.21.3.303) in its Response to Complainant’s MPSJ.

This conduct constitutes lack of candor and/or lack of competence.²⁶ Additionally, as noted by Complainant in his Feb. 10, 2026 Response, Mr. Hicks failed to file NMHU’s Answer timely and failed to produce proffered exhibits in an accessible format upon request, as noted by the Complainant.²⁷

It is noted that not all citations are invalid or improper, as in another matter recently considered and reported by the Hearing Examiner. *See* PELRB Case No. 128-25, *Hatch FOP v. Village of Hatch*. Here, about four or five were sound citations. Additionally, the undersigned notes that – as in the *Hatch* case – Mr. Hicks did make generally accurate statements of law notwithstanding his false or fraudulent citations.

However, the issue of Mr. Hick’s lack of candor and apparent lack of ability to practice law in New Mexico is very damaging to the integrity of the PELRB, and could have impaired Parties’ rights and the efficient adjudication off the instant PPC.

²⁶ It is possible that Mr. Hicks used AI to generate some citations and failed to verify their accuracy as required under our rules of professional responsibility. In the undersigned’s assessment it is irrelevant whether he found or made-up incorrect citations on his own or with the assistance of AI.

²⁷ Dr. Rivas also avers that Mr. Hicks or the University altered an Exhibit at issue, an April 25, 2025 email, by removing his original highlights, and provided false statements of fact for confusing the timeline about the two investigations. The first issue appears to the undersigned to be simply a formatting/reformatting error and no intent is evident or presumed. The undersigned also notes that whether the highlighting was original or not had no evidentiary value in the matter, being immaterial to the undersigned’s decision although it was important to Dr. Rivas. The second issue is largely a matter of style or opinion about advocacy. The undersigned does not find either thing reportable under the NM’s professional rules.

Accordingly, Mr. Doajo David Hicks is hereby BARRED from appearing as an attorney before the undersigned (and the PELRB if this part of the undersigned's Order is affirmed) until his competence to practice law in the State of New Mexico is adequately confirmed. Nonetheless, he may appear as a non-attorney advocate if he discloses that status. Additionally, this Order does not limit or impair the rights of New Mexico Highland University to request PELRB review of the foregoing Order pursuant to NMAC 11.21.3.19 through the services of Mr. Hicks, if no other counsel is available to it.

Signed as if under penalty of perjury this 20th day of April, 2026

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

Pilar Vaile
Exec. Dir. and Hearing Examiner