

34-PELRB-2026

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

In re:

ZACHARIAH HAWKINS,

Complainant

v.

PELRB No. 107-26

**CIBOLA COUNTY FEDERATION
OF UNITED SCHOOL EMPLOYEES,**

Respondent.

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, and finds that the allegations in the Complaint fall outside the Board's jurisdiction.

DocuSigned by:

Peggy Nelson

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Date: 9/10/2026

Peggy J. Nelson, Board Chair



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MICHELLE LUJAN GRISHAM
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August 6, 2026

Via Email and USPS on request

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Re: *Hawkins v. Cibola County FUSE; PELRB 107-26*

Parties:

The following constitutes my decision on the Complainant's Motion for Partial Summary judgment and the Respondent's Motion to dismiss filed in the above-named case.

The Prohibited Practice Complaint (PPC), as amended through April 27, 2026, (the Second Amended Complaint is a sprawling document of 187 pages) alleges five "counts" of violations of the Public Employee Bargaining Act (PEBA): Count 1 alleges interference, restraint, and/or coercion in regard to protected concerted activity in violation of Section 20(B) of the PEBA (NMSA 1978 §10-7E-1 et seq.); Count 2 alleges retaliation for protected concerted activity in violation of Section 20(B) of the PEBA; Count 3 alleges a failure to bargain in good faith in violation of Section 20(C) of the PEBA; Count 4 alleges a failure to comply with the Collective Bargaining Agreement (CBA) in violation of Section 20(D) of the PEBA; and Count 5 alleges a violation of Section 20(E) of the PEBA by failing to comply with Section 17(A) of the PEBA.

Pursuant to a Scheduling Order, both parties timely filed their dispositive motions and responses thereto. Complainant requested summary judgment on Count 1 of the PPC; Respondent requests dismissal of all Counts. I will begin with the Motion to Dismiss

STANDARD OF REVIEW: MOTION TO DISMISS

In New Mexico, "Dismissal [for failure to state a claim] is appropriate only if [the complainant is] not entitled to recover under any theory of the facts alleged in their complaint." (*Callaban v. N.M. Fed'n of Teachers-TVI*, 2006-NMSC-010, ¶ 4) Accordingly, I will treat the factual allegations in the Amended PPC as true for the purposes of evaluating Respondent's Motion to Dismiss.

Count 1

Complainant's Count 1 is based on a violation of Section 20 of the PEBA for violating his rights granted by Section 5 of the PEBA (NMSA 1978 §10-7E-5). Section 5 of the PEBA contains nearly identical language to Section 8 of the National Labor Relations Act (NLRA), so it is appropriate to look to decisions interpreting Section 8 of the NLRA when interpreting Section 5 of the PEBA (See *as Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-31)

After considering the entirety of the Complainant's PPC, the essence of Complainant's Count 1 is that the Union violated Section 20(B) of the PEBA by interfering, restraining or coercing him in exercising his 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" granted by Section 5 of the PEBA. Complainant, the Union Vice President for Certified Staff, was dissatisfied with having been left out of the negotiations team and had expressed his displeasure to other bargaining unit members. The Union took issue with some of his communications to fellow bargaining unit members about the ongoing negotiations of a CBA between the Union and the Employer, told him to cease such communications, and said that continuing to do so would 'have consequences.'

A case on point is *Office and Professional Employees International Union, Local 251*. (331 NLRB 1417 (2000)). In that case, as here, the dispute was "essentially an intraunion factional quarrel over intraunion policies and politics" and the NLRB was called upon to interpret Section 8 of the NLRA, which, as noted above, contains language nearly identical to that of the PEBA. The NLRB held that the NLRA does not "proscribe intraunion discipline under Section 8(b)(1)(A) which involves a purely intraunion dispute, and does not interfere with the employee-employer relationship, or contravene a policy of the National Labor Relations Act." (OPEIU at p. 1426). Here, there has been no allegation that Complainant's relationship with the employer has in any way been affected by the Union's actions; also, I see no contravention of any policy or purpose of the PEBA.

The purpose of the PEBA is to "guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions." (NMSA 1978 §10-7E-3) As noted above, PEBA also expresses a policy that public employees (with certain exceptions not applicable here) have the right to form, join or assist a labor organization without interference, restraint or coercion. The Complainant was not prevented from forming, joining or assisting a labor organization, except insofar as the Union declined to accept his assistance; and as the conduct at issue in this case took place in the context of ongoing contract negotiations between the employer and the Union which have since successfully concluded, the purpose of the PEBA was not thwarted. (See Order on Motion for Preliminary Injunction, issued in this case on April 16, 2026). The Union's actions alleged to have violated the PEBA are attempts by the Union to control the messaging put out under their imprimatur. As for the threat of consequences, it could simply be a reminder that we live in a universe of cause and effect and the Complainant's open dissent could undermine their bargaining position, or it could refer to internal union disciplinary/governance matters, but the statement was not alleged to mean and cannot reasonably be construed to imply "unacceptable methods of union coercion, such as physical violence" that would be prohibited by the Act. (OPEIU at 1418) I find and conclude that the Unions actions as alleged in the PPC do not rise to the level that would justify a

finding that the Union violated the Complainant's rights granted by the PEBA as alleged in Count 1. Accordingly, Count 1 fails to state a claim upon which relief can be granted and should be dismissed.

Count 2

Count 2 of the Amended PPC alleges that "Respondents restricted the Complainant's communications, publicly countermanded or discredited his meeting communication, excluded him from Executive Council and bargaining-related communications, limited his participation in governance and bargaining functions, and undermined his representational assistance to a bargaining-unit employee" in violation of Section 20(B) of the PEBA. As noted above, the actions by the Union as alleged in the Amended PPC are attempts by the Union to control the messaging to bargaining unit members sent out under their imprimatur and did not affect the Complainant's employment relationship with the employer, so the facts as alleged do not support a finding that the Union violated the PEBA. Count 2 also alleges the Union "undermined his representational assistance to a bargaining-unit employee" by informing "the District that the Complainant did not have authorization from the Union to represent [an unnamed employee] in a union capacity" in a disciplinary meeting. However, who to send to represent bargaining unit members in disciplinary proceedings is an internal union matter over which this Board has no jurisdiction. Accordingly, Count 2 fails to state a claim upon which relief can be granted and should be dismissed.

Count 3

Count 3 alleges that the Union failed to bargain in good faith with the Employer in violation of Section 20(C) of the PEBA (with reference to Section 17 "Scope of Bargaining"). Specifically, "Respondents refused to provide clear information regarding who was authorized to bargain, excluded the elected Vice President for Certified Staff from bargaining-related communications after he raised objections, and proceeded despite unresolved objections that the member participation structure for developing and approving proposals had not occurred." As a matter of law, because the PEBA only contemplates bargaining between an exclusive representative and a public employer, (See Section 4(F) of the PEBA defining collective bargaining as occurring between the public employer and the exclusive representative) I find and conclude that only a public employer has standing to bring a claim for bad faith bargaining under Section 20(C). The other allegations in Count 3 are internal union matters that fall outside the jurisdiction of this Board. (See Order 25-PELRB-2026 adopting the Hearing Officer's decision that "PEBA and the PELRB do not have jurisdiction over internal Union affairs or its legitimate policy choices as the bargaining representative") Accordingly, Count 3 fails to state a claim upon which relief can be granted and should be dismissed.

Count 4

Count 4 alleges that the Union violated the CBA Article 3, which requires "bargaining through authorized bargaining representatives...good-faith negotiations...that tentative agreements do not become effective until the entire negotiations package has been ratified by the parties...[and] alterations become effective only upon written approval of both parties." The claim that the bargaining was not conducted through authorized representatives is based on a violation of the Union constitution that is beyond the jurisdiction of this Board. As noted above, only a public employer has standing to bring a claim against a Union for bad faith bargaining and the negotiated agreement was ratified by the union membership. The remaining claim is based on the allegation that any approval did not follow "what proper Federation-side authorization, member approval, and ratification required." This, again, is based on a violation of the Union constitution that is beyond the jurisdiction

of this Board. Accordingly, Count 4 fails to state a claim upon which relief can be granted and should be dismissed.

Count 5

Count 5 alleges that the Union violated Section 20(E) of the PEBA by failing to comply with Sections 5(A), 5(B) and 17(A). As noted in the discussion of Count 1, above, the facts alleged do not support a finding that the Complainant's Section 5 rights were infringed by the Union and as noted in the discussion of Count 3, above, neither do they support a finding that the Union did not comply with Section 17. To the extent that Count 5 alleges separate violations not contained in Counts 1 and 3, they are based on the Union not recognizing his status and/or authority as Vice President for Certified Staff, which is an internal Union matter beyond the jurisdiction of this Board. Accordingly, Count 5 fails to state a claim upon which relief can be granted and should be dismissed.

MOTION FOR SUMMARY JUDGMENT

Complainant has moved for summary judgment on Count 1. Because the Count 1 does not state any claim for which this Board can grant relief as discussed above, that Motion is denied.

CONCLUSION

The Amended PPC does not state any claim upon which relief can be granted and should be DISMISSED.

Sincerely,

A handwritten signature in blue ink, reading "Matthew Huchmala", followed by a stylized flourish.

Matthew Huchmala
Alternate Hearing Examiner