

PEBA LEGAL DIGEST

(Revised September 2026)

HOW TO USE THIS DOCUMENT

- The PEBA Legal Digest or “Digest” – previously titled the “PEBA Keyword and Phrase Digest” – has been greatly expanded, and modestly reorganized.¹ It attempts, as was always its purpose, to index and digest all substantive Court and Board decisions implementing or impacting the [Public Employee Bargaining Act \(PEBA\)](#), NMSA §§ 10-7E-1 *et seq.* Note, however, that most appealed decisions will be subsumed in the summary of the final appellate decision, so the prudent practitioner should look at all relevant underlying decisions.
- The primary emphasis of this Digest is on [statutory](#) and [regulation](#) citations. They and certain keywords or phrases are cross-indexed in the Table of Contents, and the cross-references are not typically repeated in the Digest proper. Accordingly, any search should begin with the following Table of Contents.
- Decisions are digested in reverse chronological order by their hierarchy of affirmed or reversed authority. Most of the Court decisions and Board orders digested herein are available on our website: [Decisional Law and Research Aids - Public Employee Labor Relations Board](#)
- The information and cases contained here and in the PELRB Practice Manual (being revised concurrently) are organized differently and the content of the two documents will not be mutually coextensive. While the Digest seeks to be comprehensive and focuses on PELRB orders and appeals thereof, the Practice Manual is a topic-oriented aid for practitioners that is intended to focus on basic processes and legal standards; and it cites more Hearing Examiner (H.E.) Reports and NLRB precedent. Accordingly, practitioners should consult both the Digest and the Practice Manual for comprehensive and topical guidance.
- Additionally, note that some of the decisions cited herein were *pro forma* adopted in the absence of a request for Board review. In those cases, the rulings are only binding on the parties, see NMAC 11.21.2.22(C) and 11.21.3.19(D), although they are deemed by Staff to be persuasive as a general matter.
- Lastly, note that **THIS DOCUMENT IS NOT A SOURCE OF LAW AND NOT TO BE CITED**. This document reflects the views of the individual Staff compilers and is to be used solely as a guide or aid to practitioners. The contents of this document have not been endorsed by the Board.

Table of Contents

PEBA PROVISIONS	6
§ 10-7E-2 [Purpose of Act].....	6
§ 10-7E-3 [Conflicts] (Amended 2020).....	6
§ 10-7E-4 [Definitions] (Amended 2020).....	7
§ 10-7E-4(G) [Definitions-Confidential employee].....	7
• Generally	7
• Application to particular job positions	7
§ 10-7E-4(K) [Definitions-Labor Organization]	7
§ 10-7E-4(N) [Definitions-Management Employee] (Amended 2020).....	8
• Generally	8
• Application to particular job positions	8
§ 10-7E-4(Q) [Definitions-Public Employee] (Amended 2020).....	9
§ 10-7E-4(R) [Definitions- Public Employer]	10
• Generally	10
• Application to particular job positions	10

¹ When the Digest was originally created and published in August 2009, the intent was to model the American judicial case digest systems as a comprehensive (and hopefully semi-regularly updated) summary of decisional law. At some point in or around 2012, most cases ceased to be added or digested, and many of those that were mis-indexed and/or restated procedural history rather than holdings or rulings. This edition comprehensively updates all substantive rulings previously omitted and corrects the indexing throughout.

The primary reorganization of the Digest was to relegate to an Appendix case law related to the now largely obsolete local board management relations boards (“local boards”), including grandfathered local boards. As a result of the 2020 Amendments, the relevance of local boards as a source of law is significantly reduced and today only three (3) local boards remain: (1) the City of Albuquerque, (2) Albuquerque Public Schools, and (3) the Town of Silver City. See Appendix.

§ 10-7E-4 (S) [Definitions-Strike]	11
§ 10-7E-4(T) [Definitions-Supervisor]	11
• Generally	11
• Application to particular job positions	12
• Directing the work of subordinates	14
• Effectively recommend hiring, promotion or discipline	14
• Employer designations as supervisor	14
• Employer expectations, job descriptions, and/or SOP manuals	15
• Independent judgment	15
• Lead employees	15
• Effect of NLRA precedent	16
• Majority of work time	16
• Routine, ministerial duties	17
• Substantially same duties	17
• Supervisory duties	17
§ 10-7E-5 [Rights of public employees] (Amended 2020)	17
• Generally <u>See also</u> § 19(B); and § 19(A), (D), and (G)	17
• Right to information	19
• Supervisors excluded	19
• Right to union representation	19
§ 10-7E-6 [Rights of public employers – e.g., “management rights”]	20
§ 10-7E-7 [Appropriate governing body; public employer]	20
§ 10-7E-8 [PELRB; created; terms; qualifications]	21
§ 10-7E-9 [PELRB powers and duties] (Amended 2020)	21
§ 10-7E-9(A) [PELRB; powers and duties-promulgation of necessary rules] (Amended 2020)	21
§ 10-7E-9(B) [PELRB; powers and duties-conduct hearings and studies, and request information.] (Am. 2020)	21
• Authority to conduct adjudicatory hearings	21
• Disciplinary Board referrals	22
§ 10-7E-9(C) [PELRB; powers and duties-issue subpoenas, administer oaths, receive evidence] (Am. 2020)	22
§ 10-7E-9(F) [Board; powers and duties-enforcement powers and administrative remedies] (Amended 2020)	22
• Generally	22
• Attorney fees not allowed	23
• Denial of local board approval	23
• Duty of fair representation (DFR) claims	23
• Injunctive relief	23
• Interest	24
• Protective orders	24
• Punitive damages not allowed	24
§ 10-7E-9(G) [Board; powers and duties-conformance of local board rules and fair share] (Amended 2020)	24
• Local boards <u>See</u> Appendix – Local Board Related Case Law	24
• Fair share	24
§ 10-7E-10 [Local Boards – conditions of continued existence; transfer of authority upon termination; prohibition of new local boards] (Repealed and reenacted 2020)	25
• Generally	25
• All other topics – <u>See</u> Appendix – Local Board Related Case Law	25
§ 10-7E-12(B) [Hearing procedures-rules and due process]	25
• Due process in administrative proceedings	25
• Entitlement of public employers to due process	25
• Right to impartial decision-maker	26
§ 10-7E-13 [Appropriate bargaining units] (Amended 2020)	26
• <u>See also</u> §§ 4(G) (Confidential), 4(N) (Manager), 4(Q) (Public employee), 4(T) (Supervisor)	26
§ 10-7E-13(A) [Appropriate bargaining units-designation of]	26
• Generally	26
• Community of interest standards	27
• Efficient administration of government	28
• Grandfathered bargaining units	28
• Law enforcement positions’ inclusion with other positions	28
• Realignment; consolidation	29
§ 10-7E-13(C) [Appropriate bargaining units; supervisors, managers and confidential employees excluded]	29
§ 10-7E-14 [Elections] (Amended 2020)	29

• Generally	29
• 40% Rule	30
• Card checks	30
• Certification of incumbent	31
• Change of affiliation does not trigger	31
• Probationary employees not eligible to vote	31
• Voluntary recognition can be withdrawn prior to approval	32
§ 10-7E-15 [Exclusive Representation] (Amended 2020)	32
§ 10-7E-15(A) [Exclusive Representation; rights and responsibilities] (Amended 2020)	32
• Generally	32
• Breach of the duty of fair representation	32
• Direct dealing prohibited.....	33
• Right to information	33
§ 10-7E-15(F) (Amended/added 2020) [Exclusive Representation; information to provide, and when]	33
<u>See also</u> Duty to Provide Information, Right to Obtain Information, §§ 5, 17(A)(1), 19(F)	
§ 10-7E-16 [Decertification] (Amended 2020)	33
§ 10-7E-17 [Scope of bargaining] (Amended 2020)	34
§ 10-7E-17(A)(1) [Scope of bargaining; duty to bargain in good faith]	34
• Generally	34
• <i>De minimis</i> changes	36
• Direct dealing	36
• Duty to provide information	37
• Emergency action.....	37
• Impairment of arbitration awards prohibited	37
• Management rights clauses	38
• Suspension or relief of the duty	38
• Waiver	38
§ 10-7E-17(A)(2) [Scope of bargaining; CBA required but does not obviate duty to bargain in good faith]	39
§ 10-7E-17(C) [Scope of bargaining; conflict of CBA with other laws prohibited]	40
§ 10-7E-17(D) [Scope of bargaining; payroll dues deduction]	40
• <u>See also</u> certain §§ 19(F) and (H) cases	
§ 10-7E-17(F) [Scope of bargaining; enhanced employee rights and benefits under the State Personnel Act]	40
§ 10-7E-17(H) [Scope of bargaining; impasse resolutions; contingent on funding].....	40
§ 10-7E-17(I) [Scope of bargaining; final and binding grievance and arbitration procedures required]	41
§ 10-7E-18 [Impasse procedures to be followed] (Amended 2020)	42
§ 10-7E-19(A) [Prohibited practices by employers; discrimination because of union membership]	42
• Generally	42
• Gender discrimination	44
• Probationary employees.....	44
• Stewards	44
§ 10-7E-19(B) [Prohibited practices by employers; interference with PEBA rights] (Amended 2020).....	45
• Generally	45
• Limitations on organizational activities	47
• Right to information	48
• Right to union representation	48
§ 10-7E-19(C) [Prohibited practices by employers; domination of or interference with union]	49
• Generally	49
• Direct dealing	50
• Stewards or representatives, appointment or recognition of	50
§ 10-7E-19(D) [Prohibited practices by employers; discrimination in hiring or term or condition, to encourage51 or discourage union membership]	51
• Generally	51
• Probationary employees.....	52
§ 10-7E-19(E) [Prohibited practices by employers; discharge or discriminate against public employee].....	53
§ 10-7E-19(F) [Prohibited practices by employers, refusal to bargain in good faith]	54
• Generally – <u>See also</u> § 17(A)(1)	54
• Direct dealing	56
• Duty to provide information	56
• Past Practices	57
§ 10-7E-19(G) [Prohibited practices by employers; refusal to comply with PEBA]	58

§ 10-7E-19(H) [Prohibited practices by employers; violation of the CBA or “Other Agreements”]	59
§ 10-7E-20 [Prohibited practices by unions and public employees]	62
• See also § 19, PPCs by public employers; <i>disting.</i> Duty of Fair Representation (DFR)	
§10-7E-21 [Strikes and lockouts prohibited]	62
§10-7E-22 [Agreements Valid; Enforcement]	63
§10-7E-23 [Judicial enforcement; standard of review]	63
• Generally	63
• Arbitrary and capricious standard	63
• Deference to Board	64
• Harmless error	64
• Substantial evidence and whole record review	64
§ 10-7E-24(A) [Existing collective bargaining units; grandfathered bargaining unit]	65
§ 10-7E-24(B) [Existing collective bargaining units; incumbent labor organizations]	65
• Generally	65
• Continuity of Representation	65
• Duty to bargain with	66
• Stay of negotiations or execution of contract pending judicial review	66
§ 10-7E-25 [Existing collective bargaining agreements]	66
§ 10-7E-26 [Existing ordinances] (Repealed 2020)	66
• See Appendix – Local Board Related Case Law	
PELRB RULES	66
11.21.1.13 NMAC [Disqualification]	66
11.21.1.14 NMAC [Motion to disqualify]	67
11.21.1.20 NMAC [Exchange of Evidence; circumstances to compel]	68
11.21.1.21 NMAC [Ownership and confidentiality of showing of interest]	68
11.21.1.22 NMAC [Burden of proof]	67
• See 11.21.2.37 (Unit clarification) and 11.21.3.16 (PPCs)	
11.21.1.24 NMAC [Service of pleadings]	68
11.21.1.27 NMAC [Appeal or review by the Board]	68
11.21.2.13 NMAC [Representation petitions; initial investigation of petition-cards]	69
11.21.2.18 NMAC [Representation petitions; investigation, report, notice of hearing]	69
11.21.2.19 NMAC [Representation petitions; representation hearing]	69
11.21.2.20 NMAC [Representation petitions; briefs]	69
11.21.2.21 NMAC [Representation petitions; hearing examiner reports]	69
11.21.2.22(A) NMAC [Representation petitions; Board review-requirements for notices of appeal]	70
11.21.2.22(C) NMAC [Representation petitions; Board review-scope of review]	70
11.21.2.22(D) NMAC [Representation petitions; Board review-Board decisions]	70
11.21.2.24(A) NMAC (Representation petitions; eligibility to vote]	71
11.21.2.35 NMAC [Representation petitions; amendment of certification]	71
11.21.2.36 NMAC [Representation petitions; certification of incumbent unions]	71
• Certification under PEBA I	71
• Certification under PEBA II	71
11.21.2.37 NMAC [Unit clarification]	72
• See also 11.21.22(A), Burden of proof; clarification petition	
• Generally	72
• Changed circumstances	72
11.21.2.38 NMAC [Representation petitions; accretion]	72
• Generally	72
• Accretions greater than 10%	73
• Community of interest	73
11.21.2.41 NMAC [Severance petition]	73
11.21.3.9 NMAC [Limitations period]	73
11.21.3.10 NMAC [Filing of answer]	73
11.21.3.11 NMAC [Default determination]	74
11.21.3.12(A) NMAC [Screening; facial adequacy]	74
11.21.3.12(B) NMAC [Screening; investigation and presentation of evidence]	74
11.21.3.12(C) NMAC [Screening; failure to produce evidence]	74
11.21.3.14 NMAC [PPCs; notice of hearing]	74
11.21.3.15(D) NMAC [PPCs; settlement efforts-when approval is required to withdraw the PPC]	75

11.21.3.16(A) NMAC [PPCs; hearings-burden of proof]	74
11.21.3.19(A) NMAC [PPCs; appeal to Board-procedural requirements for notice of appeal]	75
11.21.3.19(D) NMAC [PPCs; appeal to Board-effect of review in absence of request]	75
11.21.3.21 NMAC [PPCs; administrative agency deferral]	75
11.21.3.22(A) NMAC [PPCs; arbitration deferral-discretionary, if conditions met]	75
KEYWORDS AND PHRASES	76
ACQUIESCENCE	76
ADMINISTRATIVE REMEDIES	
• Duty to exhaust	77
AFFIRMATIVE DEFENSES	77
AGENCY RELATIONSHIP	77
AMENDMENT OF A PPC TO CONFORM TO EVIDENCE	77
ARBITRATION	78
AUTHORIZATION CARDS	78
<u>See also</u> § 14, Elections – Card counts	
“CLEAR AND UNMISTAKABLE” <u>See</u> § 17, Duty to bargain - Waiver	
COLLATERAL ESTOPPEL	79
CONTRACT COVERAGE <u>See</u> § 17 [Duty to bargain - Waiver]	
CONTRACT INTERPRETATION	79
COSTS OF PROCEEDINGS	79
DISPARATE TREATMENT <u>See</u> generally Discrimination/Interference type claims, e.g., §§ 5, and/or 19(A), (B), (D), (E) and/or (G) claims	
DIRECTED VERDICT	80
DUTY OF FAIR REPRESENTATION (DFR) CLAIMS	80
FAIR SHARE <u>See</u> §§ 9(G) and/or 17(E)	
JURISDICTION	81
• Generally	81
• Death of a Complainant during proceedings	81
• Divestment of Board's jurisdiction over PPCs	81
• Home rule jurisdictions	81
• PELRB's violation of its regulations, jurisdictional effect of	81
• PPCs raised in petitions	82
• Reconsideration authority	82
MANAGEMENT RIGHTS	
<u>See</u> § 6 (Rights of public employers), and § 17(A)(1) (Duty to bargain in good faith)	
MANDAMUS	82
MANDATORY SUBJECTS OF BARGAINING <u>See</u> §15(A)(1), §19(F), and §20(C) (Duty to bargain)	
MOOTNESS DOCTRINE	82
MOTION TO DISMISS	83
NEXUS <u>See</u> §§ 5(A), 19(A), 19(B), 19(D) and/or 19(E), and discrimination and interference claims generally	
PARAMILITARY STRUCTURE	84
PAYROLL DEDUCTION OF DUES	84
PERMISSIVE SUBJECTS OF BARGAINING	83
PRECEDENT	84
• Effect of PELRB precedent before the PELRB	84
• Effect of NLRB precedent before the PELRB	84
• Effect of other labor boards' decisions before the PELRB	85
PRELIMINARY INJUNCTION / TRO	85
PROHIBITED SUBJECTS OF BARGAINING	86
REMEDIES <u>See</u> § 19(F) [Board powers; enforcement and appropriate remedies]	
RES JUDICATA	86
RIPENESS	86
SANCTIONS	86
STANDING	87
STATUTORY CONSTRUCTION	88
STAY OF PROCEEDINGS	88
SUMMARIES OF EVIDENCE	89
SUMMARY JUDGMENT	89
UNILATERAL CHANGES <u>See</u> §15(A)(1), §19(F), and §20(C) (Duty to bargain)	
UNIT CLARIFICATION <u>See</u> 11.21.2.37 NMAC, Unit Clarification	

VENUE	90
WAIVER.....	90
• Waiver of the right or duty to bargain <u>See</u> § 17(A)(1); <u>see also</u> §§ 19(F), 20(C)	
• Waiver of arbitration	90
“Weingarten rights” <u>See</u> §§ 5, 19(B), 19(E), and 19(F)	
Wright Line test <u>See</u> §§ 5, 15(A), 19(A), 19(B), 19(D), 19(E), 19(F), and 19(G)	
ZIPPER CLAUSE <u>See</u> § 17, Duty to bargain - Waiver	
APPENDIX - LOCAL BOARD RELATED CASE LAW	91

PEBA PROVISIONS

§ 10-7E-2 [Purpose of Act]

Interim or *ad hoc* appointments by a city council president during a local board member’s absence do not impede core purposes or render a local board or ordinance non-compliant with PEBA. *City of Albuquerque v. Juan B. Montoya*, 2012-NMSC-007 (Mar. 6, 2012).

Employee officials attending a policy review meeting with the department are acting in furtherance of official state business. “[T]he record contradicts the Department’s contentions that employee officials attend policy review meetings only ‘on behalf of the union’ and are merely ‘advocating for the union’s position’ at those meetings; and second, the Department’s summary conclusion that ‘[u]nion business is not state business, and vice versa’ rests on a false dichotomy.” *Corrections Dep’t v. AFSCME Council 18*, 2018-NMCA-007 (in re: D-101-CV-2009-3457, 11-PELRB-2009, Case No. 105-09), **cert. den.** No. S-1-SC-36688.

Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over provisions of PEBA stating arbitration awards shall be final and binding. Accordingly, although multi-year contracts are beneficial to the public interest, the arbitration award based on the Union’s final offer was subject to the availability of funds. The Court emphasized the balance between finality in collective bargaining and prudent financial management within political subdivisions. *IAFF Local 1687 v. City of Carlsbad*, Ct. of App. Case No. 28,189 (Jun. 23, 2009).

A bargaining order vindicates § 2 rights and enforces § 5 rights in the face of refusal to bargain over layoffs. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23); **aff’d** D-202-CV-2024-01995 (6/10/25).

The employer violated §§ 19(B) and 19(C) when it continued to act in a manner found in an earlier case involving the same parties to have violated the law. Additionally, “[t]hat sort of ‘in your face’ approach to labor relations is not consistent with the stated purpose of the PEBA” under § 2, to “...promote harmonious and cooperative relationships between public employers and public employees” *AFSCME Council 18 v. Reg. and Lic. Dep’t*, 5-PELRB-2013 (Feb. 22, 2013); **see also** 4-PELRB-2013 (Feb. 21, 2013; in re: PELRB 113-12) (same parties, similar facts and ruling).

§ 10-7E-3 [Conflicts] (Amended 2020)²

The PEBA supersedes the Governmental Conduct Act (GCA), NMSA §§ 10-16-1 et seq, because § 3 of PEBA provides that, “the provisions of the...[PEBA] shall supersede other previously enacted legislation and rules”, and the GCA, which dates back to 1993, is not listed among the exceptions. *McKinley Fed’n of United School Employees (MCFUSE), Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25).

The parties to a collective bargaining agreement may limit the scope of the required grievance and/or arbitration procedures to apply only to disputes concerning the interpretation, application and/or violation of the CBA. In this case, the limitation comports with § 3 by subordinating §27(F) (requirement for grievance-arbitration procedures) to State Personnel Board (SPB) rules, including the requirement that disputes concerning discipline to proceed through SPB rules). *AFSCME Council 18 v. State*, 7-PELRB-2007 (Dec. 13, 2007)

² The 2020 amendment, effective July 1, 2020, removed a provision providing that, in the event of a conflict, the provisions of the PEBA shall not supersede the provisions of Sections 10-7-1 through 10-7-19 NMSA 1978; after “legislation and”, deleted “regulations” and added “rules”; and after “the Personnel Act”, deleted “Sections 10-7-1 through 10-7-19 NMSA 1978”.

§ 10-7E-4 [Definitions] (Amended 2020)

Note: Section 4 was amended in several respects in 2020, not all of which have been relevant to current case law. The changes involved updating the Act in light of the, *Janus v. AFSCME*, 585 U.S. 878 (2018) (regarding the unenforceability of fair share provisions), renumbering, and adding language to several definitions.³

§ 10-7E-4(G) [Definitions-Confidential employee]

- **Generally**

Detention lieutenants were properly within the bargaining unit comprised of detention officers, because the lieutenants share a community of interest with the officers in the bargaining unit and did not meet the statutory definitions of management, confidential or supervisory employees under the PEBA. *AFSCME Council 18 v. Luna County*, 9-PELRB-2016 (May 13, 2016; in re: Case No. 310-15).

PEBA's exclusion of "confidential employees" from collective bargaining concerns those employees whose work duties are related to the formulation, determination and effectuation of a public employer's employment, collective bargaining, or labor relations activities. *CWA Local 7076 and Worker's Compensation Administration*, 5-PELRB-2009 (Apr. 6, 2009).

The exclusion of confidential employees is limited to those employees who assist and act in a confidential capacity to persons exercising managerial functions in the field of labor relations. As such, PEBA's confidential employee definition requires an analysis of (1) the duties of the employee in question and (2) the duties of the person he or she allegedly assists. However, an employee does not "assist and act in a confidential capacity" as contemplated by PEBA where she carries out her job functions almost entirely independent of anyone else, including her supervisors, and her duties do not involve handling confidential information related to collective bargaining. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

Where the employer has not engaged in collective bargaining in the past, the Board will utilize a reasonable expectation test for analyzing confidential status. Under such a test, analysis of the roles of the employer and his or her supervisor in collective bargaining will be based on their current duties and a reasonable expectation of whether the employee in question will be performing confidential duties within the meaning of the Act in the future. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

- **Application to particular job positions**

A school district's administrative interns or "principals-in-training" are confidential employees because they could be on a bargaining team and, by training closely with principals and other administrators and attending the monthly administrator meetings, are privy to the formulation of the district's labor-management policies. *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re: Case No. 169-06).

The secretary to a school principal who is or will definitely be on the school district's negotiating team is confidential where she types and files documents related to labor relations matters and has access to the principal's offices, even if she does not have substantive input in creating the documents typed or filed. On the other hand, the district's payroll manager is not a confidential employee where she carries out her job functions almost entirely independent of anyone else, any financial information to which she has access is also available to others and, while the financial information she handles may be used by the employer for cost proposals in collective bargaining, that use does not require further input by the payroll manager. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

§ 10-7E-4(K) [Definitions-Labor Organization]

Petitioner is a labor organization under § 4(L), despite the facts that it is a 501(c)(5) organization that is not registered to do business in New Mexico, and a 501(c)(5) organization is required by the state's Tax Code to register for a New Mexico tax identification number (CRS) in order to conduct business in the state. Whatever difficulties the petitioner may face as a result of not being properly registered with state or federal taxing authorities, such registration is not an element of the PEBA's definition of a labor organization. A separate enforcement mechanism exists in the Tax Code,

³ The 2020 amendment, effective July 1, 2020, removed the definition of "fair share" and revised the meanings of certain terms as used in the PEBA; in Subsection B, changed "Section 7 of the Public Employee Bargaining Act" to "10-7E-7 NMSA 1978"; deleted former Subsection J, which defined "fair share", and redesignated former Subsections K through U as Subsections J through T, respectively; in Subsection L, after "charter amendment", added "and which continues to exist by virtue of the election described in Subsection B of Section 10-7E-10 NMSA 1978"; in Subsection N, after "decision-making programs", deleted "on an occasional basis" and added "or whose fiscal responsibilities are routine, incidental or clerical"; and in Subsection Q, after "probationary employee", added "and includes those employees whose work is funded in whole or in part by grants or other third-party sources".

over which this Board has no jurisdiction or duty to enforce. Determination of petitioner's status as a labor organization is based primarily on the definition of "labor organization" found in § 4(K): "...an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations." *UE & UNM*, 66-PELRB-2021 (Aug. 17, 2021; in re: 306-21); **see also** and 73-PELRB-2021 (Nov. 9, 2021; in re PELRB 307-20).

By using the term "labor organization" this section incorporates a requirement that local ordinances follow the § 4 PEBA definition of "labor organization." *Santa Fe County and AFSCME*, 1 PELRB No. 1(Nov. 18, 1993).⁴

§ 10-7E-4(N) [Definitions-Management Employee] (Amended 2020)⁵

- **Generally**

PEBA's definition of manager can be broken down into a two-part test: (1) the employee is primarily engaging in executive and management functions; and (2) he or she has responsibility for developing administering, or effectuating management policies, which requires the employee to do more than merely participate in cooperative decision-making programs on an occasional basis. The first part of the Act's test – engagement in primarily executive or management functions – requires an individual to possess and exercise a level of authority and independent judgment sufficient to significantly affect the employer's purpose. The second part of the test – responsibility for developing, administering or effectuating management policies – requires an employee to either create, oversee or coordinate the means and methods for achieving policy objectives and to determine the extent to which policy objectives will be achieved. This requirement means more than mechanically directing others in the name of the employer but, rather, requires an employee to have meaningful authority to carry out management policy. Consistent with NLRB case law, "manager" unlike "confidential employee", is read to encompass all management policies and not just those relating to labor relations. The key inquiry is whether the duties and responsibilities of the alleged management employees are such that these individuals should not be placed in a position requiring them to divide their loyalty between the employer and the union. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

- **Application to particular job positions**

Healthcare related positions were supervisory and or managerial where they spent a majority of their time in direct patient care, but also greater than 50% of their time engaged in supervisory activities; this is possible because "the Petitioned-for employees complete supervisory duties while providing patient care". Additionally, their "duties are not merely routine, incidental, or clerical"; and "these employees hold the interest of the employer as to hiring, promoting, and disciplining subordinates". *AFSCME Council 18 v. Dep't of Health*, Case No. D-202-CV-2017-08953 (Mar. 15, 2019; in re: 13-PELRB-2017, Case No. 305-16).

Fire captains are excluded as managers under PEBA, based on a whole record review that "establishe[d] that there is substantial competent evidence in the record upon which to base the administrative findings", and the decision was not "contrary to law", or "arbitrary or capricious". *IAFF Local 4384 v. City of Hobbs*, D-506-CV-2025-00320 (Jan. 28, 2026; in re: 32-PELRB-2024, Case No. 303-24) (pending further appeal in N.M. Ct. App. Docket No. A-1-CA-43276).

House Supervisors are not excluded as "management" employees as defined by § 4(N). *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 26-PELRB-2023 (Jun. 9, 2023; in re: Case No. 304-22).

A unit comprised of park ranger supervisors, park ranger specialists, law enforcement certified training coordinators and park rangers was appropriate because these employees share a community of interest, while others petitioned for (park superintendents, park managers and line managers) were statutorily excluded as managers. However, as to the marine law enforcement position, "the additional training, equipment and law enforcement duties and different chain of command required of the certified positions justifies carving out certain employees for representation while leaving other employees with the same working title but who are not required to be law enforcement certified out of the petitioned-for unit." *N. M. Park Ranger's Law Enforcement Division v. New Mexico Energy, Minerals and Natural Resources Dep't*, 14-PELRB-2020 (Oct. 16, 2020; in re: Case No. 301-20).

Certain full-time department chairs and program directors are appropriately excluded as managers and/or supervisors under PEBA. *Santa Fe Community College-AAUP and Santa Fe Community College*, 4-PELRB-2017 (PELRB No. 311-16).

Detention center lieutenants were properly within the bargaining unit comprised of detention officers because the lieutenants share a community of interest with the officers in the bargaining unit and did not meet the statutory definitions

⁴ Although regarding a local labor ordinance, this case may have broader or continuing relevance under § 24.

⁵ Section 4(N) amendment: "decision-making programs", deleted "on an occasional basis" and added "or whose fiscal responsibilities are routine, incidental or clerical".

of management, confidential, or supervisory employees under the PEBA. *AFSCME Council 18 v. Luna County*, 9-PELRB-2016 (May 13, 2016; in re: Case No. 310-15).

Police lieutenants are not managers under PEBA because: (a) their abilities to recommend policy changes and to override staffing software do not significantly affect the employer's overall purpose of law enforcement, and (b) in creating quarterly "beat plans" they do not determine the extent to which the Department's policy objectives will be achieved *NMCP SO-CWA Local 7911 and City of Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009) (concluding, however, that they were supervisors under § 4(T).)

School day care managers meet the definition of "manager" under PEBA because they have a number of job functions unique from that of other day care workers that are related to executive and management functions, and/or developing, administering, or effectuating management policies. Additionally, it is not relevant under the PEBA definition of "manager" that they spend approximately 60% of their workdays engaged in the same work as other day care employees. *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re: Case No. 169-06).

A detention center training sergeant is not a manager under PEBA, because she is not primarily engaged in executive and management functions. Although she drafts policies, that work largely consists of the routine or perfunctory task of pirating policies from other organizations and modifying them as needed and her drafts are subject to numerous levels of review and revision. Additionally, she is not engaged in developing, administering or effectuating management policies because she largely just disseminates the policies, while the administrator and the operations sergeant are responsible for determining which policies to follow. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

A payroll manager who simply collects and maintains information pursuant to policy, plays no role in the development of management policy, and has no discretion in the way she carries out policies related to the payroll, is not primarily engaged in executive and management functions. Although she may carry out management policies related to payroll, she has no meaningful authority related to policy where she simply verifies financial information given to her by others: she must inform the director of finance if she makes any changes to pay as a result of an error. She lacks authority to sign a purchase order to otherwise pledge the employer's credit; and she has no responsibilities associated with the budget. Nor is a maintenance supervisor a management employee if he spends almost all his time doing actual physical maintenance; he does not engage in independent decision-making that broadly affects the employer's purpose; and the Superintendent created the district's maintenance plan based on information obtained from the maintenance supervisor, but the plan was never shown to the maintenance supervisor. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

§ 10-7E-4(Q) [Definitions-Public Employee] (Amended 2020)⁶

By using the term "employee" this section incorporates the definition of "public employee" under PEBA and requires the extension of rights under the ordinance to all "public employees" that would be covered under PEBA. *UNM v. N.M. Fed'n of Teachers and American Assoc. of University Professors*, 1998-NMSC-20.⁷

Once an employee's status has changed from probationary to non-probationary, an employer cannot revert the employee to probationary status. *City of Albuquerque v. AFSCME Council 18*, 2011-NMCA-21.

An employee was held not to be probationary under UNM personnel regulations where she had worked in the same position doing the same job for almost a year, for six months as a temporary employee and five months as a regular employee; and where the stated purpose of probationary status was to "give the University the opportunity to evaluate" a new employee's performance and to allow the new employee "the opportunity to understand the mission and goals of the University and ... department and to demonstrate satisfactory performance." *United Staff-UNM Employees Local 6155 v. UNM*, PELRB Case No. 101-05, Hearing Examiner Report at 11-13, 32-34 (Aug. 17, 2005).

Court or judicial employees are not covered public employees under PEBA, based upon the separation of powers doctrine. *Chamas-Ortega v. 2nd Judicial District Court*, 7th Judicial. Dist. Ct. Case No. CV-047883 (Mar. 10, 2006) (reversing as "arbitrary and an abuse of discretion" the Board's decision in *Chamas-Ortega v. Second Judicial District Court*, 1-PELRB-2004 (Nov. 9, 2004), that PEBA applies to state judicial employees).

"PRN" or "as needed" nurses are not "regular employees" under PEBA. *UNM-SRMC v. United Health Professionals of N.M.*, D-202-CV-2023-09660 (Nov. 1, 2024; in re: 59-PELRB-2023 and 26-PELRB-2023, Case No. 304-22). (The

⁶ Section 4(Q) amendment: after "probationary employee", added "and includes those employees whose work is funded in whole or in part by grants or other third-party sources".

⁷ Although this case dealt with a grandfathered local labor resolution, it may have broader or continuing relevance under § 24.

district court decision is currently being appealed in Ct. App. Docket No. A-1CA-42271.)

See also *UHPNM v. UNM-SRMC*, D-202-CV-2023-02118 (Aug. 14, 2023; in re: 26-PELRB-2022, 8-PELRB-2023 and 9-PELRB-2023, Case No. 304-22) (reversing and remanding because the Board failed to provide a reasoned basis for its decision that per diem or “PRN” employees are “regular” employees under PEBA, and the its decision lacked citations to relevant authorities, facts, or analysis); *UHPNM v. UNM-SRMC*, 45-PELRB-2024 (Nov. 19, 2024; in re: Case 304-22) (remanding the matter back to the hearing examiner, concluding that “the practical result of the Court’s...Order is that an unresolved Petition for Recognition remains before this Board in PELRB Case No. 304-22, requiring a determination whether the petitioned-for unit, without the PRNs, is “appropriate” as required by § 13(A) and, if so, whether majority support without reference to the PRNs existed at the time the Petition for Recognition was originally filed”); and *UHPNM v. UNM-SRMC*, 1-PELRB-2025 (Jan. 17, 2025; in re: Case 304-22) (affirming certification of the unit without PRN nurses).

Bona fide temporary employees are not regular employees, so are not public employees eligible for coverage under the PEBA, irrespective of any accretion certification to that effect. However, the “EXOT” positions at issue are not bona fide temporary positions. The six EXOT employees directly at issue at the hearing did not meet the definition of “temporary”, “term”, or “probationary” employees under SPB regulations; and the H.E. rejected the argument that these employees never concluded their probationary period because serving under successive contracts of one-year and a day. Additionally, the same conclusion was held to apply to all other NHCC EXOT Employees, but their claims are not yet ripe because they have not yet completed a full year of term or probationary service. *CWA and Dep’t of Cultural Affairs (DCA) and State Personnel Office (SPO)*, 15-PELRB-2026 (May 12, 2025; in re: Case No. 130-25), pending appeal at D-202-CV-2026-05466; *see also* 31-PELRB-2026 (8-12-26; same case) (ordering the H.E. to conduct a hearing on the issue of “make-whole” relief ordered), pending appeal at D-202-CV-2026-07473.

Employees of a “research park corporation” created under and in accordance with the University Research Park and Economic Development Act, NMSA §§ 21-28-1 to 25 (“URPEDA”), that “owns, operates or manages a health care facility or employs individuals who work at a health care facility”, are public employees because such URPEDA Corporations are deemed a “public employer” for purposes of the PEBA, as defined in § 4(R). *AFT and IAMAW Local 794 v. UNM Sandoval Reg’l. Med. Center*, 30-PELRB-2022 (Dec. 1, 2022; in re: PELRB 108-22. (**Note:** Subsequently the URPEDA was amended to clarify that URPEDA corporations are public employers under PEBA.)

Graduate students working for the university on paid assistantships are regular public employees under PEBA. *UE & UNM*, 66-PELRB-2021 (Aug. 17, 2021) and 73-PELRB-2021 (Nov. 9, 2021; both in re: PELRB 307-20) (the Board reversed the Hearing Officer’s original determination and he rewrote his analysis on remand to conform with the Board’s reversal, and the case was not appealed further); **see also** *United Electrical, Radio, and Machine Workers of America (UE) and UNM*, 6-PELRB-2022 (Mar. 11, 2022; in re: Case No. 307-20) (amending and clarifying prior Orders 66-PELRB-2021 and 4-PELRB-2022 to reflect that “graduate students” instead reads as “graduate students holding an assistantship”).

§ 10-7E-4(R) [Definitions- Public Employer]

- **Generally**

The definition of “public employer” must be read in conjunction with the provision of the Act regarding a public employer’s governing body, which, according to § 7, is the policy making body, or the body or person charged with management of the local public body. Therefore, the critical question is who is charged with management of the public body. Determining who is charged with the management of the local public body requires addressing the factual question of who has the authority to hire, promote, evaluate, discipline, discharge and set work rules for the employees in question. A joint employer status exists when two or more employers co-determine those matters governing essential terms and conditions of employment. A management contract between a public hospital and a private managing firm does not change the public character of the hospital where the hospital retains all authority and control over the business, policies, operations and assets of the hospital. *USWA and Gila Reg’l Med. Center*, 1 PELRB No.14 (Nov. 17, 1995).

- **Application to particular job positions**

The constitutional independence of state universities is not impaired by application of PEBA to them and their employees, because PEBA only requires employers and unions to bargain in good faith. The purpose of constitutional independence is to assure that the entities’ mission and function is free from the whims of political interference, notwithstanding its funding through legislative appropriations. PEBA, however, does not require a public employer to accept any specific proposal; the employer always has final say over the financial consequences of any collective bargaining agreement; and employers do not have to accept any union proposal that interferes with their organizational mission. *UNM v. N.M. Fed’n of Teachers and American Ass’n of Univ. Professors*, 1998-NMSC-020.

The courts are not among the “public employers” covered by PEBA, based on the separation of powers doctrine. *Chamas-Ortega v. 2nd Judicial District Court*, 7th Judicial Dist. Ct. Case No. CV-2006-047883 (Mar. 10, 2006; in re: 1-

PELRB-2004) (overruling the PELRB's affirmative determination of jurisdiction as "arbitrary and an abuse of discretion").

A "research park corporation" created under and in accordance with the University Research Park and Economic Development Act, NMSA §§ 21-28-1 to 25 ("URPEDA"), that "owns, operates or manages a health care facility or employs individuals who work at a health care facility", shall be deemed a "public employer" for purposes of the PEBA, as defined in § 4(R). *AFT and IAMAW Local 794 v. UNM-Sandoval Reg'l. Med. Center*, 30-PELRB-2022 (in re: Case No. 108-22); **see also** *UHPNM and UNM-SRMC*, PELRB 306-21. (**Note:** the URPEDA was subsequently amended to clarify that URPEDA corporations are public employers under PEBA.)

The University Research Park and Economic Development Act (URPEDA) does not control whether the Respondent was a "public employer" under the PEBA. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 70-PELRB-2021 (Oct. 18, 2021; Case No. 306-21). (**Note:** URPEDA subsequently amended to clarify that they are public employers under the PEBA.)

§ 10-7E-4(S) [Definitions-Strike]

An essential element of the definition of "strike" under PEBA is that it includes a requirement that the employee's absence be directed to the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

The definition of strike does not prohibit certain forms of activity that are not traditionally regarded as strike activity, including slowdowns, traffic ticket writing campaigns, mass resignations, and willful interference with the operations of the employer-t *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-4(T) [Definitions-Supervisor]

- **Generally**

On review, courts will remand if there is insufficient evidence to support exclusion of positions as supervisory under PEBA; also, lack of a hearing record or transcript, "necessarily forecloses effective appellate reviews both at the district court and before us of whether the Board's decision is supported by substantial evidence in the record when viewed as a whole." *AFSCME Council 18, Local 2851 v. City of Las Vegas and Las Vegas LMRB*, Case No. D-412-CV-2015-0369 (Nov. 22, 2021; in re: 4-PELRB-2021, Case No. 305-20), *aff'd* A-1-CA-35840 (2/4/19).

It was not abuse of discretion or arbitrary or capricious to determine, based upon federal labor authority and testimony regarding work duties, that use of independent judgment is required for an activity to qualify as a "supervisory duty" under PEBA; that the lieutenants here did not exercise independent judgment a majority of their work time; and that the lieutenants at issue did not effectively recommend discipline due to the multi-level disciplinary review process. *AFSCME Council 18 v. Corrections Dep't*, D-202-CV-2013-01920 (May 15, 2014; in re: 2-PELRB-2013, Case No. 311-11).

The positions petitioned for accretion, which had "supervisor" in their titles, are not supervisory or managerial, and do share a community of interest with the statewide bargaining unit. *AFSCME Council 18 v. CYFD*, 74-PELRB-2021 (Dec. 9, 2021; in re: Case No. 303-21).

Based on the reasoning of *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 167 LRRM 2164 (2001), decisions made through ordinary technical or professional judgment do not constitute the exercise of independent judgment required by the PELRB for supervisors; and the existence of employer-specified standards, rules and regulations may constrain an employee's judgment to such a degree that the direction of others does not rise to the level of supervisory authority. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB- 2013 (Jan. 23, 2013).

Whatever inferences may be drawn from the fact that "supervisors" are not expressly excluded from PEBA's coverage under § 5, they are nevertheless excluded by § 13(C). Where two statutes deal with the same subject, one general and the other specific, the specific statute controls. Section 13(C), being the more specific, controls and supervisors are therefore excluded from PEBA's coverage. *Santa Fe Police Officers Ass'n v. City of Santa Fe*, 2-PELRB-2007 (Oct. 14, 2007).

It is not the rank nomenclature (corporal, sergeant, lieutenant, captain, etc.) that is determinative but rather the facts related to whether the individual functions as a supervisor as defined under the Act. *New Mexico Coalition of Public Safety Officers, Local 7911, CWA and Town of Bernalillo*, 1 PELRB No. 21 (Jul. 7, 1997).

Although it may appear awkward to find a person (operation sergeant) of a like rank to his or her actual subordinates (shift sergeants) to be their supervisor, that is not prohibited under PEBA and the determination of supervisor must

ultimately be based on the facts and the law, regardless of job title or rank. Additionally, including eight of the detention center's nine sergeant positions in the bargaining unit does not result in lack of supervision at the facility because these positions do have supervisory duties and responsibilities, just not enough compared to their overall actual day-to-day duties to meet the statutory definition for exclusion under PEBA. *CWA Local 7911 and Doña Ana County*, 1-PELRB-16 (Jan. 2, 1996).

The similarity of working conditions between a putative supervisor and his or her subordinates is not a criterion in the statutory definition of supervisor and instead relates to community of interest. *McKinley County Sheriffs Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

The following is the established three-part test for determining whether an employee is a supervisor: (1) the employee must devote a majority of work time to supervisory duties; (2) the employee must customarily and regularly direct the work of two or more other employees; and (3) the employee must have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. If these requirements are met the analysis continues to determine whether the disputed employee (i) performs merely routine, incidental or clerical duties; or (ii) only occasionally assumes supervisory or directory roles; or (iii) performs duties which are substantially similar to those of his or her subordinates; or (iv) is a lead employee or an employee who participates in peer review or occasional employee evaluation programs. Even if the initial three-part test is met, if any of the subsequent questions found in the definition can be answered in the affirmative, or the employee is a lead worker or he or she merely participates in peer review or occasional employee evaluation programs, then the employee is not a supervisor under PEBA. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

Accord: *AFSCME v. Corrections Dep't*, 2-PELRB-2013 (Jan. 23, 2013; in re: 311-11) (lieutenants did not meet the statutory definition of supervisors under PEBA); *N.M. Coalition of Public Safety Officers Ass'n and Santa Fe County*, 78-PELRB-2012 (Dec. 5, 2012) (sergeants accreted into existing bargaining unit); *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009); *IAFF Local 4366 v. Santa Fe County*, 6-PELRB-2009 (May 7, 2009) (battalion commanders are supervisory and possibly managerial employees and therefore properly excluded from collective bargaining); *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996); *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995); *AFSCME v. Corrections Dep't*, 8-PELRB-2012 (Jul. 13, 2012) (lieutenants' inclusion would not render the bargaining unit an improper unit).

Note: Under PEBA I, the Board established the basic three-part test for determining whether an employee is a "supervisor" and therefore excluded from coverage under the Act. Since PEBA II the Board has continued to apply the same three-part two stage analysis but modified the requirement that the employee must devote a "substantial amount" of his or her worktime to supervisory duties to a "majority" of work time to supervisory duties to reflect the change under PEBA II to 1§ 4(T).

- **Application to particular job positions**

The landfill supervisor did not meet the definition of supervisor in the PEBA because he spends a majority of worktime operating a bulldozer or compactor and doing other work similar to his subordinates; regularly directs the work of two or more other employees; and does not have the authority to hire, promote or discipline other employees, although his recommendations are taken seriously by the employer. *Teamsters Local 492 v. Estancia Valley Solid Waste Authority (EVSWA)*, 14-PELRB-2026 (May 12, 2025; in re: Case No. 301-26).

Lead maintenance mechanic and the lead housekeeper positions were not supervisory under PEBA, so were appropriately included in the petitioned for bargaining unit. *AFSCME Council 18 and Middle Rio Grande Conservancy Dist.*, 21-PELRB-2024 (Apr. 3, 2024; in re: Case 305-24).

Charge nurses at UNM SRMC are not excluded as supervisors because they do not devote a majority of their work time performing supervisory duties. *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 26-PELRB-2023 (Jun. 9, 2023; in re: Case No. 304-22).

Bernalillo fire lieutenants do not meet the statutory definition of supervisors under PEBA so are not excluded from collective bargaining. *Town of Bernalillo Prof'l Firefighters Ass'n – IAFF and Town of Bernalillo*, 22-PELRB-2022 (Oct. 5, 2022; in re: Case No. 307-22).

Accreting the water supervisor, utilities superintendent, parks supervisor, public facilities supervisor and zoning and licensing supervisor into the existing blue- and white-collar unit did not render the unit inappropriate. *AFSCME Local 2851 and City of Las Vegas*, 4-PELRB-2021 (Jan. 15, 2021; in re: Case No. 305-20).

Certain full-time department chairs and program directors are appropriately excluded as managers and/or supervisors under PEBA. *Santa Fe Community College-AAUP and Santa Fe Community College*, 4-PELRB-2017 (PELRB No. 311-16).

Detention center lieutenants at the county's Deming detention facility were properly within the bargaining unit composed of detention center officers, because the lieutenants share a community of interest with the employees in the bargaining

unit and did not meet the statutory definitions of management, confidential or supervisory employees under the PEBA. *AFSCME Council 18 v. Luna County*, 9-PELRB-2016 (May 13, 2016; in re: Case No. 310-15).

Corrections lieutenants did not meet at least two of the three criteria required by § 4(T), devoting a majority amount of work time to supervisory duties and having hire/promotion/fire authority. Additionally, they arguably do not customarily and regularly direct the work of two or more other employees because of the absence of independent discretion in their direction of their subordinates except in rare circumstances. *AFSCME Council 18 v. Dep't of Corrections*, 2-PELRB-2013 (Jan. 23, 2013), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

Sergeants were accreted into an existing bargaining unit because their actual duties as performed did not meet the three-part test established by the Board to determine whether an employee is a "supervisor" as that term is defined by the Act. *New Mexico Coalition of Public Safety Officers Ass'n and Santa Fe County*, 78-PELRB-2012 (Dec. 5, 2012).

Corrections lieutenants are not supervisory, and their inclusion would not render the bargaining unit inappropriate. *AFSCME Council 18 v. Corrections Dep't*, 8-PELRB-2012 (in re: Case Nos. 139-11 and 311-11); **see also** 9-PELRB-2012, and 60-PELRB-2012 (same case).

County detention center sergeants are not excluded as supervisors. *N.M. Coalition of Public Safety Officers Ass'n v. Santa Fe County*, 70-PELRB-2012 (Oct. 24, 2012; in re: Case No. 304-12); **see also** 78-PELRB-2012 (same case, reaffirming).

Battalion commanders are supervisory and possibly managerial employees and therefore properly excluded from collective bargaining. *IAFF Local 4366 v. Santa Fe County*, 6-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the H.E.'s determination that they did not spend a majority of their time engaged in work requiring the exercise of independent judgment).

Rio Rancho police lieutenants are not managers under PEBA, but they are supervisors under PEBA because they effectively recommend discipline by issuing written and oral warnings; they effectively recommend promotion by evaluating their subordinates, since such evaluations are weighed in awarding promotions in pay grade under department policies; they customarily and regularly direct the work of both their subordinates by instructing and guiding them in the proper interpretation of department policies for them, by acting as incident commander at large operations and by regularly delegating and directing beat activities sergeants and the lower ranked patrol officers, and they spend a majority of their work time devoted to various supervisory duties, including but not limited to the direction of subordinates that require independent judgment and that are distinct from the work of their subordinates. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009).

Fire captains and lieutenants are not supervisors and share a community of interest with the existing bargaining unit. *Silver City Professional Firefighters IAFF Local 2430 v. Town of Silver City*, 2-PELRB-2008, PELRB Case No. 308-07 (May 2, 2008) (nonetheless dismissing proceedings to be refiled as a petition for election under NMAC 11.21.2.38(C)).

Administrative interns, or "principals-in-training," are not supervisors because they merely assist with some limited supervisory acts, and the purpose and emphasis of their job is to learn the job duties of a principal, to decide if they wish to become one. Additionally, custodian heads are not supervisors because they spend less than ten percent (10%) of their time engaged in strictly supervisory tasks. However, food service managers are supervisors because they regularly supervise cooks and assistant managers. *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re: Case No. 169-06).

School district's head custodians and supervisory custodians are not supervisors under PEBA because they performed the same work as their subordinates and functioned as a lead employee. Additionally, some did not supervise at least two or more employees. *Classified School Employees Council-Las Cruces and Las Cruces Schools*, 1 PELRB No. 20 (Feb. 13, 1997).

The detention center's operations sergeant is a supervisor under PEBA. While all the other sergeant positions are largely interchangeable, her job duties are very different from those of other sergeants and all the other sergeants, and her work time is devoted almost entirely to supervisory duties such as directing her subordinates' work by reviewing their paperwork for accuracy and completeness, overseeing their work, and evaluating their performance; disciplining and recommending discipline; conducting monthly sergeant meetings; and ensuring that the facility's policies and procedures are communicated to and carried out by staff. Her job duties are also different from those of her subordinates, since unlike other sergeants she works in the administrative part of building and has little contact with detainees, and since she has additional responsibilities regarding facility maintenance and repair. In contrast, the positions of shift sergeant, classification sergeant, juvenile sergeant and transport sergeant at detention center are not supervisors under PEBA. The amount of supervisory direction undertaken by the sergeants varies from sergeant to sergeant, and the amount of time a sergeant spends directing subordinates is limited to 25-30% of their workday, or may even be eliminated entirely depending on how busy and short-handed a shift may be. The bulk of these sergeants' workday is spent on the performance of non-supervisory duties which are substantially similar to that of their

subordinates, involving movement, care, safety and welfare of inmates. Thus, these sergeants are mere lead workers, not supervisors, because they perform most, if not all, of the duties as those of their subordinates: they explain tasks to them and expedite the work of a shift that is small in number of personnel; their supervisory functions are incidental and occasional; and, for the most part, their exercise of independent judgment and discretion is limited by reliance on such things as decision trees and the standard operating procedures manual. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

Sergeants are appropriately included in the bargaining unit where a substantial amount of their work time is consumed by duties of a routine nature, which are also closely aligned with the duties performed by subordinate patrol officers and deputies. A sergeant's actual duties fall within the role and function of a lead employee because the sergeant performs the same duties as the deputies; expedites or facilitates the performance or completion of those duties; explains tasks to new workers; and any supervisory functions are incidental to the duties performed as a member of the work shift. *McKinley County Sheriffs Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

A maintenance supervisor is not a supervisory employee where he spends most if not all of his time doing maintenance work; he does not have to directly tell the custodians what to do as they know what needs to be done and complete their work without instruction from him; and it is the principal, not the maintenance supervisor, that has the authority to hire, promote, discipline or discharge the custodians, or effectively recommend any of these actions. *NEA and Jemez Valley Public Schools*, 1 PELRB No.10 (May 19, 1995).

- **Directing the work of two or more subordinates**

"Post orders" exist for every duty assignment at the employer's facilities and they set forth how each assignment is to be performed; lieutenants' reliance upon post orders issued by the warden of each institution are an indicium of the limitation on, if not the total absence of, the lieutenant's ability to exercise independent judgment. Rare exercise of independent judgment is not sufficient, because no set of standardized rules and procedures can anticipate every contingency, and post orders cover most situations. Here, the direction given by lieutenants to their subordinates is almost completely constrained by the post orders and, therefore, time spent enforcing compliance with those orders does not involve the exercise of independent judgment sufficient to constitute supervision as contemplated under PEBA. Instead, any independent judgment exercised was "occasional" or in the performance of non-supervisory duties. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2013 (Jan. 23, 2013).

This element of the PEBA definition of supervisor is distinct from "supervisory duties". Thus, an employee need not spend a majority of his or her work time directing the work of subordinates but need only do so "customarily and regularly". The phrase "customarily and regularly" means that the conduct is commonly or frequently practiced or observed, at fixed or normal intervals. "Directing" the work of subordinates does not require the supervisor to literally instruct his or her subordinates in how to perform every aspect of their jobs. Thus, an employee may be a "supervisor" under PEBA even though his or her subordinates are largely capable of executing their job duties without direction. It is sufficient in these cases that the disputed employee regulates or determines the activities or course of performance of his or her subordinates, organizes or energizes their work, or trains and leads the performance of their duties. *NMCPSO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009; in re: Case No. 319-08).

Some of the school's head custodians and supervisory custodians are not supervisors under PEBA because they did not supervise at least two or more employees, in addition to performing the same work as their subordinates and functioning as lead employees. *Classified School Employees Council-Las Cruces and Las Cruces Schools*, 1 PELRB No. 20 (Feb. 13, 1997).

- **Effectively recommend hiring, promotion or discipline**

Lieutenants in the state corrections department do not have authority to hire, promote or discipline other employees or effectively recommend as much when they merely report instances of a subordinate's deviation from policies or post orders without a recommendation of any specific level of discipline and all decision-making lies with the warden and HR. Similarly, the lieutenants play no role in the hiring or promotional process; and their role in the promotion process is limited to annual performance evaluation of their subordinates, using a standardized form prepared by HR and completed based on instructions and training provided by HR. Accordingly, they are the sort of occasional peer review or evaluation program contemplated by PEBA as not being an indication of supervisory status. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2013 (Jan. 23, 2013).

The "hiring, promotion or discipline" prong is written in the disjunctive, so only one criterion need be met. Under the "hiring, promotion or discipline" prong, it is sufficient that the employee has the authority to issue written or oral discipline, even if some of that employee's subordinates – who are lead employees or are otherwise in the bargaining unit – also have similar authority. *NMCPSO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009; in re: Case No. 319-08).

- **Employer designations as supervisor**

Duties performed by a sergeant are not supervisory merely because the county has designated the sergeant position to

be supervisory. Otherwise, an employer could, merely by labeling positions as supervisory, exclude whole classes or groups of employees from the Act's coverage, without regard to statutory definitions and the Board's role in adjudicating unit determination issues. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n, FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

The public employer retains the right to designate a position as supervisory in nature, but PEBA provides the definition for supervisor for purposes of collective bargaining and unit composition, even over a conflicting definition of a local ordinance. *NEA v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996).

- **Employer expectations, job descriptions, and/or SOP manuals**

An employer's expectation that an employee shall supervise subordinates even when they are performing the same work as those subordinates is not relevant under the PEBA definition. Rather, the PEBA definition requires consideration of duties actually performed, while expectations may not surface or materialize. In determining whether an employee is an excluded supervisor, a hearing examiner properly relies on witness testimony regarding actual job duties, rather than basing the determination on written job descriptions. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

Unit inclusion and exclusion determinations must be based on actual duties performed, rather than on written job descriptions or standard operating procedures manuals, which merely reflect expectations that may not materialize or surface, especially when juxtaposed against actual duties. Basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees. *McKinley County Sheriff's Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

Testimony that police sergeants are expected to supervise 100% of the time only reflects the expectation that they will perform supervisory duties whenever called upon to do so. Where, in fact, the expectation only results in the occasional performance or assumption of supervisory or directory roles, the position meets the proviso in the definition for excluding a position from supervisory status. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

- **Independent judgment**

The direction given by lieutenants to their subordinates is almost completely constrained by the post orders issued by the warden of each facility and, therefore, time spent enforcing compliance with those orders does not involve the exercise of independent judgment sufficient to constitute supervision as contemplated under PEBA. Any independent judgment exercised was found to be "occasional" or in the performance of non-supervisory duties. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB- 2013 (Jan. 23, 2013), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

An important factor in determining supervisory status is whether the employee is exercising independent judgment or routinely ensuring that procedures and policies are followed. Where an employee is merely relaying instruction from a supervisor or ensuring that subordinates adhere to an established procedure, that individual is not a supervisor under the Act. A police lieutenant is appropriately excluded as a supervisor where his or her duties go beyond simply ensuring established procedures and policies are followed and instead require the use of independent judgment in directing employees. For example, the lieutenant is responsible for the supervision of the patrol division through the planning, controlling, and direction of work, *i.e.*, through planning work schedules, determining types and numbers of employees to assign to each shift, and reassigning calls issued by telecommunications. Furthermore, the lieutenant is involved with the applicant review board, whereas the sergeant's role in that process is minimal or nonexistent. *McKinley County Sheriff's Ass'n FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

A telecommunicator supervisor is excluded from a bargaining unit where he is responsible for the overall supervision of the communications personnel; has sole scheduling responsibility; disciplines and evaluates subordinate telecommunicators or effectively recommends such action; is responsible for other telecommunicators' proficiency training; and there is no evidence presented demonstrating that he does not devote a substantial amount of work time to supervisory duties, or that he performs substantially the same duties as his subordinates. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

- **Lead employees**

Battalion commanders are not mere lead employees, and their duties were substantially different from those of their subordinates. *IAFF Local 4366 v. Santa Fe County*, 6-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the H.E.'s determination that a majority of their work time was spent on routine or clerical duties that did not call for the exercise of independent judgment).

A "lead employee" is one who performs the same work as his or her subordinates and who does not engage in distinct and separate supervisory duties that require the exercise of independent judgment. *NMCPSO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009; in re: Case No. 319-08).

The school's head custodians and supervisory custodians are not supervisors under PEBA because they performed the same work as their subordinates and functioned as lead employees. Additionally, some did not supervise at least two or more employees. *Classified School Employees Council-Las Cruces and Las Cruces Schools*, 1 PELRB No. 20 (Feb. 13, 1997).

The positions of shift sergeant, classification sergeant, juvenile sergeant and transport sergeant at the county detention center are lead workers, not supervisors, because they perform most, if not all, of the duties as those of their subordinates: they explain tasks to them and expedite the work of a shift that is small in number of personnel; their supervisory functions are incidental and occasional; and, for the most part, their exercise of independent judgment and discretion is limited by reliance on such things as decision trees and the standard operating procedures manual. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

A sergeant's actual duties are of a routine, ministerial nature and fall within the role and function of a lead employee, where the leader (sergeant) performs the duties of the workers (deputies), expedites or facilitates the performance or completion of those duties, and explains tasks to new workers, and supervisory functions "are incidental to the duties performed as a member of the work shift, *McKinley County Sheriffs Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

Notwithstanding their job descriptions or the paramilitary structure of the fire department, captains are not supervisors under PEBA, but rather are lead employees with limited authority, whose duties are substantially similar to those of their subordinates including firefighting, and who exercise no independent judgment in directing other employees. *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

- **Effect of NLRA precedent**

The definition of "supervisor" in PEBA is not the same as, or closely similar to, the definition contained in the NLRA because PEBA's definition is delimited by provisos that do not exist in the NLRA definition. Consequently, positions that may be supervisory under the NLRA and excluded from the bargaining unit under that act may not be supervisory under PEBA, given the difference in definitions. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

- **Majority of work time**

Note: PEBA II amended PEBA I by requiring that a "majority of work time" be devoted to supervisor duties, instead of a "substantial" amount of work time. See § 10-7E-4(T). Thereafter, the 2020 amendments repealed § 26 which allowed grandfathered boards to continue to use the "substantial", which was generally viewed as more than a majority. As such, PELRB jurisprudence concerning § 26(B) local ordinances and the "substantial amount of time" has been rendered moot. See Appendix – Local Board Related Law.

The landfill supervisor did not meet the definition of supervisor in the PEBA because he spends a majority of worktime operating a bulldozer or compactor and doing other work similar to his subordinates, among other factors. *Teamsters Local 492 v. Estancia Valley Solid Waste Authority (EVSWA)*, 14-PELRB-2026 (May 12, 2025; in re: Case No. 301-26).

Charge nurses at UNM SRMC are not excluded as supervisors because they do not devote a majority of their work time performing supervisory duties. *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 26-PELRB-2023 (Jun. 9, 2023; in re: Case No. 304-22).

Lieutenants are not excluded as supervisors where much of the administrative work lieutenants engage in "is of a routine or clerical nature, such as recording attendance, or creating shift rosters" and approximately 4.25 hours out of a possible 12-hour shift were arguably supervisory. As such, it cannot be said that the lieutenants at issue devote a majority of their work time to supervisory duties. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB- 2013 (Jan. 23, 2013).

Rio Rancho police lieutenants spend a majority of their work time devoted to various supervisory duties, including but not limited to the direction of subordinates, and other work that requires independent judgment and that are distinct from the work of their subordinates. It is not required that they spend a majority of work time directing the work of subordinates, but rather that a majority of work time is spent on supervisory duties in general. *NMCP SO-CWA Local 7911 and City of Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009).

Custodian heads are not supervisors because they spend less than ten percent (10%) of their time engaged in strictly supervisory tasks. *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re: Case No. 169-06).

The positions of shift sergeant, classification sergeant, juvenile sergeant and transport sergeant at detention center are not supervisors under PEBA because, among other things, the amount of time a sergeant spends directing subordinates is limited to 25-30% of their workday, and it may even be eliminated entirely depending on how busy and short-handed a shift may be. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

Police sergeants are not excluded as supervisors where they spend 75% of their work engaged in the same patrol duties as their subordinates, such as patrolling the university, issuing citations, appearing in court, and providing support or backup to other officers. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

- **Routine, ministerial duties**

Fire battalion commanders or captains are supervisors and not mere lead employees, because their duties were substantially different from those of their subordinates. *IAFF Local 4366 v. Santa Fe County*, 6-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the H.E.'s determination that a majority of their work time was spent on routine or clerical duties that did not call for the exercise of independent judgment).

"Routine, clerical or ministerial duties" are duties that do not require the exercise of independent judgment and such duties therefore cannot be supervisory in nature. *NMCP SO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009, in re: Case No. 319-08).

Sergeants are appropriately included in the bargaining unit where a substantial amount of their work time is consumed by duties of a routine nature, which are also closely aligned with the duties performed by subordinate patrol officers and deputies. A sergeant's actual duties fall within the role and function of a lead employee because the sergeant performs the same duties as the deputies; expedites or facilitates the performance or completion of those duties; explains tasks to new workers; and any supervisory functions are incidental to the duties performed as a member of the work shift. *McKinley County Sheriffs Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

- **Substantially same duties**

Fire Department Battalion Captains may not be accreted into the existing bargaining unit because their duties were substantially different. *IAFF Local 4366 v. Santa Fe County*, 6-PELRB-2009 (May 7, 2009; in re: Case No. 321-08) (reversing the H.E.'s determination that a majority of their work time was spent on routine or clerical duties that did not call for the exercise of independent judgment).

It is not sufficient to perform substantially different duties, if the majority of the different duties are routine, clerical or ministerial in nature because they do not involve the exercise of independent judgment. *NMCP SO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009, in re: Case No. 319-08).

Police sergeants are not excluded as supervisors where they spend 75% of their work engaged in the same patrol duties as their subordinates, such as patrolling the university, issuing citations, appearing in court, and providing support or backup to other officers. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

Notwithstanding their job descriptions or the paramilitary structure of the fire department, captains are not supervisors under PEBA, but rather are lead employees with limited authority, whose duties are substantially similar to those of their subordinates including firefighting, and who exercise no independent judgment in directing other employees. *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

- **Supervisory duties**

Supervisory duties are marked by the use of independent judgment, and supervisors are distinguished from lead employees who typically do substantially the same job as their subordinates except for occasional routine or clerical duties that do not require independent judgment. Supervisory duties are not limited to directing the work of others and can instead include any administrative or liaison duties that involve the use of independent judgment in effectuating the employer's purposes, goals and objectives. *NMCP SO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009; in re: Case No. 319-08).

§ 10-7E-5 [Rights of public employees] (Amended 2020)⁸

- **Generally**

Note: The 2020 amendments expressly added the "right to engage in other concerted activities for mutual aid or benefit", which is the NLRA language from which *Weingarten* type rights to union representation were derived, resolving this occasionally disputed area of law. **See** § 5(B). Before the 2020 amendments, § 5 rights were nonetheless largely interpreted comparably by the PELRB. *See, e.g., AFSCME Council 18 v. Dep't of Health*, 6-PELRB-2007 (Dec. 3, 2007; in re: Case No. 168-06) (finding § 5 provided "basically the same rights" as § 7 of the NLRA and that the differences in text "appear to be directed to streamlining the language utilized in the NLRA, rather than limiting or narrowing the enunciated rights").

⁸ Section 5: The 2020 amendment, effective July 1, 2020, provided public employees the right to engage in concerted activities for mutual aid or benefit; and added Subsection B.

PPC summarily dismissed upon motion where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant's PEBA rights to engage in concerted activity and have Union representation, but Complainant's evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§ 5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

Respondent violated §§ 5(A), 5(B), 19(B), 19(C), 19(F) and 19(G) – but was not shown to have violated §§ 19(A) or 19(D) – by refusing to bargain over layoff or provide information related to the layoffs. Additionally, “SRMC’s re-assignment of nurses between Pre-Op and PACU constituted a substantive change in terms and conditions of employment – a mandatory subject of bargaining, not only work tasks but schedules requiring bargaining, for which bargaining was demanded but refused. Such a change in duty assignments necessarily implicates terms and conditions of employment that SRMC was obliged to bargain before implementing.” *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), **aff’d** D-202-CV-2024-01995 (6/10/25).

The Board correctly applied the *Wright Line* burden shifting standard, to conclude that §§ 5, 19(A), 19(B), 19(D) or 19(E) were violated; and the Board’s Order was supported by substantial evidence because termination was due to unsatisfactory job performance, not Union activity, and management was unaware of the employee’s union involvement. *UHPNM v. UNM-SRMC*, D-202-CV-2023-09603 (Jun. 28, 2024; in re: 60-PERB-2023, Case No. 105-23).

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee’s union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff’d** D-202-CV-2024-01099 (2/7/25).

PPC dismissed upon pre-hearing motion for failure to state a claim under §§ 5(A) or (B), 17(A), or 20(B) - (E) where it alleged the union, of which the complainant was the vice president, failed or refused to let him speak for the union; and violated its own bylaws and/or constitution. This was an internal union dispute and it _____. *Hawkins v. Gallup McKinley County Schools*, 34-PELRB-2026 (Sep. 10, 2026; in re: Case No. 107-26).

Refusal to deduct dues of regular employees who are not bona fide temporary employees violates §§ 5(A), 19(B), and 19(G). *CWA and Dep’t of Cultural Affairs (DCA) and State Personnel Office (SPO)*, 15-PELRB-2026 (May 12, 2025; in re: Case No. 130-25), pending appeal at D-202-CV-2026-05466; see also 31-PELRB-2026 (8-12-26; same case) (ordering the H.E. to conduct a hearing on the issue of “make-whole” relief ordered), pending appeal at D-202-CV-2026-07473.

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that termination was based on multiple grounds of serious misconduct, and was not pretextual. 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.” It was emphasized that “[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

The union failed to meet its burden of proof regarding allegations that the hospital violated §§ 5(A) and 19(B) by supporting a decertification campaign against the Union and treated pro-union bargaining team members and/or supporters different than the pro-decertification or anti-Union employees, where the evidence only showed anti-union actions and animus by non-supervisory/non-managerial employees, aside from some *de minimis* instances. *United Health Profs. of N.M. v. UNM-Sandoval Reg’l Med. Center*, 3-PELRB-2026 (Feb. 19, 2026, in re: Case No. 128-24).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

PPC dismissed where it alleged that by reclassifying a particular employee’s position from one within the bargaining unit

to one outside of it, the Department interfered with, restrained or coerced a public employee in the exercise of a right guaranteed pursuant to § 5. There was no evidence that the employee was reclassified in violation of the PEBA, and “[t]here are no facts alleged by the union that the reclassification of the position in question was for any reason other the legitimate interests of the employer notwithstanding its unsupported statements in paragraph 6 that the State re-classified the position solely to erode the employee’s right to collective representation and bargaining.” *AFSCME Council 18 v. Human Services Dep’t*, 7-PELRB-2012 (Jan. 22, 2012; in re: Case No. 132-11).

- **Right to information**

Respondent violated §§ 5, 17, 19(B), 19(C), 19(F) and 19(G) – but was not shown to have violated §§ 19(A) or 19(D) – by refusing to bargain over layoff or provide information related to the layoffs. “This Board has recognized that the duty to bargain includes the duty to provide, upon request, any relevant information necessary not only to negotiate or administer a Collective Bargaining Agreement, but to otherwise fairly and adequately represent all collective bargaining unit employees. An employer’s failure to provide information is a per se violation of the PEBA.” “The financial information, information related to hours of work and any other benefit or term and condition of employment, information pertaining to possible loss of bargaining unit work, such as that sought by AFT in this case, is recognized as being presumptively relevant.” *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23) (citing *Nat’l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04)), *aff’d* D-202-CV-2024-01995 (6/10/25). *Accord United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), *aff’d* D-202-CV-2024-01996 (11/4/24).

Respondent violated §§ 15(F) and 19(F) and (G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information that was presumptively relevant. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

Respondent violated §§ 5(A), 5(B), 14(A) and 19(G) by failing or refusing to provide the Union with the list of bargaining unit employees in the proposed unit in PELRB Case No. 303-22, along with their contact information. *AFT and IAMAW v. UNM-Sandoval Reg’l Med. Center*, 29-PELRB-2022 (Nov. 28, 2022; in re: Case No. 112-22).

The failure to provide a union with the names and home addresses of proposed bargaining unit employees interferes with, restrains or coerces the public employees in their right to form, join or assist a union for purposes of collective bargaining. *SSEA Local 3878 v. Socorro Consol. School Dist.*, 5-PELRB-2007 (Dec. 13, 2007), citing *Excelsior Underwear*, 156 NLRB 1236 (1996).

Note: This implicitly rejected arguments of counsel that *Excelsior* should not apply to the public sector based on language differences and public policy, and that the PELRB should instead follow precedent under the Federal Labor Management and Employees Relations Act, 29 USC §§ 7101 *et seq.* However, the 2020 amendments made the relevant PEBA language congruent to that of the NLRA, rendering the argument moot.

- **Supervisors excluded**

The failure to expressly exclude supervisors from those public employees protected under § 5 was a clerical or typographical error, and the omission does not mean that supervisors are covered under PEBA provided that they are represented in a separate bargaining unit under § 13(A). *Santa Fe Police Officers Ass’n v. City of Santa Fe*, 2-PELRB-2007 (Oct. 14, 2007).

- **Right to union representation**

Weingarten rights apply under PEBA generally (although not to law enforcement investigations) and are also relevant to personnel board hearings. The assistant superintendent violated the employee’s rights by denying his request for union representation at the initial investigatory meeting. However, *Weingarten* rights did not apply to law enforcement investigation of potential crimes, so no violation occurred when he was denied union representation for a subsequent APD interview. *AFSCME Council 18, on Behalf of Daniel Nogales v. City of Albuquerque Parks and Recreation Dep’t and City Personnel Board*, D-202-CV-2013-2891 (Oct. 11, 2013) (reviewing a City Personnel Board determination).

Weingarten-type rights exist under PEBA. *AFSCME Council 18 v. CYFD*, 10-PELRB-2013 (May 15, 2013), citing *Pita S. Roybal v. CYFD*, 2-PELRB-2006.

Note: the dissent emphasizing language differences between relevant PEBA and NLRA provisions but the 2020 amendments incorporated the NLRA “mutual aid and benefit” language in Subsection (B) upon which the NLRA *Weingarten* rights were established.

The division violated the PEBA by conducting an investigation of a bargaining unit employee without first informing her of her CBA rights to a union representative. *AFSCME Council 18 v. Adult Protective Services Division*, 9-PELRB-2010 (Oct. 12, 2010; in re: Case No. 111-10) (reversing the H.E.’s determination that it was a *Weingarten*-based right).

Employee waived his rights to union representation when he retained an attorney; and he continued to waive such

rights when he was provided with a written statement from his legal counsel allowing him to continue discussion of issues with his employer. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 1-PELRB-2010 (Jun. 25, 2010; in re: Case No. 139-09).

Claims based on *Weingarten* are dismissed where the meeting at issue was not investigatory. *Pita S. Roybal v. CYFD*, 2-PELRB-2006 (affirming dismissal and accepting without question that *Weingarten* rights exist under PEBA and enumerating them).

§ 10-7E-6 [Rights of public employers – e.g., “management rights”]

The presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining. The department relied upon the management rights and scheduling clauses in its CBA as a waiver of the union's right to bargain but the court – referring to another section of the same CBA that required HSD to negotiate in good faith prior to making any changes in terms and conditions of employment related to “reasonable standards and rules for employees' safety” – found that HSD did not meet its burden of showing a clear and unmistakable waiver of the union's right to bargain those issues through the management rights clause. *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re: 59-PELRB-2012, Case No. 151-11).

The union failed to prove the department violated §§ 19(F), 19(G), or 19(H) by unilaterally implementing a performance quota for family assistance analysts, because their right to do so has already been bargained for in the management rights clause. *AFSCME Council 18 v. Human Services Dep't*, 12-PELRB-2018 (Oct. 4, 2018; in re: Case No. 123-17).

Furloughs are an exercise of management's reserved rights under the parties' CBA, which reserves to management the right to relieve an employee from duties because of lack of work or other legitimate reason, so there was no duty to bargain over the furlough. Nor was there an obligation to bargain the impacts, “because all matters over which the Union wanted to bargain are covered by the contract”, meaning the parties had already bargained over the impacts. *AFSCME Council 18 v. State*, 1-PELRB-2013 (Jan. 23, 2013).

A PPC alleging failure to promote in violation of the CBA may be dismissed on motion for summary judgment where, “[o]n that threshold question of Complainant's qualifications it is management's assessment that is determinative in this case”, reading the CBA's management rights and job qualifications provisions together; and management had concluded the employee was not qualified due to the prior demotion for poor performance. *Thuman v. Public Defender Dep't*, 54-PELRB-2012 (Jul. 13, 2012; in re: Case No. 103-12).

A local ordinance cannot limit the subjects over which a public employer must negotiate through an improperly broad reservation of exclusive management rights. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993). **Accord** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

Subjects that lie at or near the core of the County's public service mission are within their inherently reserved management's rights and not mandatory subjects of bargaining. However, the effect, consequence or impact and implementation of core managerial decisions with respect to bargaining unit employees are mandatory bargaining subjects. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

The employer did not breach a duty to bargain before changing shift hours and transferring bargaining unit work to non-bargaining unit employees where the CBA's management rights clause stated that management could transfer unit employees and change shift hours in order to maintain the governmental operations entrusted to it by law. Section 6 allows the transfer of public employees unless limited by the provisions of the CBA and here the CBA's management rights clause expressly permitted it. *Bernalillo County Court Deputies Ass'n v. Bernalillo County Sheriff's Office and Bernalillo County*, 54-PELRB-2021 (Jun. 1, 2021; in re: Case No. 121-20).

§ 10-7E-7 [Appropriate governing body; public employer]

Instrumentalities, agencies and institutions of local government are included as separate appropriate governing bodies under PEBA by virtue of use of the phrase “local public body” in § 7. As an instrumentality, agency or institution of Grant County that is solely responsible for managing the hospital and for performing all tasks and assuming all responsibilities associated with the hospital's employees, the Gila Regional Medical Center is a public employer under the Act and is the appropriate governing body. A county is not an appropriate governing body where its instrumentality, agent or institution routinely acts independently of the county and disregards county commissioner recommendations, and where the county has historically denied legal liability related to the operation of the instrumentality, agent or institution. The definition of “public employer” must be read in conjunction with § 7 regarding a public employer's “governing body”, which is the policy making body, or the body or person charged with management of the local public body. Therefore, the critical question is who is charged with management of the public body. Determining who is charged with the management of the local public body requires addressing the factual question of who has the authority to hire, promote, evaluate, discipline, discharge and set work rules for the employees in question. *United Steelworkers Ass'n and Gila*

§ 10-7E-8 [PELRB; created; terms; qualifications]

None of the PELRB members serve at the pleasure of the governor. Although the PEBA obligates the governor to appoint them, based on Article XX, Section 2 of the New Mexico Constitution, the third neutral board member whose appointment had expired continued to serve until his successor is duly qualified “unless he is lawfully removed.” Because constitutional due process requires a neutral tribunal with members who were free to deliberate without fear of removal by a frequent litigant such as the governor, the governor is enjoined from removing the PELRB members. Nor may the governor use the broad removal authority granted by Article V, Section 5 of the New Mexico Constitution to remove members PELRB who were responsible for adjudicating disputes involving the Governor. First, as noted, none of the PELRB members serve at the pleasure of the governor and PEBA obligated the governor to appoint the recommended members. Second, the governor’s duty to ‘take care that the laws be faithfully executed,’ as outlined in Article V, Section 4 of the New Mexico Constitution, requires respecting the PEBA’s provisions for continuity and balance. Attempting to remove appointed PELRB members would undermine this balance and the guarantees of constitutional due process and fair deliberations. *AFSCME v. Gov. Martinez and the State*, 2011-NMSC-018.

Nonetheless, the Governor is not required to pick one union’s preferred nomination. *AFSCME v. Martinez (Martinez II)*, Sup Ct. Docket No. 33,141 (Sep. 6, 2011) (denying a writ of prohibition based on the state governor not selecting a labor representative that had the recommendation of a “vast majority of organized labor representatives” and instead choosing one recommended by the Las Cruces Police Officers Association).

§ 10-7E-9 [Board] (Amended 2020)

Note: § 9 was amended in 2020 to add “local board” after every iteration of “the board”; and other changes, which had the effect of imposing a functionality requirement on local boards by providing them the same powers and express duties as provided to the PELRB. There were a number of other significant changes as well, including deleting the reference to fair share, and specifying the remedies the PELRB is empowered to issue.⁹

§ 10-7E-9(A) [Board; powers and duties-issue regulations] (Amended 2020)¹⁰

PELRB regulations have the force of law if promulgated in accordance with the statutory mandate to carry out and effectuate the purpose of PEBA. *City of Las Cruces v. N.M. PELRB*, 1996-NMSC-024.

§ 10-7E-9(B) [Board; powers and duties-conduct hearings] (Amended 2020)¹¹

- **Authority to conduct adjudicatory hearings**

The separation of powers doctrine does not prevent the PELRB, an executive agency, from acting as an adjudicatory body by passing on the merits of a complaint alleging that a local labor ordinance’s provisions violate PEBA. *Santa Fe County* and *AFSCME*, 1 PELRB No.1 (Nov. 18, 1993). **See also** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

⁹ Section 9: The 2020 amendment, effective July 1, 2020, provided certain powers and duties to local labor boards, and revised certain powers and duties of the public employee labor relations board; added “or a local board” or “and local board” after each occurrence of “board” throughout the section; in Subsection E, after “functions”, added “and each may delegate any or all of its authority to those third parties, subject to final review of the board or local board”; in Subsection F, after “administrative remedies”, added “actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the board or local board”; in Subsection G, added the first three sentences of the subsection, and deleted “The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit.”; and added Subsection H.

¹⁰ Section 9(A): the 2020 amendment added “local board”.

¹¹ Section 9(B): the 2020 amendment added “local board”.

- **Disciplinary Board referrals and other sanctions for misconduct before the H.E.**¹²

Lawyer appearing before the PELRB hearing examiner was reported by the H.E. to the N.M. Disciplinary Board for unauthorized practice of law, and lack of candor and competence, because the evidentiary record showed the attorney was not authorized to practice law in N.M. and had provided false or fabricated legal citations in their brief. *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

Lawyer appearing before the PELRB hearing examiner was reported by the H.E. to the N.M. Disciplinary Board for lack of candor and competence, because the evidentiary record showed the attorney to have provided false or fabricated legal citations in their brief, which may have been generated by AI. *Hatch Police Officers Ass'n v. Village of Hatch*, 9-PELRB-2026 (Mar. 19, 2026; in re: Case No. 128-25);¹³ see also 35-PLRB-2026 (Sep. 10, 2026) (setting hearing before Board on Village non-compliance).

§ 10-7E-9(C) [PELRB; powers and duties-issue subpoenas, administer oaths, receive evidence]¹⁴

Employer's motion to quash the union's subpoena *duces tecum* denied, rendering moot a previous decision to deny an interlocutory appeal. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 7-PELRB-2024 (in re: Case No. 107-23).

An omnibus motion filed regarding three cases, to quash subpoenas for depositions and production of documents, was denied. *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center and Int'l Union of Machinists and Aerospace Workers v. UNM-Sandoval Reg'l Med. Center*, 10-PELRB-2023 (Feb. 15, 2023; in re: Case Nos. 119-22, 122-22, and 123-22).

§ 10-7E-9(F) [Board; powers and duties-enforcement powers and administrative remedies] (Amended 2020)¹⁵

- **Generally**

Where an employer unilaterally altered employment terms and conditions (a take-home vehicle allowance) that was established pursuant to a legally binding past practice, it was ordered to reinstate the allowance and "reimburse injured bargaining unit members for their mileage and interest", with interest calculated "at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Med. Center*, 356 NLRB 6 (2010), and without recouping the money owed for past dues from employees". *Hatch Police Officers Ass'n v. Village of Hatch*, 9-PELRB-2026 (Mar. 19, 2026, in re: Case No. 128-25), citing *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25); see also 35-PLRB-2026 (Sep. 10, 2026) (setting hearing before Board on Village non-compliance).

Union awarded damages for failure to deduct dues pursuant to the CBA; with damages payable "with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), and compounded daily as prescribed in *Kentucky River Med. Center*, 356 NLRB 6 (2010), and without recouping the money owed for past dues from employees". *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25).

Respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated to support a more expansive remedy than a declaration of liability, particularly one that had not been previously awarded by the PELRB. (Complainant had sought up to 15% interest under NMSA § 56-8-3(A), which provides that "[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract...") *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No.

¹² Where an H.E. learns of professional misconduct in the process of taking evidence and processing complaints or petitions, a duty to report or otherwise address it arises from the hearing examiner's inherent authority and duty to maintain the integrity of PELRB processes and forum. Such a duty to report will also arise from the same professional responsibilities if the H.E. is a licensed attorney.

¹³ In 2007 or 2008, the same hearing examiner, then the Deputy Director, determined an attorney had and reported them for fraudulently or misleadingly redacting evidence they were directed to submit for in camera review; the matter settled before a Board order was issued. See *Santa Fe Public Schools v. NEA-Santa Fe*, Case No. 122-06, Hearing Examiner Report (Sep. 27, 2006).

¹⁴ Section 9(C): the 2020 amendment added "local board".

¹⁵ Section 9(F): the 2020 amendment added "local board"; additionally, after "administrative remedies", added "actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the board or local board".

118-25).

A steward was not entitled to backpay or expungement where he received a 30-day suspension for proven sexual harassment, but the employer made a harmless technical violation of CBA disciplinary process in issuing the final notice of determination. The Board “makes a distinction between violations of contractual due process occurring before the disciplinary hearing and violations that occur after the hearing; in this case the violations occurred after the employee’s disciplinary hearing and had no adverse effects on the employee’s right to appeal the discipline”, so expungement was not an appropriate remedy. *AFSCME, Local 1529 v. Doña Ana County*, 34-PELRB-2025 (Nov. 11, 2025; in re: Case No. 112-25).

Where the county violated §§ 19(B), 19(D), and 19(E) by its investigations of two employee union organizers, the Board amended the recommended remedies to include removal of any reference to the investigation at issue from the two employees’ personnel files. *AFSCME Council 18 v. Bernalillo County*, 65-PELRB-2021 (Aug. 6, 2021; in re: Case No. 101-21).

The Board is without authority to award “consequential” monetary damages for losses associated with contract breach. *AFSCME Council 18 v. Santa Fe County*, 20-PELRB-2016 (Oct. 17, 2016; in re: Case No. 128-15) (the claim concerned failure to provide information necessary to obtain dues).

Note: The 2020 amendments specifically added backpay and consequential damages among other listed remedies, so the continuing validity of this ruling is uncertain.¹⁶

As remedy for violations of §§ 19(A), 19(B), § 19(D), and § 19(E), the county was ordered to cease and desist, post a notice, and re-instate the employee to his probationary position of Sergeant for the remainder of his probationary period and thereafter unless removed for other legitimate reasons and make him whole by payment of back pay and benefits until the ordered reinstatement is accomplished. Costs of the merits hearing were further ordered based upon the county’s failure to cooperate in PELRB prehearing procedures, and for its default at the merits hearing, and not in the way of a sanction or punitive damages. *AFSCME Council 18 and Chris Verduzco v. Luna County*, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16); **see also** 26-PELRB-2016 (assessing costs at \$16.00).

As remedy for the county’s violations of §§ 19 (A), (B), (D), and (E) in noticing its intent to terminate and then terminating an employee for appearing and giving testimony during an bargaining unit composition hearing associated with another case, the county was ordered to post notice of the violations; and to immediately reinstate the employee to his former position with all back pay and benefits including but not limited to PERA contributions, seniority rights and leave accruals. *AFSCME Council 18 and Gilmore v. Luna County*, 17-PELRB-2016 (Aug. 9, 2016; in re: Case No. 105-16) (discipline was based upon his providing or discussing allegedly confidential Post Orders that had been stipulated to and/or offered and admitted without objection during proceedings in Case No. 320-15).

- **Attorney fees not allowed**

The imposition of attorney fees is not an appropriate administrative remedy under PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994).

- **Denial of local board approval**

Where a local labor ordinance violates PEBA, the PELRB may deny approval of the application for a local board and may declare the ordinance to be of no effect unless and until the governing body revises the offending provisions consistent with the Board’s determination. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994). (**Note:** at the time, this power was inferred based upon the Board’s power to approve local boards, but the power was made express with the 2020 amendments.)

- **Duty of fair representation (DFR) claims**

The PELRB and local boards lack authority under § 9(F) to either award monetary damages to an aggrieved union member for a union’s breach of its duty of fair representation, or to order the union to reinstate an employee allegedly improperly terminated as a result of the Union’s breach. Therefore, DFR claims against the union cannot be brought before the PELRB or a local labor board and must instead be filed in district court. *Callahan v. NM Federation of Teachers-TVI*, 2006-NMSC-010.

See also Keywords and Phrases, Duty of Fair Representation, *infra*, for DFR related civil cases and legal standards

- **Injunctive relief**

The Board’s authority to issue injunctive relief is supported by the PEBA, which allows it to seek enforcement of its

¹⁶ See also [Compensatory vs. Punitive Damages: What’s the difference?](https://thelawdictionary.org), at <https://thelawdictionary.org>.

orders in court. *City of Rio Rancho v. AFSCME Council 18, Local 3277*, D-202-CV-2019-1398 (Oct. 28, 2019; in re: 1-PELRB-2019, Case No. 113-18).

PEBA grants both express and implied authority for the PELRB to grant injunctive relief. *AFSCME Council 18 v. Dep't of Workforce Solutions*, 6-PELRB-2015 (Oct. 9, 2015; in re: Case No. 114-15), citing § 23(A) and *Leonard v. Payday Professional*, 2007-NMCA-128.

The Board has jurisdiction to grant pre-adjudication injunctive relief based on §§ 23(A), and 18(D) (evergreen provision) which requires existing contracts to remain in effect until a successor contract is negotiated. Granting a pre-adjudication injunction under the facts here would serve to preserve the status quo, while the underlying PPC remains in the process of adjudication, and it is consistent with PEBA's evergreen provision; and the change the district proposed to make while at impasse relates to mandatory subjects of bargaining under § 17 and are, in comparison to the CBA, more burdensome to the member of EA-WLY because it increases the number of classes and subjects, as well as reduces class-preparation time and the period for lunch. *NEA – West Las Vegas v. West Las Vegas School Dist.*, 21-PELRB-2013 (Aug. 19, 2013; in re: Case No. 108-13); **but see** D-412-CV-2013-00347 (the court dissolved the injunction and referred the matter to pending arbitration pursuant to the impasse proceeding and the matter thereafter settled).

- **Interest**

Where an employer unilaterally altered employment terms and conditions (a take-home vehicle allowance) that was established pursuant to a legally binding past practice, it was ordered to reinstate the allowance and "reimburse injured bargaining unit members for their mileage and interest", with interest calculated "at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Med. Center*, 356 NLRB 6 (2010), and without recouping the money owed for past dues from employees". *Hatch Police Officers Ass'n v. Village of Hatch*, 9-PELRB-2026 (Mar. 19, 2026; in re: Case No. 128-25), citing *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25); *see also* 35-PLRB-2026 (Sep. 10, 2026) (setting hearing before Board on Village non-compliance).

Union awarded damages for failure to deduct dues pursuant to the CBA; with damages payable "with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), and compounded daily as prescribed in *Kentucky River Med. Center*, 356 NLRB 6 (2010), and without recouping the money owed for past dues from employees". *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25).

Respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated to support a more expansive remedy than a declaration of liability, particularly one that had not been previously awarded by the PELRB. (Complainant had sought up to 15% interest under NMSA § 56-8-3(A), which provides that "[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract...") *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No. 118-25).

- **Protective orders**

The Board and its hearing examiners can enter protective orders as appropriate. *Bernalillo County Court Deputies Ass'n v. Bernalillo County*, 54-PELRB-2021 (Jun. 1, 2021; in re: Case No. 121-20) (stipulated protective order issued to seal a proposed exhibit regarding courthouse security).

- **Punitive damages not allowed**

The imposition of punitive damages is not an appropriate administrative remedy under PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-9(G) [Board; powers and duties-conformance of local board rules and fair share] (Amended 2020)¹⁷

- **Generally** See Appendix – Local Board Related Case Law
- **Fair share**

Note: pre-2020 amendments, PEBA II expressly identified fair share payments as a permissive subject of bargaining, whereas PEBA I had interpreted it as a mandatory subject. *Cf.* § 10-7E-9(G) and § 10-7D-9(G), but that provision was rendered moot after *Janus v. AFSCME*, 585 U.S. 878 (2018), which held that union dues

¹⁷ Section 9(G): the 2020 amendment added "local board; additionally, added the first three sentences of the subsection, and deleted "The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit."

deduction agreements for agency fees (fair share payments) are no longer enforceable under the U.S. Constitution.

Following the *Janus* decision, a plaintiff sought retrospective relief for dues paid while a member of a trade union, after having signed three union membership agreements and dues deduction authorizations over the course of his employment. The Tenth Circuit determined that the signed agreements were binding documents that the plaintiff freely entered into on multiple occasions and the *Janus* case did not permit the plaintiff to renege on his contractual obligations. The court also concluded that the governor and attorney general have Eleventh Amendment immunity and do not fall under the *Ex Parte Young* exception. *Hendrickson v. AFSCME Council 18*, 992 F. 3d 950 (10th Cir. 2021).

The city violated the CBA when it stopped deducting union dues from member employees based on *Janus v. AFSCME Council 31*, 585 U.S. 878 (2018), which declared mandatory agency fees for non-members to be unconstitutional. The city misinterpreted *Janus* by attempting to require reauthorization for union dues from members, as *Janus* explicitly pertains only to nonmembers. *City of Rio Rancho v. AFSCME Council 18, Local 3277*, D-202-CV-2019-1398 (Oct. 28, 2019; in re: 1-PELRB-2019, Case No. 113-18).

Although § 9(G) provides that “fair share” shall be a permissive subject of bargaining and *Janus* renders such agreements unenforceable, the State is still obligated to bargain “dues deductions” as a mandatory subject of bargaining under § 17(C). However, if the union includes fair share language in its dues deductions proposals, then it calls into question whether a provision that would otherwise be a mandatory subject of bargaining remains so. *AFSCME Council 18 v. State*, 62-PELRB-2012 (Sep. 9, 2012; in re: Case No. 106-12).

As part of an interest arbitration award, the arbitrator rejected a proposed indemnification clause wherein management sought to add to a fair share article among other changes to the *status quo*. *Doña Ana County (Sheriff) and CWA, Local 7911*, FMCS Case #13-51332-1 (Aug. 27, 2013).

§ 10-7E-10 [Local boards – conditions of continued existence; transfer of authority upon termination; prohibition of new local boards] (Repealed and reenacted 2020)

- **Generally**

Matters before a local board are remanded to the PELRB after dissolution or lapsing of that local board. *AFSCME Council 18 v. Doña Ana County*, 18-PELRB-2024 (Mar. 7, 2024) (the PELRB ordered the union’s requested relief after the court reversed the local board, determining the employee was terminated in retaliation for exercise of PEBA rights).

Note: the 2020 reenactment provided that no more local boards may be created; clarified that all local boards’ rules and processes must follow PELRB requirements; and provided for automatic dissolution in the event local boards are not compliant. **See** § 10. The 2020 amendments also repealed § 26, concerning grandfathered local boards. There are currently only three local boards remaining (City of Albuquerque LMRB, Albuquerque Public Schools, and Silver City), so the extensive past law concerning local boards is now largely moot and therefore removed to the Appendix, herein.

- **All other topics - See Appendix – Local Board Related Case Law**

§ 10-7E-12(B) [Hearing procedures-due process requirement]

- **Due process in administrative proceedings**

It is well settled that the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense. *TW Telecom v. Pub. Reg. Comm’n*, 2011-NMSC-029, ¶ 17.

The “*Mathews* test” from *Mathews v. Eldridge*, 424 U.S. 319 (1976), provides useful framework for determining the appropriate amount of process to protect liberty. “Under the *Mathews* test, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *City of Albuquerque v. Chavez*, 1998-NMSC-033.

Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law. A litigant must be given a full opportunity to be heard with all rights related thereto. The essence of justice is largely procedural. *Uhden v. N.M. Oil Conservation Comm’n*, 1991-NMSC-089.

- **Entitlement of public employers to due process**

Counties are not “persons” entitled to due process and equal protection under state and federal constitutions. *McKinley*

County Sheriffs Ass'n FOP and McKinley County, 1 PELRB No. 15 (Dec. 22, 1995), citing *Williams v. Mayor*, 289 US 36, 40 (1933); *City of Newark v. City of New Jersey*, 262 US 192, 196 (1923); *Avon Lake City School District v. Limbach*, 518 N.E.2d 1190 (Oh. 1988); *Penny v. Bowden*, 199 So.2d 345 (La. App. 1967); and *Village of Blaine v. Indep. School Dist.*, 138 NW.2d 32 (Minn. 1965). **Accord** *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n, FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

- **Right to impartial decision-maker**

The governor's responsibilities under Article V, Section 4 of the New Mexico Constitution to "take care that the laws be faithfully executed" requires that the governor respect the PEBA's requirement for continuity and balance by not attempting to remove appointed members of the PELRB. Constitutional due process requires a neutral tribunal whose members are free to deliberate without fear of removal by a frequent litigant in that forum, such as the governor. *AFSCME v. Martinez and the State*, 2011-NMSC-018.

A board member is not disqualified for bias simply because he was nominated by union interests, or because he had expressed support for aggressive unionization of the public sector prior to being appointed to the Board. Additionally, questions asked by a local board member at an administrative hearing concerning the possibility of compromise do not indicate prejudgment or bias where the board member directed the questions to both the employer and the union representatives, and he did not indicate what he thought the compromise should be. *Las Cruces Prof'l Fire Fighters v. City of Las Cruces (Fire Fighters II)*, 1997-NMCA-031.

Motions to disqualify a hearing examiner are denied where based on statements or conduct in a previous unrelated case between the same parties. *AFSCME Council 18 v. Corrections Dep't*, 3-PELRB-2009 (Apr. 6, 2009; in re: Case No. 149-08). **Accord** *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2009 (Apr. 6, 2009; in re: Case No. 148-08).

Any suggestion of improper conduct on the part of a hearing officer is highly inappropriate absent evidence of bias or a showing of some impermissible motive which might lead to an inference of bias and without such evidence the Board will not entertain mere allegations of impropriety. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

Vague and unspecific comments of a Board member are insufficient to preserve objection of bias particularly when record shows appellant was otherwise granted due process regarding pleadings and oral arguments allowed and considered. *McKinley County Sheriffs Ass'n FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

§ 10-7E-13 [Appropriate bargaining units] (Amended 2020)

Note: the 2020 amendments addressed incumbent units as of January 1, 2020.¹⁸ **Cf.** § 24, pre-2004 Incumbents

See also §§ 4(G) (Confidential), 4(N) (Manager), 4(Q) (Public employee), 4(T) (Supervisor)

§ 10-7E-13(A) [Appropriate bargaining units-designation of]

Generally

The Board is charged with the statutory duty of designating appropriate bargaining units for collective bargaining. There is no absolute rule of law as to what constitutes an appropriate bargaining unit and courts will defer to the Board's decision on what constitutes an appropriate bargaining unit if that determination is supported by substantial evidence and otherwise in accordance with the law. *San Juan College v. San Juan College Labor Mgmt. Relations Board*, 2011-NMCA-117.

A unit was appropriate as proposed, even though it did not include cooperative extension service instructors. *NMSU-NEA and SNMSU*, 34-PELRB-2024 (Aug. 9, 2024; in re: Case 310-24).

A bargaining unit of employees at the N.M. School for the Deaf Santa Fe Campus was appropriate, over objections that the bargaining unit should include employees at all campuses. *N.M. School for the Deaf Faculty Ass'n and N.M. School for the Deaf*, 33-PELRB-2024 (Aug. 9, 2024; in re: Case No. 309-24).

A petition to amend the certification of representation to include probationary school employees was dismissed as an improper accretion under PEBA pursuant to a prior agreement between the parties to exclude probationary employees notwithstanding their inclusion in the definition of public employee and PEBA's coverage, pursuant to § 4(Q). *Peñasco Fed'n of United School Employees, Local 4284 and Peñasco Indep. School Dist.*, 26-PELRB-2024 (Jul. 9, 2024; in re: Case 308-24).

¹⁸ Section 13: the 2020 amendment, effective July 1, 2020, provided that jobs included within a bargaining unit pursuant to a local ordinance in effect on January 1, 2020 shall remain in that bargaining unit; and added Subsection D.

Community of interest is determined on a case-by-case basis. *Public Safety Officers and Town of Bernalillo*, 1 PELRB No. 21 (Jun. 3, 1997).

A hearing examiner does not err by failing to consider whether a disputed position is an excluded confidential employee if the employer did not raise that defense at the representation hearing. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

Unit determinations, such as statutory exclusions, must be based on actual duties performed rather than on written job descriptions or standard operating procedures manuals, which merely reflect expectations that may not materialize or surface. Basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees, in violation of *Santa Fe County*, 1 PELRB No. 1 (1993). *McKinley County Sheriffs Ass'n FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

Decisions from other jurisdictions cannot substitute for performing the community of interest analysis under § 13(A). *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

Unit determinations are fact-specific and must be made on a case-by-case basis. Additionally, the occupational groups listed in § 13(A) are advisory as opposed to mandatory directives for configuring appropriate units; it was not the legislature's intent in drafting § 13(A) that only the listed occupational groups would constitute appropriate units. It is the Board's responsibility to designate *an* appropriate unit, not necessarily the most comprehensive or most appropriate unit. If the Board were to determine the most appropriate bargaining unit, it would result in an untenable situation where the Board unduly interfered in the affairs of public employers and labor organizations. Therefore, the Board should maintain a posture of noninterference, except where a proposed bargaining unit is clearly inappropriate. Where a labor organization's petitioned-for unit is appropriate, an alternative proposal or configuration proffered by an employer will not be substituted. *NEA-Belen and Belen Fed'n of School Employees and Belen Consoli. Schools*, 1 PELRB No. 2 (May 13, 1994).

- **Community of interest standards**

Utility operators and the administrative assistant share a community of interest so a single unit for both was appropriate. *Utility Workers Union of America and Village of Bosque Farms*, 1-PELRB-2024 (Jan. 20, 2024; in re: Case No. 339-23).

All positions in the putative unit (light equipment operator, medium equipment operator, heavy equipment operator, laborer, fuel truck operator, transport operator, welder, mechanic, mechanic's helper, parts runner, warehouse specialist and lead worker) shared a sufficient community of interest. *AFSCME Council 18 and Middle Rio Grande Conservancy Dist.*, 51-PELRB-2023 (Oct. 4, 2023; in re: Case No. 309-23).

Lieutenants were appropriate accreted into an existing unit of firefighters, EMTs and paramedics, except for the position of "Lieutenant - Public Health and Safety Outreach", which lacked sufficient community of interest. *Sandoval County Prof'l Firefighters Ass'n, IAFF Local 4563 and Sandoval County*, 18-PELRB-2023 (May 3, 2023; in re: Case No. 302-23).

The positions petitioned for accretion, which had "supervisor" in their titles, are not supervisory or managerial, and do share a community of interest with the statewide bargaining unit. *AFSCME Council 18 v. CYFD*, 74-PELRB-2021 (Dec. 9, 2021; in re: Case No. 303-21).

There is sufficient community of interest to support the accretion of interpreters and dieticians into an existing unit of nurses and professional employees where they work under the same discipline rules, supervision and holiday schedules, work at the same location, get paid the same day, participate equally in the process of patient care, interact and work closely with the members of the existing unit to carry out the hospital's core function of patient care, and their positions require a certain amount of medical related training. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04)

Similarities between employees regarding their hourly compensation, work hours, benefits, lack of history of collective bargaining and, to some degree, supervision, are not sufficient by themselves to create a community of interest, where such commonalities are shared by all of the employees and are not unique to the petitioned-for group. OR technicians lack a community of interest with service, maintenance, and clerical employees because they carry pagers; remain on call for emergency surgeries; have different training and skills; actually assist the surgeons during the operations and are expected to anticipate what to do; are ultimately responsible to the OR director; have limited daily contact with other proposed bargaining unit personnel; and there is no integration of work functions between OR techs and other petitioned-for employees. Inclusion of OR techs in a service, maintenance and clerical bargaining unit is not appropriate, even though some members of petitioned-for unit share a title of "technician", without facts suggesting more parallels regarding their qualifications, training and actual job functions. The fact that OR techs are not licensed or certified is also not a sufficient justification for their inclusion into a service, maintenance and clerical bargaining unit, where the OR techs' job requires a greater degree of skill and use of independent judgment and the position is a technical one. *USWA and Gila Reg'l Med. Center and Grant County*, 1 PELRB No. 14 (Nov. 17, 1995).

Community of interest shall be analyzed under the nine factors listed in *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 49 LRRM 1715 (1962). These include: (1) differences in method of wages or compensation; (2) differences in work hours; (3) differences in employment benefits; (4) separate supervision; (5) degree of dissimilar qualifications, training and skills; (6) differences in job functions and amount of working time spent away from the employment or plant *situs*; (7) the infrequency or lack of contact with other employees; (8) the lack of integration with the work functions of other employees, or interchange with them; and (9) the history of collective bargaining. No single factor will be conclusive, and the test cannot be mechanically applied as some elements may support one outcome, and others may indicate another outcome. Rather, the factors are a means of sifting through relevant facts to reach well-reasoned community of interest determinations. Lastly, the statutory phrase “related personnel matters” is part and parcel of community of interest rather than a separate factor to be considered. *NEA-Belen and Belen Fed’n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994).

- **Efficient administration of government**

The principle of efficient administration of government, which must be considered when determining an appropriate bargaining unit, requires consideration of stability in government operations. The maintenance of stability in government operations may outweigh a group of employees’ desire to be placed in a separate unit where the creation of such a unit would lead to fragmentation. Based on the principle of efficient administration of government, the PELRB adopts an anti-fragmentation policy to avoid unnecessary and needless proliferation of bargaining units, and resultant instability in government operations. However, the Board’s anti-fragmentation policy is not violated where employers and labor organizations have mutually agreed upon multiple units without invocation of the Board. Such decisions reflect self-determination and efficient administration of government as appropriately determined by those at the operational level of the labor-management relationship. *NEA-Belen and Belen Fed’n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994; see also

- **Grandfathered bargaining units**

The Board reversed the H.E.’s determination that the union was not grandfathered because it had ceased to legally exist before the effective date of PEBA, concluding the Board was “compelled by the use of the word ‘shall’ in Section 24 of the PEBA to recognize IAFF Local 3602 as the incumbent exclusive representative of the incumbent bargaining unit”. The Board ordered the employer to recognize IAFF Local 3602 as the incumbent exclusive representative; and ordered the parties to bargain over who is included in the bargaining unit. *Clovis Firefighters, IAFF Local 3602 v. City of Clovis*, 10-PELRB-2025 (Apr. 13, 2026; in re: Case 321-25).

Continued recognition of the existing wall-to-wall bargaining unit is mandated by § 24(A) which allows bargaining units established prior to July 1, 1999 to continue to be recognized as appropriate bargaining units; and “[t]he Board’s rule 11.21.2.37 NMAC expressly exempts bargaining units under Section [10-7E-24(A)] ... from being subject to unit clarification except in limited circumstances not applicable here.” *Deming Public Schools v. NEA-Deming and N.M. PELRB*, consolidated Case Nos. D-202-CV-2017-06276 and D-202-CV-2018-05580 (Feb. 21, 2019; in re: 9-PELRB-2017, consolidated Case Nos. PELRB 304-17 and 305-17).

- **Law enforcement positions’ inclusion with other positions**

A unit comprised of officers, detectives, sergeants, the evidence technician (ET), and the animal control officer (ACO) is appropriate because those positions share adequate community of interest in essential law enforcement functions, interrelated work duties, impact on the primary functions of the department, and similar locus of employment, notwithstanding some differences between the positions (including that the ET and ACO were not law enforcement officers, and the animal control officer was formally employed and supervised by the village rather than the police department). *AFSCME v. Bosque Farms*, 24-PELRB-2026 (7-14-26; in re: Case No. 333-25).

One park services position, marine law enforcement, was carved out of the petitioned for unit on the basis that “the addition training, equipment and law enforcement duties and different chain of command required of the certified positions justifies carving out certain employees” even though they shared the same official title as others who are not required to be law enforcement certified. *N.M. Park Ranger’s Law Enforcement Division v. Energy, Minerals and Natural Resources Dep’t*, 14-PELRB-2020 (Oct. 16, 2020; in re: Case No. 301-20).

An appropriate bargaining unit of police officers, investigators and telecommunicators does not include administrative secretaries, because there is no clear and identifiable community of interest between the two types of positions to justify varying from the normal designations under PEBA. Specifically, clerical employees are not certified in law enforcement; they do not wear a uniform; they perform clerical duties; they do not work the same shifts as officers and telecommunicators and do not share the same or similar skills or tasks; the record does not show a great deal of contact between these employees and other members of the proposed bargaining unit; and the clerical employees’ impact upon the primary function of the department is tangential. However, NLRA precedent that precludes the inclusion of security guard positions with other positions in the same bargaining unit, is not persuasive here because PEBA and the NLRA are not the same as or closely similar in this matter: (1) PEBA does not contain a security guard provision; (2) § 13 permits the consolidation of occupational groups by the parties and the Board may, in fashioning an

appropriate unit, consolidate them; and (3) § 21(A), unlike the NLRA, unequivocally prohibits strikes and lockouts on which the NLRA prohibition is based. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

- **Realignment; consolidation**

The realignment of previously certified bargaining units represented by the same union into a single horizontal unit organized by occupational groups effectuates the legislative intent in § 13(A), constitutes an appropriate bargaining unit under PEBA, and it facilitates both collective bargaining and the principles of efficient administration of government. *CWA and State*, Case No. 28-95(S), PELRB Order of Realignment (Mar. 13, 1996).

§ 10-7E-13(C) [Appropriate bargaining units; supervisors, managers and confidential employees excluded]

See also §§ 4(G), (N), and (T) [Definitions]

Accreting the water supervisor, utilities superintendent, parks supervisor, public facilities supervisor and zoning and licensing supervisor into the existing blue- and white-collar unit did not render the unit inappropriate. Despite use of "supervisor" in their name, they did not meet the statutory definition. *AFSCME, Local 2851 and City of Las Vegas*, 4-PELRB-2021 (Jan. 15, 2021; in re: Case No. 305-20).

Unit determinations regarding statutory exclusions must be based on actual duties performed, rather than on written job descriptions or standard operating procedures manuals that merely reflect expectations that may not materialize. Basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees under PEBA. *In re: McKinley County Sheriff's Ass'n, FOP and McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995).

An appropriate bargaining unit of city firefighter personnel includes the position of fire captain but not the position of battalion chief, which is a supervisory position. *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

§ 10-7E-14 [Elections] (Amended 2020)¹⁹

- **Generally**

Note: Before the 2020 amendments, §14(C) (Amended 2020) granted public employers the general right to insist on a secret ballot representation election before the Board or a local board certified a labor organization as exclusive representative, if it did not involve an incumbent labor organization under § 24. As such, much of the older law concerning card counts versus elections is no longer directly relevant. **See, e.g.,** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994) (addressing right of employer to demand an election); *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006); and *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006 (Jun. 1, 2006) (the latter two cases dealt with the exception for incumbent labor organizations that existed by operation of § 24(B) and § 14(A)).

The Board did not act arbitrarily or capriciously by relying on showing of interest cards that were signed before amendment of the University Research Park and Economic Development Act, NMSA §§ 21-28-1 to 25 ("URPEDA"), which deemed certain research park corporations a "public employer" for the purposes of PEBA). This did not constitute retroactive application of the URPEDA amendment; and conducting a confidential card check was reasonable given the confidential nature of the showing of interest and the fact that SRMC had an adequate opportunity to be heard on its objections. *UNM-Sandoval Reg'l Med. Center v. Int'l Ass'n and Aerospace Workers*, Case No. D-202-CV-2023-00132 (Jul. 9, 2024; in re: 21-PELRB-2022, Case No. 303-22).

An election was fair where it was consistent with the requirements of NMAC 11.21.2.24 (election, eligibility) and 11.21.2.30 (challenged ballots); and the "alleged procedural irregularities did not rise to the level of 'vice,' did not unfairly advantage AFSCME, and did not materially interfere with employees' free choice." *AFSCME COUNCIL 18 v. Santa Fe County et. al.*, consolidated Case Nos. D-101-CV-2014-01195 and D-101-CV-2014-01700 (Jun. 11, 2015; in re: 13-

¹⁹ The 2020 amendment, effective July 1, 2020, revised certain bargaining unit election procedures; in Subsection A, added "Upon acceptance of a valid petition, the board or a local board shall require the public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers."; in Subsection C, after "Subsection A of this section", deleted "a public employer and", after "appropriate bargaining unit may", deleted "establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of" and added "submit", after "an appropriate bargaining unit", deleted "The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election" and added the remainder of the subsection; and in Subsection E, changed "Section 16 of the Public Employee Bargaining Act" to "10-7E-16 NMSA 1978".

PELRB-2014).

Cards older than one year old are stale and should be disallowed, pursuant to NLRB precedent and *Las Cruces Prof'l Fire Fighters* instruction to follow applicable NLRB precedent where the applicable language between the two is the same. *AFSCME v. N.M. Transp. Union and City of Albuquerque*, D-202-CV-2011-08899 (May 23, 2012).

Respondent violated §§ 5(A), 5(B), 14(A) and 19(G) by failing or refusing to provide the union with the list of bargaining unit employees in the proposed unit in PELRB Case No. 303-22, along with their contact information. *AFT and IAMAW v. UNM-Sandoval Reg'l Med. Center*, 29-PELRB-2022 (Nov. 28, 2022; in re: Case No. 112-22).

Respondent's objections to providing employee contact information to the union were denied because § 14(C) authorizes a union to obtain certification as the exclusive representative by card check "[a]s an alternative to the provisions of Subsection A." SRMC relied on the quoted language to argue that it is not required to produce the employee contact information requested by the PELRB when representation is sought in a card check proceeding. However, "...Subsection C does not affect a public employer's obligation under Section 10-7E-14(A) and the Board's rules to provide" this information. *Int'l Ass'n of Machinists & Aerospace Workers and UNM-Sandoval Reg'l Med. Center*, 16-PELRB-2022 (Jul. 21, 2022; in re: Case No. 303-22).

Petition for decertification dismissed as moot where the union disclaimed its interest in the bargaining unit. *Gurule and AFSCME Council 18*, 10-PELRB-2022 (Apr. 20, 2022; in re: Case No. 301-22).

An election will be invalidated for certain fatal procedural errors, including where (1) the consent election agreement was not approved by the Board prior to the election, and (2) "more importantly, notice of the right of competing unions to intervene was not posted prior to the election and there appears to be an interested union that seeks to intervene in order to compete with the petitioner for representation of the employees in the bargaining unit at issue". *N.M. Coalition of Public Safety Officers and Santa Fe County*, 24-PELRB-2013 (Sep. 16, 2013; in re: Case No. 306-13).

- **40% Rule**

See also § 16, Decertification

Petition for decertification of NMCPSO as the exclusive representative of a group of emergency communications employees, specialists and coordinators employed by the county was dismissed because less than 40% of the bargaining unit participated in the election, which resulted in the election being invalid under § 14(A). *Macias and New Mexico Coalition of Public Safety Officers*, 8-PELRB-2022 (Mar. 11, 2022; in re: Case No. 315-21).

- **Card Checks**

Objections denied where the county alleged coercion in obtaining cards but did not present sufficient evidence to rebut the presumption under NMAC 11.21.2.13 that the showing of interest is valid. *Prof'l Fire Fighters of Torrance County, IAFF Local 5441 and Torrance County*, 68-PELRB-2023 (Dec. 14, 2023; in re: Case No. 332-23).

Objections denied because the union's additional submission of support was not time-barred and there was no evidence of fraud or coercion by the union in obtaining the additional showing of support. *AFSCME Council 18 and Middle Rio Grande Conservancy Dist.*, 51-PELRB-2023 (Oct. 4, 2023; in re: Case No. 309-23).

Respondent's motion to strike card check results dismissed as being without merit, because there was no timely filed objection to the card check results pursuant to NMAC 11.21.2.34. *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 9-PELRB-2023 (Feb. 15, 2023; in re: Case No. 304-22).

Cards dated before the effective date of the University Research Park and Economic Development Act, NMSA §§ 21-28-1 to 25 ("URPEDA") amendment providing that URPEDA entities are public employers under the PEBA are valid and may be counted, since the card itself simply indicates that the employee has designated IAMAW to be the employee's exclusive bargaining representative. Because the petition was filed after the amendment, this does not involve the retroactive application of it. UNM-SRMC's second objection, that the cards provided by IAMAW were stale, is without a factual basis. None of the cards submitted by IAMAW were more than a year old at the time of their submission, and the requirements of NMAC 11.21.2.13 were met in that the cards were reviewed for assurance that the cards are signed, dated and sufficiently current. UNM-SRMC's third objection, that cards were obtained by fraud or coercion, is similarly unsupported by the evidence. The objection was not articulated based on facts, but instead "[u]pon information and belief," which is not a sufficient basis to invalidate any particular cards. Finally, SRMC's objection that it had a right to attend and observe the card count conducted by PELRB staff was denied because no provision within the PEBA vests an employer with such a right. *Int'l Union of Machinists and Aerospace Workers and UNM-Sandoval Reg'l Med. Center*, 24-PELRB-2022 (Dec. 9, 2022; in re: Case No. 303-22).

Objections to a card check conducted under § 14(C) denied after Board fact-finding upon the Director's recommendation. Section 14(C) authorizes certification based on a majority showing via valid authorization cards, with fact-finding available if the employer challenges verification. The Board's duty to verify cards and hold fact-finding is self-executing and does not depend on procedural rules; therefore, the absence of rules did not invalidate the card

check. Additionally, PEBA does not require an updated bargaining-unit list; card check evaluates majority support as of the petition-filing date; misspelled names do not indicate fraud; the challenged cards were properly excluded and did not affect the remaining valid cards; alleged violations of the card check agreement lacked merit; NMSU showed no effect on the validity of the proceedings; whether cards are “sufficiently current” is judged at petition filing, not during card check, but NMSU did not dispute the cards’ currency at the time of filing; and the wording on the results form was not misleading, and no confusion or prejudice was shown. *United Electrical, Radio and Machine Workers of Am. and NMSU*, 12-PELRB-2022 (May 16, 2022; in re: Case No. 313-21).

Objections to a card check conducted under § 14(C) denied after Board fact-finding upon the Director’s recommendation, because “[n]o testimony was presented to the Board during its fact-finding hearing ...substantiating TECS’ objections to the results of the February 7, 2022 Card Check.” *Tierra Encantada Charter School-NEA and Tierra Encantada Charter School*, 9-PELRB-2022 (Mar. 11, 2022; in re: Case No. 314-21).

Procedural rules on the conduct of a card check are not specifically mandated by PEBA and the Board has discretion to determine what rules are “necessary to accomplish and perform its functions and duties as established in the...[PEBA]” under § 9(A). UNM’s objection that procedural rules were not adopted by the Board before proceeding with the card check, is without merit. The card check encompasses the simple task of counting the cards, and the lack of rules for the conduct of this card check does not render the card check invalid. The card check, unlike an election, merely requires the Board to count the cards and then verify they are from graduate students on the employee list. *United Electrical Radio and Machine Workers of America (UE) and UNM*, 4-PELRB-2022 (Jan. 27, 2022; in re: Case No. 307-20).

- **Certification of incumbent labor organizations**

See also § 24, Incumbent Labor Organizations

Note: these decisions predate the 2020 amendments, when only incumbents were entitled to card count over the employer’s objection, so are of diminished relevance today.

An incumbent labor organization may demonstrate majority support by card count, even over employer’s objection and demand for an election. Elections, which attend initial representation proceedings and are extensively regulated, are not required under the language of either § 24(B) or 11.21.2.36 NMAC. The right of an employer to demand an election under § 14(C) (Amended 2020) relates only to the certification of an appropriate bargaining unit, while § 24(A) has already recognized the incumbent unit as appropriate. Additionally, 11.21.2.36 NMAC (Amended 2020) authorizes a card count and is a reasonable implementation of § 24(B). *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006 (Jun. 1, 2006). **Accord** *Fed’n of Teachers and Pecos Indep. Schools*, 7-PELRB-2006 (Sep. 10, 2006), citing *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006 (Jun 1, 2006).

Section 14(A) (Amended 2020) and § 24 read together and in conjunction with 11.21.3.36 NMAC authorize incumbent labor organizations to demonstrate majority support by way of card count even over objection of the employer. This is so because § 14(A), which details requirements for elections, concerns the initial identification of an exclusive representative, if any, while § 24(B) has already specified that the incumbent shall be the exclusive representative. *AFT Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re Case No. 309-05).

- **Change of affiliation does not trigger an election**

Election petition from another union rejected when based on change of the incumbent exclusive representative’s change of affiliation. Affiliation and/or name change does not generally raise a question of representation or trigger an election. “...[A]s...long as continuity of representation and due process are satisfied, affiliation is considered an internal matter that does not affect the union’s status as the employees’ bargaining representative.” Rather, § 16 “affords a recourse for members of a bargaining unit who are dissatisfied with the performance of their exclusive representative--a decertification petition and election. By this decertification process members may choose another representative, or no agent, to represent them.” *NMCP SO and AFSCME Council 18 v. Santa Fe County*, 7-PELRB-2014 (Apr. 18, 2014; in re consolidated Case Nos. 313-13, 314-13, 315-13 and 316-13), citing *NLRB v. Financial Inst. Employees*, 475 U.S. 192 (1986) (holding that the NLRB exceeded its authority under the NLRA in requiring that nonunion employees be allowed to vote for affiliation before it would order the employer to bargain with the affiliated union, due to continuity of representation); **aff’d** D-101-CV-2014-01195 (6/11/15).

- **Probationary employees not eligible to vote**

Employees on probationary status are not properly included in an eligible employee list. *AFSCME Council 18 and Middle Rio Grande Conservancy Dist.*, 21-PELRB-2024 (Apr. 3, 2024; in re: Case No. 305-24).

Employees on probationary status at the time the petition was filed should not be included in the employee list for the purposes of an election or card check. *Int’l Union of Machinists and Aerospace Workers and UNM-Sandoval Reg’l Med. Center*, 21-PELRB-2022 (Sep. 14, 2022; in re: Case No. 303-22).

- **Voluntary Recognition can be withdrawn prior to approval**

The union's request for approval of a voluntary recognition agreement was denied where the school district rescinded its approval pending further study. Because the essence of such an agreement is its voluntariness, rescission was sufficient ground to deny the request. *MCFUSE and Gallup-McKinley County Schools*, 13-PELRB-2013 (May 15, 2013; in re: Case No. 304-13).

Note: voluntary recognition was more of an issue pre-2020 amendments, when employers could generally demand a secret ballot election to demonstrate majority support, if petitioner was not an incumbent representative.

§ 10-7E-15 [Exclusive representation] (Amended 2020)

Note: this section was amended quite significantly in 2020.²⁰

§ 10-7E-15(A) [Exclusive representation; rights and responsibilities] (Amended 2020)²¹

- **Generally**

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that termination was based on multiple grounds of serious misconduct, and was not pretextual. 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." It was emphasized that "[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

"The PELRB has not previously directly addressed the question of whether the duty to bargain attaches upon demonstrating majority support or upon certification of the bargaining unit and recognition of the exclusive representative." However, it is clear that it attaches upon certification, even if that certification is thereafter reversed by a Court. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), *aff'd* D-202-CV-2024-01995 (6/10/25).

The union's claims under §§ 15; 22; 24; 25 and 26 for ABCWUA's refusal to negotiate over a successor contract were summarily dismissed upon motion because the union failed to request bargaining within a 30-day window called for under the CBA were summarily denied. However, summary judgment was granted to the union on its claim that ABCWUA violated §19(F) by refusing or failing to comply with its obligation to bargain collectively in good faith with AFSCME. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 18-PELRB-2022 (Aug. 10, 2022; in re: Case No. 106-22).

- **Breach of the duty of fair representation (DFR)²²**

See also Keywords and Phrases - Duty of Fair Representation (DFR)

A claim against a union for breach of its statutory duty, as exclusive representative, to fairly and adequately represent a bargaining unit member (a.k.a. "DFR") does not state a prohibited practice under PEBA. Therefore, such claims cannot be brought before a labor relations board and must instead be filed in district court. *Callahan v. N.M. Fed'n of Teachers-TVI*, 2006-NMSC-010 (*Callahan I*).

²⁰ The 2020 amendment, effective July 1, 2020, required public employers to grant an exclusive union representative reasonable access to and information concerning bargaining unit employees, as well as use of public employees' facilities or property; in Subsection A, added "A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation."; and added Subsections C through I, which expanded the exclusive representative's access to information and use of email systems among other things.

²¹ See Note 21.

²² Note that DFR claims now have a 6-month limitation period, under the 2020 amendments. See Note 21.

- **Direct dealing prohibited**

See also §§ 5, 17(A)(1), 19(C), and/or 19(F)

Failure to provide the certified representative notice of a mandatory employee meeting concerning the terms and conditions of employment interferes with the Union's status as exclusive representative, and interferes in the collective bargaining relationship, contrary to § 15(A), § 19(C), and § 19(G). *AFSCME Council 18 v. Dep't of Health*, 6-PELRB-2007 (Dec. 3, 2007).

- **Right to information**

See also §§ 5, 15(F), 17(A)(1), and/or 19(F)

Besides arising under the duty under the duty to bargain in good faith, a right to information also arises in relation to the rights as an exclusive representative because a labor organization that has been certified as the exclusive representative has a duty to adequately represent its members, and information is needed to administer and police the CBA. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04) (finding violations of §§ 15(A)(1), 17(A)(1), as well as 19(H) regarding other claims, and also connecting the duty to bargain to the rights of the union as exclusive representative).

§ 10-7E-15(F) [Exclusive Representation; information to provide, and when] (Amended/added 2020)

See also Duty to Provide Information, Right to Information, §§ 5, 15(A), 17(A)(1), 19(F)

Note: The 2020 amendments significantly augmented and/or clarified a union's right to information. Before these amendments, right to information cases were typically brought in relation to an exclusive representative's rights to access and the duty to bargain in good faith, as is done under the NLRA.

Respondent violated §§ 15(F), 19(F), and 19(G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information. “[A]ll of the information and documents requested are presumptively relevant to the Union’s duties to its members under PEBA and to enforce their rights”, “UNM SRMC’s actions have the potential effect of undermining the authority of the Union and eroding support for the Union as the certified representative”, and “UNM SRMC’s refusal to respond to information requests is a *per se* violation of the Employer’s duty to bargain in good faith with the duly authorized representative.” *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

§ 10-7E-16 [Decertification] (Amended 2020)²³

Section 16 “affords a recourse for members of a bargaining unit who are dissatisfied with the performance of their exclusive representative---a decertification petition and election. By this decertification process members may choose another representative, or no agent, to represent them.” *NMCPSO and AFSCME Council 18 v. Santa Fe County*, 7-PELRB-2014 (Apr. 18, 2014; in re: consolidated Case Nos. 313-13, 314-13, 315-13 and 316-13); **aff'd** D-101-CV-2014-01195 (6/11/15) (held in the context of dismissal of an election petition filed under § 14 based upon a change of affiliation).

Petition for decertification dismissed where the tolling of the period of limitations for filing such petitions, entered in Case 110-23 as a remedy for the employer's PEBA violations, had not yet run. *Montañez v. United Health Professionals of N.M.*, 45-PELRB-2024 (Nov. 19, 2024; in re: Case No. 321-24).

Decertification petition dismissed after the union filed a disclaimer of interest. *Int'l Union of Police Assn's*, 19-PELRB-2024 (Mar. 7, 2024; in re Case No. 343-24).

Decertification petition dismissed where only 33% of eligible employees voted to decertify AFSCME. *Urbaniak and AFSCME Council 18*, 17-PELRB-2024 (Mar. 7, 2024; in re: Case No. 335-23).

Petitions for decertification dismissed after the union filed a disclaimer of interest. *McKee and AFSCME Council 18*, 50-PELRB-2023 (Oct. 3, 2023; in re: Case No. 329-23); **accord** 1-PELRB-2023 (in re: Case No. 327-23) (same parties and decision).

Decertification petition dismissed for facial invalidity where the petitioning union was neither a “member of a labor organization” or the labor organization that is the exclusive representative itself, as required by § 16(A); and the

²³ The 2020 amendment, effective July 1, 2020, prohibited a competing labor organization from seeking an election within twelve months of initial certification; and in Subsection D, after “decertification election”, added “or an election sought by a competing labor organization”.

petitioner's evidence of a "no confidence" vote did not constitute an adequate showing of interest. *Sandoval County Sheriff Deputies Ass'n and N.M. Coalition of Public Safety Officers Ass'n*, 25-PELRB-2023 (Jun. 9, 2023; in re: Case No. 305-23).

Petition for decertification dismissed as facially inadequate where the petitioner was not a member of the labor organization to be decertified as required by § 16(A); none of the persons signing the petition in support of decertification were members of TECS-NEA, so substituting another petitioner for the lead petitioner would not cure the deficiency; and the card check election had been held within the last twelve months. *Rodriguez and Tierra Encantada Charter School-NEA*, 11-PELRB-2022 (Apr. 20, 2022; in re: Case No. 302-22).

Petition for decertification of NMCP SO as the exclusive representative of a group of emergency communications employees, specialists and coordinators employed by the county was dismissed because less than 40% of the bargaining unit participated in the election, which resulted in the election being invalid under § 14(A). *Macias and New Mexico Coalition of Public Safety Officers*, 8-PELRB-2022 (Mar. 11, 2022; in re: Case No. 315-21).

Under the merger doctrine, when several individually certified bargaining units are merged into a single bargaining unit by subsequent collective bargaining agreement, any petition for decertification must be addressed to the decertification of, and supported by a showing of interest for, the entire bargaining unit as merged, rather than as originally certified. *Romero, et al. and CWA Local 7076*, 1A-PELRB-2006 (Nov. 21, 2005; in re: Case Nos. 315-05 and 316-05).

§ 10-7E-17 [Scope of bargaining] (Amended 2020)

Note: the 2020 amendments to this section were, again, quite significant. The changes included adding and redesignating multiple subsections.²⁴

§ 10-7E-17(A)(1) [Scope of bargaining; duty to bargain in good faith]

- **Generally**

See also §§ 15(A)(1), 19(F) and/or -20(C)

The department violated PEBA by denying union officials and stewards use of a state vehicle for attending meetings while allowing management representatives to use them to attend the same meeting. Employee officials attending a policy review meeting with the department are acting in furtherance of official state business. "[T]he record contradicts the Department's contentions that employee officials attend policy review meetings only 'on behalf of the union' and are merely 'advocating for the union's position' at those meetings; and second, the Department's summary conclusion that '[u]nion business is not state business, and vice versa' rests on a false dichotomy." *Corrections Dep't v. AFSCME Council 18*, 2018-NMCA-007 (in re: D-101-CV-2009-3457, 11-PELRB-2009, Case No. 105-09), **cert. den.** No. S-1-SC-36688

Courts will remand matters back to the board where the decision turns on such fact questions as past practice and/or whether a change was presented as a *fait accompli*, and insufficient record has been developed. *CWA v. State v. N.M. PELRB*, 2019-NMCA-031 (in re: D-202-CV-2015-03814 (3/15/17); PELRB Order 1-PELRB-2015, Case No. 122-14); **cert.**

²⁴ The 2020 amendment, effective July 1, 2020, revised the scope of bargaining provisions, including allowing parties to bargain regarding a public employer assuming a portion of public employees' retirement contributions, clarifying that a collective bargaining agreement that provides greater rights, remedies and procedures than contained in a state statute shall not be considered to be in conflict with that state statute, dictating procedures regarding how and when dues deductions are determined, and providing that bargaining shall include enhancements of employee rights and benefits existing pursuant to the Personnel Act; in Subsection A, Paragraph A(2), after "written collective bargaining agreements covering employment relations", added the remainder of the paragraph; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "any other statute of this state", added "provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute", and after "In the event of", added "an actual"; in Subsection D, after "in accordance with the negotiated agreement", added "and this subsection", and added "Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The public employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by a public employer or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee"; and added new Subsections E and F and redesignated the remaining subsections accordingly.

den. No. S-I-SC-36811 (1/23/18).

The city violated the duty to bargain in good faith where it implemented new disciplinary provisions to its substance abuse policy (SAP) after stating at the outset of a series of bargaining sessions that it had no intention of changing its position as to the proposed penalties for SAP violation. *N.M. Transportation Union v. City of Albuquerque*, D-117-CV-2008-0369 (Nov. 30, 2009; in re: 4-PELRB-2021, Case No. 305-20), **aff'd** A-1-CA-35840 (2/4/19).

A school district violated § 17(A)(1) by assigning extra work to employees and paying them a “foreman stipend” without bargaining. *Central Consol. School Ass’n v. Central Consol. School Dist.*, 27-PELRB-2013 (Oct. 11, 2021; in re: Case 101-13), **aff’d** D-202-CV-2013-0875 (1/12/15), **aff’d** A-I-CA-34843 (11/30/17).

“Multi-year collective bargaining agreements are beneficial to both sides and provide stability and continuity for both management and public employees. Section 3-2-18 of the LMRO does not prohibit the city from adopting a contract that has fiscal implications over several years. As a fiscal protection to the city, the CBA and LMRO provide a vehicle to re-open the CBA to address “economic items.” This re-opening requirement in Section 3-2-18 ensures that the City has a mechanism to address unexpected deficit spending or budgetary shortfalls that arise during the subsequent years of multi-year collective bargaining contracts...” *Albuquerque Police Officer’s Ass’n v. City of Albuquerque et al.*, Ct. 2013-NMCA-110 (Aug. 29, 2013).

“The PELRB has not previously directly addressed the question of whether the duty to bargain attaches upon demonstrating majority support or upon certification of the bargaining unit and recognition of the exclusive representative.” However, it is clear that it attaches upon certification, even if that certification is thereafter reversed by a Court. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), **aff’d** D-202-CV-2024-01995 (6/10/25).²⁵

Where a *fait accompli* exists, the employer’s duty to bargain is not waived by the union’s failure to request bargaining. *CWA v. State and N.M. PELRB*, D-202-CV-2015-03814 (Mar. 15, 2017; in re: Case No. 122-14) (but determining that PELRB’s order sustaining a violation of § 19(B) was inconsistent with its conclusion rejecting a finding of bad faith; thereafter **rev’d** as to existence of a *fait accompli* and remanded for additional fact finding in 2019-NMCA-031).

The presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining. *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re: 59-PELRB-2012, Case No. 151-11).

PPC dismissed upon pre-hearing motion for failure to state a claim under §§ 5(A) or (B), 17(A), or 20(B) - (E) where it alleged the union, of which the complainant was the vice president, failed or refused to let him speak for the union; and violated its own bylaws and/or constitution. *Hawkins v. Gallup McKinley County Schools*, 34-PELRB-2026 (Sep. 10, 2026; in re: Case No. 107-26).

PPC alleging violations of §§ 17(A)(1) and 19(F) sustained upon determination that the take-home vehicle allowance was a legally binding past practice that required notice and opportunity to bargain before its termination. *Hatch Police Officers Ass’n v. Village of Hatch*, 9-PELRB-2026 (Mar. 19, 2026; in re: Case No. 128-25); *see also* 35-PLRB-2026 (Sep. 10, 2026) (setting hearing before Board on Village non-compliance).

PPC dismissed where some of the alleged changes to terms and conditions did not occur, and the union failed to request bargaining on others. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 6-PELRB-2025 (Feb. 15, 2025; in re: Case No. 116-24).

Respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated to support a more expansive remedy than a declaration of liability, particularly one that had not been previously awarded by the PELRB. (Complainant had sought up to 15% interest under NMSA § 56-8-3(A), which provides that “[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract...”.) *United Health Professionals of N.M. and UNM-Sandoval Reg’l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No. 118-25).

The county violated the PEBA by implementing a COVID-19 vaccine mandate that included discipline for non-compliance following declaration of an impasse in negotiations; the decision re-iterates the Board’s long-standing policy that a public employer under may not unilaterally impose its last best offer after impasse, and doing so is a breach of the duty to bargain in good faith. *AFSCME Council 18 v. Human Services Dep’t*, 13-PELRB-2023 (Apr. 12, 2023; in re: Case No. 102-23).

The county violated § 19(F) by failing or refusing to bargain over elimination of boundary spanners; and violated §§ 17(A)(1) and 19(F) by withholding information relevant to their layoff. *AFSCME Council 18 v. Bernalillo County*, 65-

²⁵ Although the PPC did not allege a violation of § 17, the H.E. cited it in his overall analysis.

PELRB-2021 (Aug. 6, 2021; in re: Case No. 101-21).

Under the totality of the circumstances, the parties' conduct reflected mutual good faith bargaining over the alleged pay discrepancy and the union did not meet its burden of proving a failure to bargain in good faith, or of violations of §§ 17(A)(1), 19(F) § 19(H), by failing to bargain in good faith regarding certain pay inequities resulting from the transfer or promotion of a non-bargaining unit employee into a bargaining unit position in violation of the PEBA. *AFSCME Local 3999 v. City of Santa Fe*, 11-PELRB-2020 (Sep. 21, 2020; in re: Case No. 101-20).

Employer did not breach a duty to bargain before changing shift hours and transferring bargaining unit work to non-bargaining unit employees where the CBA's management rights clause stated that management could transfer unit employees and change shift hours in order to maintain the governmental operations entrusted to it by law. Section 6 allows the transfer of public employees unless limited by the provisions of the CBA and here the CBA's management rights clause expressly permitted it. *Bernalillo County Court Deputies Ass'n v. Bernalillo County Sheriff's Office and Bernalillo County*, 54-PELRB-2021 (Jun. 1, 2021; in re: Case No. 121-20).

There is no duty to reach an agreement, and a PPC is dismissed as deficient, and for failure to state a claim, where the gravamen of the allegations is that the parties rejected each other's offers of settlement at Step 1 of the grievance process and the complainant failed to advance to grievance to the next step. *AFSCME Council 18 v. Dep't of Health*, 56-PELRB-2012 (Jul. 13, 2012; in re: Case No. 108-12).

The duty to bargain is not met merely by sending notice of an intent to initiate a reduction in force (RIF); or having two meetings that "never included any discussion of any details of the reduction plan or identification of the employees to be affected by it." The Union must be provided with "a significant opportunity to bargain...in a meaningful manner and at a meaningful time" over the effects of an employer's decision to terminate its union-represented employees because of economic reasons. *CWA Local 7076 v. Public Educ. Dep't*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-11), citing *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 681 (1981).

The department did not violate PEBA by placing a global positioning system (GPS) in the department's trucks without first negotiating the installation of the GPS with the union, where the GPS was used to log miles driven, gas used and other useful, managerial information; and the purpose of the GPS was not to collect information for the sole purpose of disciplining employees. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 8-PELRB-2010 (Oct. 12, 2010; in re: Case No. 142-09).

Resumption of suspended negotiations and ultimate agreement on a contract does not end a controversy over whether a prohibited labor practice of bad faith bargaining had occurred. *NEA-NM v. Española Public Schools*, 4-PELRB-2011 (Sep. 27, 2011; in re: Case No. 114-10) (denying motion for directed verdict).

The duty to bargain in good faith under PEBA is not subject to other county ordinances. Additionally, an employer or a labor organization violates its duty to bargain in good faith with the other by placing unreasonable conditions on bargaining, including by insisting upon agreement to subjects that are considered "permissive," such as ground rules. Because ground rules for negotiation are permissive subjects of bargaining, it is a violation of the duty to bargain in good faith to impose them as a precondition to bargaining. In contrast, payroll deduction of dues is a mandatory, not permissive, subject of bargaining. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

"Terms and conditions of employment" is a broad term that includes workloads and work assignments; definition of bargaining unit work; transfer of employees; promotion; discipline and work rules; changes in operations that have a significant impact on bargaining unit employees; certain subcontracting bargaining unit work or other removal of work from the bargaining unit; and procedures regarding the discharge of employees. Parties must bargain over the terms and conditions of employment which are mandatory subjects of bargaining. The duty of an employer and an exclusive representative to bargain in good faith over wages, hours and other terms and conditions of employment is fundamental to the entire scheme of PEBA, and without the mutual duty to bargain over terms and conditions of employment, PEBA would be useless and pointless. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

- **De minimis changes**

Directed verdict granted where the challenged unilateral changes made to the county's personnel policies were not substantial, material and significant because they made no change in the actual practices followed in those policies and were therefore *de minimis* and insufficient to violate §§ 17(A)(1) and 19(F). *AFSCME Council 18 v. Hidalgo County*, 10-PELRB-2014 (Jun. 3, 2014; in re: Case No. 110-13).

- **Direct dealing**

UNM-SRMC did not violate §§ 17(A)(1) or 19(F) by engaging in direct dealing where it was in the process of acquiring a private company and sent the employees engaged in organizing information on what their new pay and benefits would be if they transferred their employment to UNM. *UNM-Sandoval Reg'l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-07978 (Dec. 8, 2025; in re: 36-PELRB-2024, Case No. 109-23).

- **Duty to provide information**

SRMC did not violate Sections §§ 17(A)(1) or 19(F) by refusing to provide requested information because it had no obligation to bargain or provide any information to complainant regarding the terms and conditions of employment at UNMH. *UNM-Sandoval Reg'l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-07978 (Dec. 8, 2025; in re 36-PELRB-2024, Case No. 117-23).

Remedies ordered for breach a statutory duty to bargain with the union over layoffs and failure or refusal to provide requested information to the union included tolling of the one-year election bar until such time as the employer begins to bargain collectively with the union on a first contract; issuance of a cease and desist order and posting of a notice of the violations; and immediate response to prior requests for information. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), **aff'd** D-202-CV-2024-01996 (11/4/24).

The PED satisfied its obligation to bargain the specific effects of the reduction in force (RIF), but it violated its duty to bargain in good faith under § 17(A) [incorporated by reference to § 19(G)] and § 19(F), by not providing the union with information necessary to administer and monitor compliance with the CBA and to fairly and adequately represent all collective bargaining unit employees. Intentionally withholding this information impaired the union and its president in fulfilling their statutory duty to represent all employees in the bargaining unit. The employer's duty to provide information to the union under § 17(A) [incorporated by reference to § 19(G)] and § 19(F) is not met when the employer does the bare minimum of providing notice to, and meeting with, the union while purposely withholding information relevant to a layoff. Additionally, the union did not waive bargaining about a reduction in force (RIF) by failing to make a timely demand, where there was insufficient evidence to support a conclusion that the employer provided meaningful and timely notice of the RIF. *CWA Local 7076 v. Public Education Dep't*, D-202-CV-2012-11595 (Aug. 9, 2013; in re: 76-PELRB-2012, Case No. 134-11) (reversing the Board's determination of waiver, and remanding for further findings on which RIF effects are covered under the contract).

The city's refusal to provide the union with bargaining unit members' home addresses constitutes a refusal to bargain in good faith, and City Resolution 00-136 is void to the extent it prohibits disclosure of the home addresses of bargaining unit employees to the Union. *USWA Local 9424 v. City of Las Cruces*, D-307-CV-2003-01599 (Apr. 1, 2005).

The duty under PEBA to bargain in good faith requires the parties to provide that information necessary to negotiate collective bargaining agreements and to police and administer existing agreements. A labor organization that has been certified as the exclusive representative has a duty to adequately represent its members. An employer is required to provide upon request such information as would assist the union in determining the extent and number of employees affected by an erroneous wage implementation; work schedules, a list of casual pool employees; and copies of contracts between the employer and staffing agencies. This type of information is routinely required and requested in implementing a contract, because it concerns wage information, information related to hours and other terms and conditions of employment, employee lists, and information pertaining to possible loss of work. A union's right to information from a public employer is not defined by the Inspection of Public Records Act (IPRA) but rather is defined by the duty to bargain in good faith. Because the public policy and purpose underlying IPRA is to ensure an informed electorate, it cannot define a public employer's obligations under PEBA to provide information. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04) (alleging violations of §§ 15(A)(1), 17(A)(1), as well as 19(H) regarding other claims).

Accord: *AFSMCE Locals 624, 1888, 2962 and 3022 v. City of Albuquerque Labor Management Relations Board*, Case No. LB 06-033, Hearing Examiner Report (Jun. 12, 2007) (upholding a similarly broad duty to provide contact and other information to certified unions under the City's grandfathered local ordinance; necessary information under the Albuquerque ordinance includes the full name, Social Security number, date of birth, department work address, work phone, email address, home address, home telephone number, date of hire, full or part time status, and salary of each bargaining unit employee).

- **Emergency action**

The county violated the PEBA by implementing a COVID-19 vaccine mandate that included discipline for non-compliance following declaration of an impasse in negotiations. The decision re-iterates the Board's long-standing policy that a public employer under may not unilaterally impose its last best offer after impasse, and doing so is a breach of the county's duty to bargain in good faith. *AFSCME Council 18 v. Human Services Dep't*, 13-PELRB-2023 (Apr. 12, 2023; in re: Case No. 102-23).

The bargaining obligation was not subject to limited exception during the COVID-19 pandemic. *Mesa Vista Fed'n of Teachers v. Mesa Vista Schools*, 17-PELRB-2020 (Dec. 15, 2020; in re: Case No. 109-20) (Board reversed the hearing examiner's decision that an employer must take such emergency actions necessary to carry out its mission).

- **Impairment of arbitration awards prohibited**

By adopting a benefit definition that contradicted an arbitrator's prior ruling on the subject, the State Personnel Board

breached its obligations under the CBA, and also substantially impaired an existing contract right. Consequently, the regulation was also unconstitutionally retroactive and violated the Contract Clauses of both the United States and New Mexico constitutions. *AFSCME Council 18 v. State, the State Personnel Board, and Sandra K. Perez, SPB Director*, 2013-NMCA-106.

- **Management rights**

See also § 6 *infra*; and Waiver, next

HSD did not meet its burden of showing a clear and unmistakable waiver of the union's right to bargain over the presence of security guards at the workplace (a mandatory term and condition of employment), by pointing to the management rights and scheduling clauses in its CBA, given the language of another section of the same CBA that required HSD to negotiate in good faith prior to making any changes in terms and conditions of employment related to "reasonable standards and rules for employees' safety". *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re: 59-PELRB-2012, Case No. 151-11).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) dismissed/denied upon pre-hearing motion because respondent's actions related to funding, allocation thereof, and upper-level administrative reorganization were legitimate exercises of management rights. The union had alleged interference through the university's failure or refusal to fully fund the union president's annual salary, and by placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25; but the union's evidence showed that funding for the president's position was locked in and approved; and reorganization was a management right. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

Furloughs are an exercise of management's reserved rights under the parties' CBA, which reserves to management the right to relieve an employee from duties because of lack of work or other legitimate reason, so there was no duty to bargain the furlough. Nor was there an obligation to bargain the impacts, "because all matters over which the Union wanted to bargain are covered by the contract", meaning the parties had already bargained over the impacts. *AFSCME Council 18 v. State*, 1-PELRB-2013 (Jan. 23, 2013).

Broad reservations of exclusive management rights are disfavored. Subjects that lie at or near the core of the County's public service mission are not mandatory subjects of bargaining. However, the effect, consequence, or impact and the implementation of core managerial decisions with respect to bargaining unit employees are mandatory bargaining subjects. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

- **Suspension or relief of the duty**

A union disclaimer of interest relieves that union and the employer of their bargaining obligations. *Int'l Union of Police Ass'n's*, 19-PELRB-2024 (Mar. 7, 2024; in re: Case 343-24).

The school violated PEBA by suspending bargaining upon the belief the union had lost majority support; and a decline in auto-dues-deduction is not sufficient to establish actual loss of majority support. "To allow public employers to suspend negotiations without numerical proof of a union's actual loss of majority support even if its belief that the union had lost that support is in good faith undermines central policies of PEBA. It is destructive of the bargaining relationship. It deprives the employees of their chosen representative and disrupts the bargaining relationship until the union reestablishes its majority status to the employer's satisfaction." *NEA-NM v. Española Public Schools*, 34-PELRB-2012 (May 6, 2012; in re: Case No. 114-10), citing *Levitz Furniture Co. of the Pacific*, 333 N.L.R.B. No. 105 (2001) (regarding the burden and quantum of proof required before an employer may withdraw recognition).

- **Waiver**

The district committed prohibited labor practices by refusing to review grievances and by providing additional work and stipends without proper negotiation, and the Union did not waive its right to bargain over changes in duties and pay for the transportation employees affected. Additionally, it was not arbitrary or capricious for the PELRB to consider differences between paying salaried certified academic employees for extracurricular activities such as sponsoring student clubs outside of working hours and paying stipends to hourly paid maintenance and transportation employees for bargaining unit work that would otherwise require overtime. *Alarcon v. Albuquerque Public Schools and Superint.*, Case No. A-1-CA-34843, consolidated with *Central Consol. School Dist. 22 v. Central Consol. Educ. Ass'n*, Case No. A-1-CA-34424 (Nov. 30, 2017).

A CBA's "zipper clause" does not necessarily constitute a waiver of any right to bargain over the paramedic training contracts at issue. The Appellate Court rejected both the Union's argument that a strict "clear and unmistakable" standard should be applied and the county's argument that broad waiver clauses satisfy the clear and unmistakable requirement language stating that "...the answer does not call for a rigid rule, formulated without regard for the bargaining postures, past practices, and agreements of the parties for two reasons. First, notwithstanding the split in the circuits, the NLRB has continued to adhere to the broader position taken in *Radioear*. (citations omitted) Moreover, given our supreme court's direction in this area, we believe that application of the reformulated standard described by the NLRB in

Radioear is the more reasoned approach to deciding the question of whether the language of the CBA expressly waived the right to negotiate the paramedic training contracts.” (Citations omitted). Accordingly, the district court did not err in determining in the summary judgment proceeding that, as a matter of law, the union did not waive its right to bargain based on the zipper clause. *Los Alamos County v. Martinez, Dickman, and Stibbard, as President of the Los Alamos Firefighters Ass’n Local 3279*, 2011-NMCA-027.

The county did not violate the PEBA by imposing a COVID-19 vaccine mandate with discipline for non-compliance, after declaring an impasse in negotiations. The CBA showed the union had waived its right to bargain over the emergency Policy and its effects. *Santa Fe County v. N.M. Coalition of Public Safety Officers*, D-101-CV-2022-00913 (Jun. 30, 2024; in re: 13-PELRB-2022, Case No. 133-21).

The union did not waive bargaining about a reduction in force (RIF) by failing to make a timely demand, where there was insufficient evidence that the employer provided meaningful and timely notice of the RIF. *CWA Local 7076 v. Public Education Dep’t*, D-202-CV-2012-11595 (Aug. 9, 2013; in re: 76-PELRB-2012, Case No. 134-11) (reversing the Board’s determination of waiver, and remanding for further findings on which RIF effects are covered under the contract).

HSD did not meet its burden of showing a clear and unmistakable waiver of the union’s right to bargain over the presence of security guards at the workplace (a mandatory term and condition of employment), by pointing to the management rights and scheduling clauses in its CBA, given the language of another section of the same CBA that required HSD to negotiate in good faith prior to making any changes in terms and conditions of employment related to “reasonable standards and rules for employees’ safety”. *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re: 59-PELRB-2012, Case No. 151-11).

PPC dismissed where some of the alleged changes to terms and conditions did not occur, and the union failed to request bargaining on others. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 6-PELRB-2025 (Feb. 15, 2025; in re: Case No. 116-24).

The employer did not refuse to bargain, as required by both Article 19(F) of the CBA and § 17(A) of the PEBA, because it already bargained for such job descriptions to be performed and approved in management’s discretion and was not required to bargain the specific issue further, midterm. *AFSCME, Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, 69-PELRB-2021 (Oct. 15, 2021; in re: Case No. 108-21).

Articles 14 and 5 of the parties’ CBA, do not constitute a waiver of the union’s right to bargain the effects of a changed work condition reserved to management’s discretion under § 17(A) [incorporated by reference to § 19(G)] and § 19(F), and the union did not waive bargaining by inactivity. *CWA Local 7076 v. Public Educ. Dep’t*, 28-PELRB-2013 (Dec. 13, 2013, in re: Case No. 134-11) (issued upon remand in D-202-CV-2012-11595 (8/9/13, in re: 76-PELRB-2012, Case No. 134-11)).

Furloughs are an exercise of management’s reserved rights under the parties’ CBA, which reserves to management the right to relieve an employee from duties because of lack of work or other legitimate reason, so there was no duty to bargain the furlough. Nor was there an obligation to bargain the impacts, “because all matters over which the Union wanted to bargain are covered by the contract”, meaning the parties had already bargained over the impacts. *AFSCME Council 18 v. State*, 1-PELRB-2013 (Jan. 23, 2013).

Where the CBA does not “cover” the subject matter at issue, the union has not waived bargaining. “Applying the criterion that a contract provision must specifically address the full range of impact and implementation issues in order to be considered as being ‘covered by a CBA’ it is clear...that Article 14 does not remove the RIF [reduction in force] from the range of bargaining ...” *CWA Local 7076 v. Public Educ. Dep’t*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-11), citing *Dep’t of the Navy, Marine Corps Logistics Base, Albany, Georgia v. Fed. Labor Relations Authority, and American Fed’n of Gov. Employees, Intervenor*, v. *Fed. Labor Relations Authority*, 140 L.R.R.M. (BNA) 2206, 295 U.S. App. D.C. 239 (1992). **But see** D-202-CV-2012-11595 (Aug. 9, 2013; in re: 76-PELRB-2012, Case No. 134-11) (effectively reversing that determination of waiver in reviewing a subsequent Board order in the same case).

PPC dismissed where, as a threshold matter, the Union had clearly and unmistakably waived its right to bargain over the subject of the PPC. *Santa Fe County Firefighters Ass’n, IAFF Local 4366 v. Santa Fe County*, 10-PELRB-2011 (Jan. 2, 2012; in re: Case No. 128-11).

§ 10-7E-17(A)(2) [Scope of bargaining; CBA required but does not obviate duty to bargain in good faith]

County violated the duty to bargain in good faith and §§ 17(A)(2), 19(F), and 19(G) – but not § 19(B) – by its unilateral implementation of “substantial, material and significant” changes to staffing policy and overtime past practices, where the union repeatedly sought, and the county failed or refused to engage in, effects bargaining before making the changes; also rejected was the argument that the employer merely accepted what had been offered, months after the union’s alleged offer and weeks after the county’s implementation thereof. *IAFF Local 244 v. Bernalillo County*, 32-PELRB-2026 (Sep. 10, 2026; in re: Case No. 106-26).

§ 10-7E-17(C) [Scope of bargaining; conflict of CBA with other laws prohibited] (Amended 2020)²⁶

The CBA required the agency to provide the union with a copy of an investigative report, notwithstanding apparent CBA language to the contrary relied upon by the H.E. that incorporated confidentiality requirements under State Personnel Board rules and IPRA. *CWA v. Workers' Compensation Administration (WCA)*, 26-PELRB-2026 (Jul. 14, 2026; in re: Case 115-25); appeal pending at D-202-CV-2026-07473. (The Board was amending or clarifying its decision in 25-PELRB-2025, upon reversal and remand from the district court, *see* D-202-CV-2025-09870 (May 15, 2026); and that second decision is now pending appeal also.)

A collective bargaining agreement provision that limits the scope of the required grievance and/or arbitration procedures to apply only to disputes concerning the interpretation, application and/or violation of the collective bargaining agreement, comports with § 17(8). *AFSCME Council 18 v. State*, 7-PELRB-2007 (Dec. 13, 2007).

§ 10-7E-17(D) [Scope of bargaining; payroll dues deduction] (Amended 2020)²⁷

Note that although there are no decision involving this provision, § 17(D) as amended – which states that “[t]he public employer shall honor payroll deductions until the authorization is revoked in writing in accordance with the negotiated agreement and this subsection” – could encompass several dues deduction claims filed over the years under § 19. *See, e.g., City of Rio Rancho v. AFSCME Council 18, Local 3277*, D-202-CV-2019-1398 (Oct. 28, 2019; in re: 1-PELRB-2019, Case No. 113-18) (the city violated the parties' CBA when it stopped deducting union dues from member employees based on *Janus v. AFSCME Council 31*, 585 U.S. 878, since *Janus* only pertains to nonmembers); *MCFUSE Local 3313M v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25) (the employer violated §§ 19(B), (C), (F), and (H) when it unilaterally ceased deducting voluntary contributions to the union's committee on political education (COPE) that were authorized by employees on their dues deduction authorization forms); *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No. 118-25) (respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated); and *AFSCME and Los Alamos County Firefighters v Los Alamos County*, 1 PELRB NO. 3 (Dec. 20, 1994) (payroll deduction of dues is a mandatory, not permissive, subject of bargaining, and the amount of dues to be deducted is a matter squarely within the province of the labor organization involved).

§ 10-7E-17(F) [Scope of bargaining; enhanced employee rights and benefits under State Personnel Act] (Amended/added 2020)

The school and the superintendent violated §§ 17(F)²⁸, 19(B), 19(G), and 19(H) by failing to follow the grievance procedure contained in the CBA and by violating its duty to bargain in good faith for a period of no less than 60 days. *Ruidoso Educ. Ass'n and Kesslers v. Ruidoso Munic. School Dist. and Superint.*, 15-PELRB-2020 (Oct. 16, 2020; in re: consolidated Case Nos. 103-20 and 105-20).

§ 10-7E-17(H) [Scope of bargaining; impasse resolutions; contingent on funding]

“Multi-year collective bargaining agreements are beneficial to both sides and provide stability and continuity for both

²⁶ Subsection 17(C): designated; additionally, after “any other statute of this state”, added “provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute”, and after “In the event of”, added “an actual”;

²⁷ Subsection 17(D): designated; additionally, after “in accordance with the negotiated agreement”, added “and this subsection”, and added “Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The public employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by a public employer or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee”.

²⁸ Subsection 17(F) may have been mis-cited since it concerns state public employers, not schools; or it could be that the subsection was applied by way of analogy to non-state public employers. Neither the H.E. decision nor the Board order clarify its citation to this provision.

management and public employees. Section 3-2-18 of the LMRO does not prohibit the City from adopting a contract that has fiscal implications over several years. As a fiscal protection to the City, the CBA and LMRO provide a vehicle to re-open the CBA to address 'economic items.' This re-opening requirement in § 3-2-18 ensures that the City has a mechanism to address unexpected deficit spending or budgetary shortfalls that arise during the subsequent years of multi-year collective bargaining contracts..." Here, though, the city bypassed the necessary resolution procedure when deciding that police officers would not receive their agreed upon annual, rank-based raise due to a projected budget shortfall. The previously executed CBA required that the city re-open the CBA to address "economic items" should an unexpected budgetary shortfall arise during subsequent years of a multi-year collective bargaining contract. "The evidence indicated that the mayor chose to breach the CBA contractual obligation in order to 'share the burden' so that no single class of employee shoulders an unfair share of the [city budgetary shortfall] or otherwise increase the City's unemployment rate through layoffs. These reasons and goals do not legally justify a departure from the City's contractual obligation to reopen the CBA to address unexpected economic items." *Albuquerque Police Officer's Ass'n, Sigala, Garcia, Novicki, and Fisher v. City of Albuquerque Police Dep't and Mayor Richard J. Berry*, 2013-NMCA-110 (Aug. 29, 2013).

In enacting the PEBA, the New Mexico legislature granted authorization to the state, acting through representatives of its executive branch, to engage in negotiations and establish binding contracts with organized labor. These contracts pertained to state employees who chose to become union members, obligating the state to pay wages at negotiated levels. Where the state negotiated and the legislature funded a pay raise but chose to allocate increased wages to employees not covered by contracts, it breached the state's contractual obligations and ran counter to legislative appropriation and PEBA itself. Accordingly, the arbitrator did not exceed their powers by mandating monetary relief that would require the legislature to appropriate funds to pay wages increases previously bargained because the legislature already appropriated sufficient funds and the state failed to meet its contractual obligation to distribute the funds according to the terms of the CBAs. There is no difference between this case and other cases where adverse judgments are rendered against the state; as in those cases, the state cannot avoid its obligation to comply with the judgment by maintaining that compliance would require it to seek further appropriations from the Legislature. *State v. AFSCME Council 18*, 2012-NMCA-114 (Aug. 8, 2012), *aff'd* N.M. Sup. Ct. No. 33,792 (5/30/13).

Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over provisions of PEBA stating arbitration awards shall be final and binding. Accordingly, a three-year arbitration award including wage increases that was based on the union's final offer was subject to the availability of funds. The court emphasized the balance between finality in collective bargaining and prudent financial management within political subdivisions. *IAFF Local 1687 v. City of Carlsbad*, 2009-NMCA-97.

§ 10-7E-17(I) (Scope of bargaining; final and binding grievance and arbitration procedures required)

Step 4 of the CBA's negotiated grievance process may provide that the school board rather than the superintendent shall review discipline and determine whether its own policy has been violated, as the policy maker who negotiated and agreed to the CBA. Making such a determination is not "interfering" in personnel matters, nor does it constitute "overruling" a personnel decision of the superintendent. Instead, because the CBA applies to all employees, the school board is not involved in making a personnel decision on a personal basis, but under the contractual structure of the CBA through which all individual personnel matters are administered. *Alarcon v. APS and Superintendent*, Case No. A-1-CA-34843, consolidated with *Central Consol. School Dist. 22 v. Central Consol. Educ. Ass'n*, Case No. A-1-CA-34424 (Nov. 30, 2017).

Under PEBA, upon a demonstration of majority support and certification, all members of the bargaining unit are considered represented, irrespective of their union membership status or agreement with organizational policies. As such, an employee who was a regular full-time, non-probationary, sworn police officer covered by the CBA between the union and the city was required to follow the negotiated disciplinary, grievances and appeals procedures stated therein, and his request for injunctive relief to permit his appeal under city personnel rules rather than the CBA was denied; and it was held that no injunctive relief – whether a writ of prohibition, temporary restraining order, or preliminary injunction – was appropriate because arbitration was the proper forum for the employee's grievance. *Luginbuhl v. City of Gallup & Gallup Police Dep't*, 2013-NMCA-053 (Mar. 11, 2013).

Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over provisions of PEBA stating arbitration awards shall be final and binding. *IAFF Local 1687 v. City of Carlsbad*, Ct. of App. Case No. 28,189 (Jun. 23, 2009).

The grievance and arbitration procedures that § 17(F) requires in all CBAs are not required to apply to all disputes pertaining to terms and conditions and related personnel matters. Parties to a CBA can limit the scope of the required grievance and arbitration procedures to apply only to disputes concerning the interpretation, application and/or violation of the collective bargaining agreement. *AFSCME Council 18 v. State*, 7-PELRB-2007 (Dec. 13, 2007).

Note: Final and binding arbitration was also arguably determined not to be a fundamental requirement of an

effective collective bargaining system for the purposes of § 26 (repealed 2020) grandfathered ordinances, see *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069, but that is no longer good law.

§ 10-7E-18 [Impasse procedures] (Amended 2020)²⁹

The county violated the PEBA by implementing a COVID-19 vaccine mandate that included discipline for non-compliance following declaration of an impasse in negotiations; the decision re-iterates the Board's long-standing policy that a public employer under may not unilaterally impose its last best offer after impasse due to the evergreen clause, and doing so is a breach of the duty to bargain in good faith. *AFSCME Council 18 v. Human Services Dep't*, 13-PELRB-2023 (Apr. 12, 2023; in re: Case No. 102-23).

PPC dismissed on the ground that the parties are not at "statutory impasse" by operation of § 18(A)(5) simply because they failed to reach an agreement by November 1. The arrival of that statutory date does not operate as or give rise to a "statutory impasse". The plain language of §18(A) indicates that the October 1 mediation, and November 1 arbitration time deadlines uniquely applicable to the State are only invoked "... if an impasse occurs during negotiations between the parties, and if an agreement is not reached by the parties by October 1..." and "the impasse continues after November 1". Additionally, reliance upon the CBA's "evergreen" clauses cannot be construed as an admission that the parties are at impasse; instead, whether parties are at impasse is a fact-dependent inquiry. *State v. AFSCME and CWA*, 15-PELRB-2017 (Nov. 16, 2017; in re: Case No. 107-17) (emphasis in original).

The Board issued a pre-adjudicatory injunction after an emergency hearing, where the union alleged bad faith bargaining during impasse, including the district's announced intent to unilaterally impose a schedule change not agreed to by the union. It determined that PELRB has jurisdiction to grant pre-adjudication injunctive relief based on §23(A); and that because PEBA §18(D) requires an existing contract to remain in effect, unless injunction is granted the union will suffer irreparable harm. *NEA v. West Las Vegas School Dist.*, 21-PELRB-2013 (Aug. 19, 2013); see also D-412-CV-2013-00347 (the Court dissolved the injunction and referred the matter to pending arbitration pursuant to the impasse proceeding and the matter thereafter settled).

Section 18(B)(2) and its procedures are inapplicable to the state, and a PPC against the state failed to state a claim under either § 18(B)(2) or the CBA, because § 18(B) concerns public employers other than the state. Nor was any other violation of § 18(A) established, since the pleadings show the department bargained to impasse on shift bidding, and "there is nothing in the record to indicate that implementation of the shift bid preferred by management violated any provision of the parties' contract so that there is nothing to support the Petitioner's allegations..." *AFSCME Council 18 v. CYFD*, 44-PELRB-2012 (May 10, 2012; in re: Case No. 101-12).

The PEBA's "evergreen clause", which states that expired contracts continue in full force and effect in the event of impasse until replaced by a subsequent written agreement, prevents an employer from implementing its last, best and final offer after impasse as may be done under case law interpreting the National Labor Relations Act (NLRA). Additionally, the § 18(D) language that "[i]n the event impasse continues after the expiration of a contract", does not require that impasse be declared prior to the CBA's expiration for it to continue in effect. However, under § 18(D), the Board cannot and does not require that a salary increase be granted or maintained by the employer after impasse. *CWA Local 7911 v. Socorro County*, 8-PELRB-2009 (Jul. 6, 2009).

Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over provisions of PEBA stating arbitration awards shall be final and binding. *IAFF Local 1687 v. City of Carlsbad*, Ct. of App. Case No. 28,189 (Jun. 23, 2009).

Where alternative impasse procedures are authorized for employers other than the state, they must still be equivalent to the PEBA's procedures. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

§ 10-7E-19(A) [Prohibited practices by employers; discrimination because of union membership or other concerted activities]

- **Generally**

Disparate denial of use of department vehicles by union stewards to travel to meetings concerning collective bargaining,

²⁹ The 2020 amendment, effective July 1, 2020, removed certain deadlines for resolving an impasse; in Subsection A, Paragraph A(3), after "between the parties", deleted "and if an agreement is not reached by the parties by October 1", in Paragraph A(4), after "helpful or until", deleted "November 1" and added "thirty days after the mediator was requested", in Paragraph A(5), after "impasse continues after", deleted "November 1" and added "the time described in Paragraph (4) of this subsection"; and in Paragraphs A(5) and B(2), after "Subsection", deleted "E" and added "H", and changed "Section 17 of the Public Employee Bargaining Act" to "10-7E-17 NMSA 1978".

violated § 19(A). “Treating two similarly situated persons differently on the basis of an identifiable characteristic is the hallmark of discrimination.” The PEBA, unlike the NLRA, does not require a showing of anti-union animus or retaliatory motive, to support a disparate treatment claim. “{12} ... [O]ur Legislature adopted Subsection A [of Section 19] as an additional protection against discrimination even where there is no evidence of anti-union animus or retaliation against employees who engage in union activities... {13} By its plain language, Section 10-7E-19(A) requires only that the discriminatory treatment be “because of the employee’s membership in a labor organization” in order for such treatment to constitute a prohibited practice. We decline to read into the statute a requirement that there be evidence that antiunion animus was the underlying motivation for a public employer’s discriminatory treatment of a public employee in order to constitute a violation of Section 10-7E-19(A).” Additionally, a CBA’s silence regarding use of a state vehicle by employee officials is not dispositive as to whether § 19(A) was violated; rather that is “simply the beginning of the inquiry, not the end.” *Corrections Dep’t v. AFSCME Council 18*, 2018-NMCA-007 (in re: D-101-CV-2009-3457, 11-PELRB-2009, Case No. 105-09), **cert. den.** No. S-1-SC-36688.

Board dismissal of a PPC for retaliatory termination reversed and remanded where the employer offered a legitimate business justification but the Board “failed to address the complaint’s allegations that the non-renewal was retaliatory and violated the Resolution”. *Northern N.M. Fed’n of Educ. Employees v. Northern N.M. College Labor Mgmt. Relations Board*, 2016-NMCA-036.

Respondent violated other sections but was not shown to have violated §§ 19(A) or 19(D) by refusing to bargain over layoff or provide information related to the layoffs and unilaterally altering terms and conditions of employment. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23); **aff’d** D-202-CV-2024-01995 (6/10/25). **Accord** *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), **aff’d** D-202-CV-2024-01996 (11/4/24).

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee’s union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff’d** D-202-CV-2024-01099 (2/7/25).

The Board correctly applied the *Wright Line* burden shifting standard, to conclude that §§ 5, 19(A), 19(B), 19(D) or 19(E) were not violated. The Board’s order was supported by substantial evidence because termination was due to unsatisfactory job performance, not union activity, and management was unaware of the employee’s union involvement. *UHPNM v. UNM-SRMC*, D-202-CV-2023-09603 (Jun. 28, 2024; in re: 60-PERB-2023, PELRB 105-23).

The department violated PEBA by disciplining an employee for placing union flyers, which contained some partisan political content, in employee mail slots while off duty. *Corrections Dep’t v. AFSCME and PELRB*, D-101-CV-2009-3458 (May 11, 2011; in re: PELRB 147-08).

The record supports a violation of § 10-7E-19(A) under the *Wright Line* test where an (1) employee “engage[d] in protected union activity” by participating in school board meetings and addressing the school board regarding removal of the superintendent; (2) the employer and superintendent, knew of this protected union activity, as demonstrated by superintendent’s and employee’s presence at these school board meetings, the fact that the employee sat with members of the union, and the fact that she was listed as an officer of the union on an email sent to the superintendent; (3) the superintendent demonstrated anti-union animus against the employee’s union activity; and (4) there is a causal connection between the superintendent’s anti-union animus and her decision to terminate or not renew the contract of the employee as it was contrary to the principal’s recommendation. *Peñasco Federation of United School Employees v. Peñasco Independent School District*, D-820-V-2021-00029 (Sep. 10, 2021) (in re 5-PELRB-2021, Case No. 108-20, **aff’d in part, rev’d in part**); **cert. den.** A-1-CA-39990 (Mar. 31, 2022).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university’s failure or refusal to fully fund the union president’s annual salary; and placing her under administrative direction of a dean identified as a “hostile actor” in Case 113-25. However, the union’s evidence showed that funding for the president’s position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president’s termination was based on multiple grounds of serious misconduct, and was not pretextual. 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.” It was emphasized that “[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

Respondent violated §§ 15(F) and 19(F) and (G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information that was presumptively relevant. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

Claims under §§ 19(A), 19(B), 19(D), and 19(E) dismissed after a hearing where the union failed to demonstrate a nexus between union activity and the allegedly retaliatory/discriminatory, under the *Wright Line* burden shifting analysis. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 60-PELRB-2023 (Nov. 16, 2023; in re: Case No. 105-23).

The complainant failed to make a *prima facie* case with regard to alleged violations of the §§ 19(A), (B), (D), or (E), and failed to rebut reasonable business reasons for management's actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations §§ 19(C), (G), and (H). However, the H.E.'s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

The county violated PEBA §§19 (A), (B), (D) and (E) in noticing its intent to terminate and then terminating the employee for appearing and giving testimony during a bargaining unit composition hearing association with Case No. 310-15, where discipline was based upon his providing or discussing allegedly confidential post orders that were not marked as confidential, and had been stipulated to and/or offered and admitted without objection during the Case No. 320-15 proceedings. *AFSCME Council 18 and Gilmore v. Luna County*, 17-PELRB-2016 (Aug. 9, 2016; in re: Case No. 105-16).

The union did not meet its burden of proof to establish that the county violated §§ 19(A), (B), (C) and (H) by issuing performance improvement plans (PIPs) and letters of caution. *AFSCME Council 18 v. Santa Fe County*, 1-PELRB-2016 (Mar. 14, 2016; in re: Case No. 107-15).

Claims under §§ 19(A), 19(B), and 19(C) dismissed because nexus not shown between union-related calls and a reprimand where a union member used state phones to conduct union business for only two of her 40 hours of personal use of the state phone, and restriction of union-related calls to the last 15 minutes of the day was not shown to interfere with union business. *AFSCME Council 18 v. NM Tax & Rev. Dep't*, 55-PELRB-2012 (in re: Case No. 104-12).

Respondent violated PEBA by reprimanding a bargaining unit member employee for sending an e-mail to 69 bargaining unit members employees with a link to the AFSCME newsletter, where the email itself did not itself contain political content, and simply disseminated the AFSCME newsletter. This was proper union activity and is allowed under the collective bargaining agreement, which trumps any contrary department policies, particularly where otherwise unenforced. *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2010 (Feb. 22, 2010, in re: Case No. 111-09).

- **Gender discrimination**

The PELRB is not the proper forum to address claims of gender discrimination, even where Union asserts that the county withheld proper rank of lieutenant from a detention center training sergeant on the basis of her gender, and that such action interfered with the designation of an appropriate bargaining unit. *CWA, Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

- **Probationary employees**

Probationary employees' rights to form, join or assist a union are not protected under § 19(A). *Health Care Local 2166. Nat'l Union of Hosp. and Health Care Employees Dist. 1199 v. UNM Health Science Center*, D-202-CV-2007-8161 (Feb. 20, 2008, J. Nash).

- **Stewards**

The county violated §§ 19(A), 19(B), 19(D), and 19(E) by discriminating against a bargaining unit member with regard to terms and conditions of his employment (promotion/demotion) because he gave testimony in a PELRB hearing.

AFSCME Council 18 and Verduzco v. Luna County, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16).

The employer found upon pre-hearing motion to have violated §§ 19(A), 19(B), 19(C), and 19(D) by refusing to recognize an employee's appointment as union steward, denying employee leave to conduct union business, preventing him from representing an employee in his steward role, refusing to process a grievance filed by him, and then issuing him a letter of reprimand for engaging in union activities without the department's approval. These actions were deemed to have interfered with, restrained, or coerced a public employee in the exercise of a right guaranteed pursuant to PEBA and dominated or interfered in the administration of a labor organization. An agreement recognizing the union's right to designate one steward and one alternate in Albuquerque, two stewards in Santa Fe, and one steward and one alternate in Las Cruces, did not require that employees serving as stewards must have an office in or work primarily out of those designated locations. The union was not required by that agreement to obtain concurrence of the employer as to whom it will appoint as its stewards. Concurrence was required only as to the number of stewards and their areas of geographical responsibility. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 5-PELRB-2013 (Feb. 22, 2013).

The department found upon pre-hearing motion to have violated §§ 19(B) and 19(C) – but not §§ 19(A) or 19(D) – where it refused to recognize a union's appointment of an employee as steward and disciplined that steward employee for acting in the capacity of and claiming the rights of a union steward. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 4-PELRB-2013 (Feb. 21, 2013; in re: Case No. 113-12).

§ 10-7E-19(B) [Prohibited practices by employers; interference with PEBA rights] (Amended 2020)³⁰

- **Generally**

"Refusal to respond to demands to bargain had a negative impact on the Union, rendering it 'irrelevant' in bargaining-unit members eyes, who came to view their efforts to organize as 'futile.' Bargaining unit members quit or were terminated during this period, leading to an erosion in the level of support for the Union...[D]elays in bargaining caused by an employer's unlawful refusal to recognize and bargain with an incumbent union foreseeably result in loss of employee support for the union, whether or not the employees know about the delay." As noted by the D.C. Circuit, the NLRB's *presumption of taint* "supports employee free choice because it prevents an employer from pointing to an intervening loss of employee support for the union when such loss of support is a foreseeable consequence of the employer's unfair labor practice." *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), citing and adopting the rationales of *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 704 (1944), and *Lee Lumber and Building Material Corp. v. NLRB (Lee Lumber I)*, 117 F.3d 1454 (D.C. Cir. 1997); **aff'd** D-202-CV-2024-01995 (6/10/25).

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee's union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff'd** D-202-CV-2024-01099 (2/7/25).

The Board correctly applied the *Wright Line* burden shifting standard, to conclude that §§ 5, 19(A), 19(B), 19(D) or 19(E) were not violated, and the Board's Order was supported by substantial evidence because termination was due to unsatisfactory job performance, not Union activity, and management was unaware of the employee's union involvement. *UHPNM v. UNM-SRMC*, D-202-CV-2023-09603 (Jun. 28, 2024; in re 60-PERB-2023, Case No. 105-23).

There was not substantial evidence that the employer violated §§ 19(B), 19(D), 19(E), or 19(G) based upon allegations that a manager "made disparaging comments about the union in a staff meeting", or that SRMC "threatened [the employee] with discipline for engaging in concerted activity" that the employer believed violated its social media policy. There was not substantial evidence to support the findings that hospital conduct at the meeting constituted discrimination or other violation of the cited sections. Additionally, the hospital's anti-solicitation policy was presumptively valid and there was no evidence of discriminatory application to a Union representative; and there was not substantial evidence that the hospital's social media policy had a chilling effect on union activity. *UNM-Sandoval Reg'l Med. Center, Inc. v. United Health Professionals of N.M.*, Case No. D-202-CV-2022-07805 (Aug. 9, 2023; in re: 28-PELRB-2022, Case No. 111-22), **cert. den.** S-1-SC-40270.

The union failed to demonstrate that the department violated §§ 19(B) or 19(E), or that disparate treatment occurred,

³⁰ The 2020 amendment, effective July 1, 2020... in Subsection B, after "Public Employee Bargaining Act", added "or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred", and added Paragraphs B(1) through B(6).

as the discipline was not a result of the employee having asserted their *Weingarten* rights but was for other legitimate business reasons. *Goodenough v. CYFD et al.*, D-101-CV-2020-01743 (Apr. 30, 2021) (In re: PELRB 106-19, 9-PELRB-2020; *see also* 20-PELRB-2019, Case No. 103-19 (Sep. 17, 2019) (a claim brought by the same employee and dismissed on standing grounds).

PPC summarily dismissed upon motion where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant's PEBA rights to engage in concerted activity and have Union representation, but Complainant's evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§ 5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president's termination was based on multiple grounds of serious misconduct, and was not pretextual. 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." It was emphasized that "[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university's failure or refusal to fully fund the union president's annual salary; and placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25. However, the union's evidence showed that funding for the president's position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

The union failed to state a claim for violation of § 19(B) based upon proven violation(s) of the duty to bargain in good faith under §§ 17(A)(2), 19(F), and 19(G). "That is a separate type of claim and no argument was proffered that it was the intent of the New Mexico legislature to make duty to bargain claims overlap with interference claims, rendering one or more as mere surplusage." *IAFF Local 244 v. Bernalillo County*, 32-PELRB-2026 (Sep. 10, 2026; in re: Case No. 106-26).

Refusal to deduct dues of regular employees who are not bona fide temporary employees violates §§ 5(A), 19(B), and 19(G). *CWA and Dep't of Cultural Affairs (DCA) and State Personnel Office (SPO)*, 15-PELRB-2026 (May 12, 2025; in re: Case No. 130-25), pending appeal at D-202-CV-2026-05466; *see also* 31-PELRB-2026 (8-12-26; same case) (ordering the H.E. to conduct a hearing on the issue of "make-whole" relief ordered), pending appeal at D-202-CV-2026-07473.

The union failed to meet its burden of proof regarding allegations that the hospital violated §§ 5(A) and 19(B) by supporting a decertification campaign against the Union and treated pro-union bargaining team members and/or supporters different than the pro-decertification or anti-Union employees, where the evidence only showed anti-union actions and animus by non-supervisory/non-managerial employees, aside from some *de minimis* instances. *United Health Profs. of N.M. v. UNM-Sandoval Reg'l Med. Center*, 3-PELRB-2026 (Feb. 19, 2026, in re: Case No. 128-24).

The employer violated §§ 19(B), (C), (F), and (H) when it unilaterally ceased deducting voluntary contributions to the union's committee on political education (COPE) that were authorized by employees on their dues deduction authorization forms, based on the parties' past practice of deducting COPE dues and base dues, and CBA language stating the parties were to "continue" deducting dues in the "same manner". The district's argument that the COPE dues were improper political contributions was rejected on the basis that the U.S. Supreme Court in *Janus v. AFSCME*, 585 U.S. 878 (2018) ruled that all public sector union activity was inherently political; and the subsequently issued N.M. Attorney General's Advisory Letter 2018-15 specifically states "Union member employees may pay dues through a payroll deduction", from which it was inferred the AG recognizes that dues are payable even though political. *MCFUSE Local 3313M v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026, in re: Case No. 124-25).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

Respondent violated §§ 15(F) and 19(F) and (G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information that was presumptively relevant. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

Claims under §§ 19(A), 19(B), 19(D) and 19(E) dismissed after a hearing, on grounds that the union failed to demonstrate a nexus between Union activity and the allegedly retaliatory/discriminatory, under the *Wright Line* burden shifting analysis. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 60-PELRB-2023 (Nov. 16, 2023; in re: Case No. 105-23).

Claims under §§ 19(A), 19(B), 19(D), and 19(E) dismissed after a hearing where the union failed to demonstrate a nexus between union activity and the allegedly retaliatory/discriminatory, under the *Wright Line* burden shifting analysis. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 60-PELRB-2023 (Nov. 16, 2023; in re: Case No. 105-23).

The county violated §§ 19(B), 19(D), and 19(E) by its investigations of two employee union organizers, and the Board amended the recommended remedies to include removal of any reference to the investigation at issue from the two employees' personnel files. *AFSCME Council 18 v. Bernalillo County*, 65-PELRB-2021 (Aug. 6, 2021; in re: PELRB NO. 101-21).

School and superintendent violated PEBA §§ 17(F), 19(B), 19(G), and 19(H) by failing to follow the grievance procedure contained in the CBA and by violating its duty to bargain in good faith for a period of no less than 60 days. *Ruidoso Educ. Ass'n and Kesslers v. Ruidoso Munic. School Dist. and Superintendent*, 15-PELRB-2020 (Oct. 16, 2020; in re: consolidated Case Nos. 103-20 and 105-20).

The PPC failed to state a claim under either §§ 19(B) or (C) where an involuntary transfer was within management rights, and "[t]he record was devoid of any connection between the events alleged...and Jaramillo's status as a union member." *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17).

The county violated §§ 19(A), 19(B), 19(D), and 19(E) by discriminating against a bargaining unit member with regard to terms and conditions of his employment (promotion/demotion) because he gave testimony in a PELRB hearing. *AFSCME Council 18 and Chris Verduzco v. Luna County*, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16).

The county violated §§ 19(A), (B), (D) and (E) in noticing its intent to terminate and then terminating the employee for appearing and giving testimony during and bargaining unit composition hearing association with Case No. 310-15, where discipline was based upon his providing or discussing allegedly confidential post orders that were not marked as confidential, and had been stipulated to and/or offered and admitted without objection during the Case No. 320-15 proceedings. *AFSCME Council 18 and Gilmore v. Luna County*, 17-PELRB-2016 (Aug. 9, 2016; in re: Case No. 105-16).

The union did not meet its burden of proof to establish that the county violated §§ 19(A), (B), (C) and (H) by issuing performance improvement plans (PIPs) and letters of caution. *AFSCME Council 18 v. Santa Fe County*, 1-PELRB-2016 (Mar. 14, 2016; in re: Case No. 107-15).

- **Limitations on organizational activities**

The record supports a violation of § 10-7E-19(B) under the *Wright Line* test where an employer terminated an employee's employment because of her union membership and activities, including participating in school board meetings and/or addressing the school board regarding removal of the superintendent; and such an action "interfere[s] with, restrain[s] or coerce[s]" her right to engage in those activities and join and assist the union. *Peñasco Fed'n of United School Employees v. Peñasco Indep. School Dist.*, D-820-V-2021-00029 (Sep. 10, 2021) (in re 5-PELRB-2021, Case No. 108-20, **aff'd in part, rev'd in part**); **cert. den.** A-1-CA-39990 (Mar. 31, 2022).

A fire department's no-solicitation rule that encompasses rest breaks, lunch time, and residential or after-duty hours presumptively violate § 19(B). Thus, such rule constitutes a prohibited practice unless the city makes a showing that its firefighting efforts would be hampered if employees were permitted to engage in union organizational activities during times when fire fighters were not needed for emergency services. *Las Cruces Prof'l Fire Fighters v. City of Las Cruces (Fire Fighters II)*, 1997-NMCA-031.

The PELRB follows NLRB authority, which permits an employer, under its inherent management rights, to overtly surveil its employees' protected, concerted activities where necessary to further the company's legitimate security concerns; but § 8(a)(1) of the NLRA prohibits the employer from using that surveillance in a manner having a tendency "to interfere with, restrain, or coerce employees in the exercise of" such activity. *McKinley County Fed. of United School Employees*

Local 2212 v. Gallup McKinley County Schools, 19-PELRB-2020, Case No. 122-20 (Dec. 23, 2020), citing *Nat'l Steel Shipbuilding Co.*, 324 N.L.R.B. 499 (1997), enf'd, 156 F.3d 1268 (D.C. Cir. 1998) and *Nat'l Steel Corp.*, 335 N.L.R.B. 747 (2001) (regarding issuance of a TRO).

Claims under §§ 19(A), 19(B), and 19(C) dismissed because nexus not shown between union-related calls and a reprimand where a union member used state phones to conduct union business for only two of her 40 hours of personal use of the state phone, and restriction of union-related calls to the last 15 minutes of the day was not shown to interfere with union business. *AFSCME Council 18 v. NM Tax & Rev. Dep't*, 55-PELRB-2012 (in re: Case No. 104-12).

The employer found upon pre-hearing motion to have violated §§ 19(A), 19(B), 19(C), and 19(D) by refusing to recognize an employee's appointment as union steward, denying employee leave to conduct union business, preventing him from representing an employee in his steward role, refusing to process a grievance filed by him, and then issuing him a letter of reprimand for engaging in union activities without the department's approval. These actions were deemed to have interfered with, restrained, or coerced a public employee in the exercise of a right guaranteed pursuant to PEBA and dominated or interfered in the administration of a labor organization. An agreement recognizing the union's right to designate one steward and one alternate in Albuquerque, two stewards in Santa Fe, and one steward and one alternate in Las Cruces, did not require that employees serving as stewards must have an office in or work primarily out of those designated locations. The union was not required by that agreement to obtain concurrence of the employer as to whom it will appoint as its stewards. Concurrence was required only as to the number of stewards and their areas of geographical responsibility. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 5-PELRB-2013 (Feb. 22, 2013).

The department found upon pre-hearing motion to have violated §§ 19(B) and 19(C) – but not §§ 19(A) or 19(D) – where it refused to recognize a union's appointment of an employee as steward and disciplined that steward employee for acting in the capacity of and claiming the rights of a union steward. The appointment of stewards is an internal union business matter and unless modified by contract the union is free to appoint whomever it will, to serve in that capacity. Assigned workstations or a quarterly updated list of union officer's names and contact information do not control who may be a steward. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 4-PELRB-2013 (Feb. 21, 2013; in re: Case No. 113-12).

A PPC failed to state a claim under § 19(B) based upon alleged obstruction of the grievance arbitration process, where it alleged only that the employer denied the arbitrability or validity of grievances, and it locked the former employees out of IT and email systems after his termination; and it incorrectly asserted that the Step 2 and 3 decision makers were the same. The first two actions are reasonable. Nor did any of the alleged actions impair the employee's functional ability to process his grievance, since he proceeded through the Step 3 denial; and his own evidence rebuts the claim that the Step 2 designee also decided the matter at Step 3. As such, if there was a violation or harm it was *de minimis*. *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Report (Aug. 26, 2026).

- **Right to Information**

The failure to provide a union with the names and home addresses of proposed bargaining unit employees interfere with, restrains or coerces the public employees in their right to form, join or assist a union for purposes of collective bargaining. *SSEA, Local 3878 v. Socorro Consol. School Dist.*, 5-PELRB-2007 (Dec. 13, 2007), citing *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1996).

Note: The Board implicitly rejected arguments of counsel that *Excelsior* should not apply to the public sector, and that in this regard the PELRB should follow precedent under the federal labor Management and Employees Relations Act, 29 USC §§ 7101, et seq., rather than the NLRA. Additionally, the 2020 amendments to PEBA have codified and augmented the Union's rights to a variety of information, including the names, telephone numbers, and addresses of bargaining unit members.

- **Right to union representation**

Weingarten rights apply under PEBA generally (although not to law enforcement investigations) and are also relevant to personnel board hearings. The assistant superintendent violated the employee's rights by denying his request for union representation at the initial investigatory meeting. However, *Weingarten* rights did not apply to law enforcement investigation of potential crimes, so no violation occurred when he was denied union representation for a subsequent APD interview. *AFSCME Council 18, on Behalf of Daniel Nogales v. City of Albuquerque Parks and Recreation Dep't and City Personnel Board*, D-202-CV-2013-2891 (Oct. 11, 2013) (reviewing a City Personnel Board determination).

Denying *Weingarten* rights is a violation of §§ 5 and 19(B), under the PEBA as under the NLRA. The rights guaranteed by PEBA § 5 to form, join or assist a labor organization for the purpose of collective bargaining are substantially the same as the well-settled and longstanding protections afforded employees by § 7 of the NLRA to act in concert for mutual aid and protection; and the protections provided by PEBA are sufficiently similar to those provided by the NLRA to warrant the inference that the state legislature intended to protect public employees to the same extent as does the decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). It was clarified, however, that *Weingarten* "rights are the

employee's not the Union's, and must be invoked by the employee, not by the Union on his or her behalf"; and the H.E. found "no requirement under *Weingarten* that the employer must advise the employee of his or her *Weingarten* rights." *AFSCME Council 18 v. CYFD*, 10-PELRB-2013 (May 15, 2013), citing *UNM v. N.M. Fed. of Teachers*, 1998-NMSC-020; and *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-031.

An employee is not denied "*Weingarten* rights" – the rights of employees to union representation during investigatory meetings – in violation of PEBA where the purpose of a meeting is not to investigate or gather information, but rather to deliver a reprimand for previous conduct. *Pita S. Roybal v. CYFD*, 2-PELRB-2006 (May 12, 2006).

§ 10-7E-19(C) [Prohibited practices by employers; domination of or interference with union]

- **Generally**

"Refusal to respond to demands to bargain had a negative impact on the Union, rendering it 'irrelevant' in bargaining-unit members eyes, who came to view their efforts to organize as 'futile.' Bargaining unit members quit or were terminated during this period, leading to an erosion in the level of support for the Union...[D]elays in bargaining caused by an employer's unlawful refusal to recognize and bargain with an incumbent union foreseeably result in loss of employee support for the union, whether or not the employees know about the delay." As noted by the D.C. Circuit, the NLRB's *presumption of taint* "supports employee free choice because it prevents an employer from pointing to an intervening loss of employee support for the union when such loss of support is a foreseeable consequence of the employer's unfair labor practice." *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), citing and adopting the rationales of *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 704 (1944), and *Lee Lumber and Building Material Corp. v. NLRB (Lee Lumber I)*, 117 F.3d 1454 (D.C. Cir. 1997); **aff'd** D-202-CV-2024-01995 (6/10/25).

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president's termination was based on multiple grounds of serious misconduct, and was not pretextual. 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." It was emphasized that "[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university's failure or refusal to fully fund the union president's annual salary; and placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25. However, the union's evidence showed that funding for the president's position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

The employer violated §§ 19(B), (C), (F), and (H) when it unilaterally ceased deducting voluntary contributions to the union's committee on political education (COPE) that were authorized by employees on their dues deduction authorization forms, based on the parties' past practice of deducting COPE dues and base dues, and CBA language stating the parties were to "continue" deducting dues in the same manner. The district's argument that the COPE dues were improper political contributions was rejected on the basis that the U.S. Supreme Court in *Janus v. AFSCME*, 585 U.S. 878 (2018) ruled that all public sector union activity was inherently political; and the subsequently issued N.M. Attorney General's Advisory Letter 2018-15 specifically states "Union member employees may pay dues through a payroll deduction", from which it was inferred the AG recognizes that dues are payable even though political. *MCFUSE Local 3313M v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026, in re: Case No. 124-25).

Respondent violated §§ 15(F) and 19(F) and (G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

The PPC failed to state a claim under either §§ 19(B) or 19(C) where an involuntary transfer was within management rights, and "[t]he record was devoid of any connection between the events alleged...and Jaramillo's status as a union

member.” H.E. also noted the narrow application of § 19(C); as under the NLRA’s essentially identical provision, PEBA § 19(C) is directed intended to address a very narrow type and limited number of activities, such as establishment of a “company union; infiltration of unions by lower-level supervisors; or failing to maintain neutrality between competing unions”. Unions frequently cite § 19(C) incorrectly, claiming violations when an employer limits a union’s access to employees, disciplines union stewards for union activity, engages in direct dealing or for other claims involving interference with *employees’* PEBA rights as contrasted with the rights of the union itself. *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17).

The complainant failed to make a *prima facie* case with regard to alleged violations §§ 19(A), (B), (D) or (E), and failed to rebut reasonable business reasons for management’s actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations of §§ 19(C), (G) and (H). However, the H.E.’s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

The union did not meet its burden of proof to establish that the county violated §§ 19(A), (B), (C) or (H) by issuing performance improvement plans (PIPs) and letters of caution. *AFSCME Council 18 v. Santa Fe County*, 1-PELRB-2016 (Mar. 14, 2016; in re: Case No. 107-15).

- **Direct dealing**

By changing the duties of and extending benefits to three bargaining unit members without bargaining, the district violated § 19(C). *Central Consol. School Ass’n v Central Consol. School Dist.*, 27-PELRB-2013 (Oct. 11, 2021; in re: Case 101-13), *aff’d* D-202-CV-2013-0875 (1/12/15); *aff’d* A-I-CA-34843 (11/30/17).

Respondent did not violate PEBA by engaging in direct dealing where it was in the process of acquiring a private company and sent the employees engaged in organizing information on what their new pay and benefits would be if they transferred their employment to UNM. *UNM-Sandoval Reg’l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-07978 (Dec. 8, 2025; in re 8-PELRB-2024, Case No. 109-23), *aff’d* D-202-CV-2024-01995 (6/10/25).

Claims under §§ 19(A), 19(B), and 19(C) dismissed because nexus not shown between union-related calls and a reprimand where a union member used state phones to conduct union business for only two of her 40 hours of personal use of the state phone, and restriction of union-related calls to the last 15 minutes of the day was not shown to interfere with union business. *AFSCME Council 18 v. NM Tax & Rev. Dep’t*, 55-PELRB-2012 (in re: Case No. 104-12).

Failure to give a union representative notice of a mandatory employee meeting concerning the terms and conditions of employment, after the representative requested such notice, constitutes interference with the union’s status as exclusive representative and interference in the collective bargaining relationship, contrary to § 19(C). *AFSCME Council 18 v. Dep’t of Health*, 6-PELRB-2007 (Dec. 3, 2007).

- **Stewards or representatives, appointment or recognition of**

The employer found upon pre-hearing motion to have violated §§ 19(A), 19(B), 19(C), and 19(D) by refusing to recognize an employee’s appointment as union steward, denying employee leave to conduct union business, preventing him from representing an employee in his steward role, refusing to process a grievance filed by him, and then issuing him a letter of reprimand for engaging in union activities without the department’s approval. These actions were deemed to have interfered with, restrained, or coerced a public employee in the exercise of a right guaranteed pursuant to PEBA and dominated or interfered in the administration of a labor organization. An agreement recognizing the union’s right to designate one steward and one alternate in Albuquerque, two stewards in Santa Fe, and one steward and one alternate in Las Cruces, did not require that employees serving as stewards must have an office in or work primarily out of those designated locations. The union was not required by that agreement to obtain concurrence of the employer as to whom it will appoint as its stewards. Concurrence was required only as to the number of stewards and their areas of geographical responsibility. *AFSCME Council 18 v. Reg. and Lic. Dep’t*, 5-PELRB-2013 (Feb. 22, 2013).

The department found upon pre-hearing motion to have violated §§ 19(B) and 19(C) – but not §§ 19(A) or 19(D) – where it refused to recognize a union’s appointment of an employee as steward and disciplined that steward employee for acting in the capacity of and claiming the rights of a union steward. The appointment of stewards is an internal union business matter and unless modified by contract the union is free to appoint whomever it will, to serve in that capacity. Assigned workstations or a quarterly updated list of union officer’s names and contact information do not control who may be a steward. *AFSCME Council 18 v. Reg. and Lic. Dep’t*, 4-PELRB-2013 (Feb. 21, 2013; in re: Case No. 113-12).

§ 10-7E-19(D) [Prohibited practices by employers; discrimination in hiring or term or condition, to encourage or discourage union membership]

- **Generally**

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee's union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff'd** D-202-CV-2024-01099 (2/7/25).

Respondent violated other sections but was not shown to have violated §§ 19(A) or 19(D) by refusing to bargain over layoff or to provide information related to the layoffs and unilaterally altering terms and conditions of employment. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23); **aff'd** D-202-CV-2024-01995 (6/10/25). **Accord** *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), **aff'd** D-202-CV-2024-01996 (11/4/24).

The Board correctly applied the *Wright Line* burden shifting standard, to conclude that §§ 5, 19(A), 19(B), 19(D) or 19(E) were not violated. The Board's order was supported by substantial evidence because termination was due to unsatisfactory job performance, not Union activity, and management was unaware of the employee's union involvement. *UHPNM v. UNM-SRMC*, D-202-CV-2023-09603 (Jun. 28, 2024; in re: 60-PERB-2023, Case No. 105-23).

There was not substantial evidence that the employer violated §§ 19(B), 19(D), 19(E), or 19(G) based upon allegations that a manager "made disparaging comments about the union in a staff meeting", or that SRMC "threatened [the employee] with discipline for engaging in concerted activity" that the employer believed violated its social media policy. There was not substantial evidence to support the findings that hospital conduct at the meeting constituted discrimination or other violation of the cited sections. Additionally, the hospital's anti-solicitation policy was presumptively valid and there was no evidence of discriminatory application to a Union representative; and there was not substantial evidence that the hospital's social media policy had a chilling effect on union activity. *UNM-Sandoval Reg'l Med. Center, Inc. v. United Health Professionals of N.M.*, Case No. D-202-CV-2022-07805 (Aug. 9, 2023; in re: 28-PELRB-2022, Case No. 111-22), **cert. den.** S-1-SC-40270.

The record supports a violation of § 10-7E-19(D) under the *Wright Line* test where an employee was terminated for engaging in protected union activity by participating in school board meetings and addressing the school board regarding removal of the superintendent. Termination "constitutes discrimination" and "[t]his is shown by the fact that [the] Superintendent did not follow the recommendation of the school principal regarding retention of Ms. Sandoval when she decided to terminate her employment." *Peñasco Fed'n of United School Employees v. Peñasco Indep. Sch. Dist.*, D-820-V-2021-00029 (Sep. 10, 2021; in re 5-PELRB-2021, Case No. 108-20, **aff'd in part, rev'd in part**); **cert. den.** A-1-CA-39990 (Mar. 31, 2022).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university's failure or refusal to fully fund the union president's annual salary; and placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25. However, the union's evidence showed that funding for the president's position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president's termination was based on multiple grounds of serious misconduct, and was not pretextual. 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." It was emphasized that "[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated

justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

Claims under §§ 19(A), 19(B), 19(D), and 19(E) dismissed after a hearing where the union failed to demonstrate a nexus between union activity and the allegedly retaliatory/discriminatory, under the *Wright Line* burden shifting analysis. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 60-PELRB-2023 (Nov. 16, 2023; in re: Case No. 105-23).

The county violated §§ 19(B), 19(D), and 19(E) by its investigations of two employee union organizers, and the Board amended the recommended remedies to include removal of any reference to the investigation at issue from the two employees' personnel files. *AFSCME Council 18 v. Bernalillo County*, 65-PELRB-2021 (Aug. 6, 2021; in re: Case No. 101-21).

The county violated §§ 19(A), 19(B), 19(D), and 19(E) by discriminating against a bargaining unit member with regard to terms and conditions of his employment (promotion/demotion) because he gave testimony in a PELRB hearing. *AFSCME Council 18 and Verduzco v. Luna County*, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16).

The county violated PEBA §§19 (A), (B), (D), and (E) in noticing its intent to terminate and then terminating the employee for appearing and giving testimony during a bargaining unit composition hearing association with Case No. 310-15, where discipline was based upon his providing or discussing allegedly confidential post orders that were not marked as confidential, and had been stipulated to and/or offered and admitted without objection during the Case No. 320-15 proceedings. *AFSCME Council 18 and Gilmore v. Luna County*, 17-PELRB-2016 (Aug. 9, 2016; in re: Case No. 105-16).

Complainant failed to make a *prima facie* case with regard to alleged violations of §§ 19(A), (B), (D) or (E), and failed to rebut reasonable business reasons for management's actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations of §§ 19(C), (G), and (H). However, the H.E.'s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

The employer found upon pre-hearing motion to have violated §§ 19(A), 19(B), 19(C), and 19(D) by refusing to recognize an employee's appointment as union steward, denying employee leave to conduct union business, preventing him from representing an employee in his steward role, refusing to process a grievance filed by him, and then issuing him a letter of reprimand for engaging in union activities without the department's approval. These actions were deemed to have interfered with, restrained, or coerced a public employee in the exercise of a right guaranteed pursuant to PEBA and dominated or interfered in the administration of a labor organization. An agreement recognizing the union's right to designate one steward and one alternate in Albuquerque, two stewards in Santa Fe, and one steward and one alternate in Las Cruces, did not require that employees serving as stewards must have an office in or work primarily out of those designated locations. The union was not required by that agreement to obtain concurrence of the employer as to whom it will appoint as its stewards. Concurrence was required only as to the number of stewards and their areas of geographical responsibility. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 5-PELRB-2013 (Feb. 22, 2013).

The department found upon pre-hearing motion to have violated §§ 19(B) and 19(C) – but not §§ 19(A) or 19(D) – where it refused to recognize a union's appointment of an employee as steward and disciplined that steward employee for acting in the capacity of and claiming the rights of a union steward. *AFSCME Council 18 v. Reg. and Lic. Dep't*, 4-PELRB-2013 (Feb. 21, 2013; in re: Case No. 113-12).

- **Probationary employees**

Although probationary employees are specifically excluded from the category of individuals whose rights are acknowledged in § 2, § 19(D) prohibits all discrimination for the purpose of encouraging or discouraging membership in a union, regardless of whether the discrimination is directed toward a probationary employee. Section 19(D), unlike § 2, omits any reference to "employees" and is broadly worded. Additionally, to conclude otherwise would render meaningless § 19(D)'s prohibition against discrimination "in hiring." *Health Care Local 2166. Nat'l Union of Hosp. and Health Care Employees Dist. 1199 v. UNM Health Science Center*, D-202-CV-2007-8161 (Feb. 20, 2008; J. Nash).

Disting. *Health Care Local 2166. Nat'l Union of Hosp. and Health Care Employees Dist. 1199 v. UNM Health Science Center*, D-202-CV-2007-8161 (Feb. 20, 2008, J. Nash) (probationary employees' rights to form, join or assist a union are not protected under § 19(A)).

See also § 4(Q), Probationary employees

§ 10-7E-19(E) [Prohibited practices by employers; discharge or discriminated for giving information or forming, joining or choosing to be represented by a union]

The record supports a violation of § 10-7E-19(E) under the *Wright Line* test where an employee was terminated after speaking at a school board meeting to “seek[] redress..., which shows that the Employer ‘discharge[d] or otherwise discriminate[d] against a public employee because the employee ... is forming, joining or choosing to be represented by a labor organization.’” *Peñasco Fed’n of United School Employees v. Peñasco Indep. School Dist.*, D-820-V-2021-00029 (Sep. 10, 2021; in re 5-PELRB-2021, Case No. 108-20), **aff’d in part, rev’d in part, cert. den.** A-1-CA-39990 (3/31/22).

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee’s union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff’d** D-202-CV-2024-01099 (2/7/25).

The Board correctly applied the *Wright Line* burden shifting standard to conclude that §§ 5, 19(A), 19(B), 19(D), and 19(E) were not violated and the Board’s order was supported by substantial evidence because termination was due to unsatisfactory job performance, not Union activity, and management was unaware of the employee’s Union involvement. *UHPNM v. UNM-SRMC*, D-202-CV-2023-09603 (Jun. 28, 2024; in re: 60-PERB-2023, PELRB 105-23).

There was not substantial evidence that the employer violated §§ 19(B), 19(D), 19(E), or 19(G) based upon allegations that a manager “made disparaging comments about the union in a staff meeting”, or that SRMC “threatened [the employee] with discipline for engaging in concerted activity” that the employer believed violated its social media policy. There was not substantial evidence to support the findings that hospital conduct at the meeting constituted discrimination or other violation of the cited sections. Additionally, the hospital’s anti-solicitation policy was presumptively valid and there was no evidence of discriminatory application to a Union representative; and there was not substantial evidence that the hospital’s social media policy had a chilling effect on union activity. *UNM-Sandoval Reg’l Med. Center, Inc. v. United Health Professionals of N.M.*, Case No. D-202-CV-2022-07805 (Aug. 9, 2023; in re: 28-PELRB-2022, Case No. 111-22), **cert. den.** S-1-SC-40270.

The Union failed to demonstrate that CYFD violated §§ 19(B) or 19(E), or that disparate treatment occurred, as the discipline was not a result of the employee having asserted their *Weingarten* rights but was for other legitimate business reasons. *Goodenough v. CYFD et al.*, D-101-CV-2020-01743 (Apr. 30, 2021; in re: 9-PELRB-2020, Case No. 106-19).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university’s failure or refusal to fully fund the union president’s annual salary; and placing her under administrative direction of a dean identified as a “hostile actor” in Case 113-25. However, the union’s evidence showed that funding for the president’s position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

PPC summarily dismissed upon motion where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant’s PEBA rights to engage in concerted activity and have Union representation, but Complainant’s evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president’s termination was based on multiple grounds of serious misconduct, and was not pretextual. 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.” It was emphasized that “[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25), citing *Maxwell v. Kelly Servs., Inc.*, 730 F. Supp. 2d 1254, 1272 (D. Or. 2010); *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); and *Argo v. Blue*

Cross & Blue Shield of Kan., Inc., 452 F.3d 1193, 1203 (10th Cir. 2006).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

Claims under §§ 19(A), 19(B), 19(D), and 19(E) dismissed after a hearing where the union failed to demonstrate a nexus between union activity and the allegedly retaliatory/discriminatory, under the *Wright Line* burden shifting analysis. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 60-PELRB-2023 (Nov. 16, 2023; in re: Case No. 105-23).

The county violated §§ 19(B), 19(D), and 19(E) by its investigations of two employee union organizers, and the Board amended the recommended remedies to include removal of any reference to the investigation at issue from the two employees' personnel files. *AFSCME Council 18 v. Bernalillo County*, 65-PELRB-2021 (Aug. 6, 2021; in re: Case No. 101-21).

The PPC failed to state a claim under § 19(E) where an employee gave information in two investigations and only received a copy of the one in which he was a target, and "[t]he record [w]as devoid of any evidence that Jaramillo has been discriminated against in any fashion as a result of his statements in either investigation." *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17).

The county violated §§ 19(A), 19(B), 19(D), and 19(E) by discriminating against a bargaining unit member with regard to terms and conditions of his employment (promotion/demotion) because he gave testimony in a PELRB hearing. *AFSCME Council 18 and Chris Verduzco v. Luna County*, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16).

The county violated PEBA §§ 19 (A), (B), (D), and (E) in noticing its intent to terminate and then terminating the employee for appearing and giving testimony during a bargaining unit composition hearing association with Case No. 310-15, where discipline was based upon his providing or discussing allegedly confidential post orders that were not marked as confidential, and had been stipulated to and/or offered and admitted without objection during the Case No. 320-15 proceedings. *AFSCME Council 18 and Gilmore v. Luna County*, 17-PELRB-2016 (Aug. 9, 2016; in re: Case No. 105-16).

The complainant failed to make a *prima facie* case for the alleged violations of §§ 19(A), (B), (D), or (E), and it failed to rebut reasonable business reasons for management's actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations of §§ 19(C), (G) and (H). However, the H.E.'s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

§ 10-7E-19(F) [Prohibited practices by employers, refusal to bargain in good faith]

- **Generally**

See also § 10-7E-17(A)(1)

The school district was found to have violated § 19(F) by assigning extra work to employees and paying them a "foreman stipend" without bargaining. *Central Consol. School Ass'n v Central Consol. School Dist.*, 27-PELRB-2013 (Oct. 11, 2021; in re: Case 101-13), *aff'd* D-202-CV-2013-0875 (1/12/15); *aff'd* A-I-CA-34843 (11/30/17).

Respondent violated §§ 5, 19(B), 19(C), 19(F) and 19(G) – but was not shown to have violated §§ 19(A) or 19(D) – by refusing to bargain over layoff or provide information related to the layoffs, and by re-assignment of nurses between Pre-Op and PACU. "Refusal to respond to demands to bargain had a negative impact on the Union, rendering it 'irrelevant' in bargaining-unit members eyes, who came to view their efforts to organize as 'futile.' Bargaining unit members quit or were terminated during this period, leading to an erosion in the level of support for the Union...[D]elays in bargaining caused by an employer's unlawful refusal to recognize and bargain with an incumbent union foreseeably result in loss of employee support for the union, whether or not the employees know about the delay." As noted by the D.C. Circuit, the NLRB's *presumption of taint* "supports employee free choice because it prevents an employer from pointing to an intervening loss of employee support for the union when such loss of support is a foreseeable consequence of the employer's unfair labor practice." "Included among the laundry list of commonly recognized mandatory subjects of bargaining are work schedules; changing from fixed to rotating shifts; work assignments; work duties; workloads and work rules...In the period following certification, no change may be made to the *status quo* absent negotiations or upon notice and opportunity to bargain over the changes...The NLRB has defined "terms and conditions" of employment as (1) wages, benefits, and other compensation; (2) hours of work and scheduling; (3) the assignment of duties to be performed; (4) the supervision of the performance of duties; (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline; (6) the tenure

of employment, including hiring and discharge; and (7) working conditions related to the safety and health of employees...Layoffs are among the enumerated topics requiring bargaining, along with work schedules and days off; changing from fixed to rotating shifts; changes in overtime policies and curtailing work hours due to a decline in business needs, work assignments; work duties; workloads and work rules...[T]he layoff of State employees is a mandatory subject of bargaining entitling the Union to a significant opportunity to bargain in a meaningful manner and at a meaningful time, at a minimum, over the effects of the Employer's layoff or RIF decision. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23), **aff'd** D-202-CV-2024-01995 (6/10/25).

The Board did not act arbitrarily or capriciously in determining that the department violated § 9(F) by unilaterally increasing labor law adjudicators' quota of inspections from 20 to 25 without bargaining. The findings were supported by substantial evidence, notwithstanding a purported conflict in testimony and the number of inspections employees were required to perform each month was a term or condition of employment and a mandatory subject of bargaining under the PEBA. *AFSCME v. Dep't of Workforce Solutions*, D-202-CV-2017-07924 (Jul. 26, 2018; in re: 11-PELRB-2017, Case No. 102-17).

The employer violated §§ 19(B), (C), (F), and (H) when it unilaterally ceased deducting voluntary contributions to the union's committee on political education (COPE) that were authorized by employees on their dues deduction authorization forms, based on the parties' past practice of deducting COPE dues and base dues, and CBA language stating the parties were to "continue" deducting dues in the same manner. The district's argument that the COPE dues were improper political contributions was rejected on the basis that the U.S. Supreme Court in *Janus v. AFSCME*, 585 U.S. 878 (2018) ruled that all public sector union activity was inherently political; and the subsequently issued N.M. Attorney General's Advisory Letter 2018-15 specifically states "Union member employees may pay dues through a payroll deduction", from which it was inferred the AG recognizes that dues are payable even though political. *MCFUSE Local 3313M v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026, in re: Case No. 124-25).

Respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated to support a more expansive remedy than a declaration of liability, particularly one that had not been previously awarded by the PELRB. (Complainant had sought up to 15% interest under NMSA § 56-8-3(A), which provides that "[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract...") *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No. 118-25).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025, in re: Case 106-25).

PPC dismissed where some of the alleged changes to terms and conditions did not occur, and the union failed to request bargaining on others. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 6-PELRB-2025 (Feb. 15, 2025; in re: Case No. 116-24).

The county violated the PEBA by implementing a COVID-19 vaccine mandate that included discipline for non-compliance following declaration of an impasse in negotiations; the decision re-iterated the Board's long-standing policy that a public employer under may not unilaterally impose its Last Best Offer after impasse, and doing so is a breach of the duty to bargain in good faith. *AFSCME Council 18 v. Human Services Dep't*, 13-PELRB-2023 (Apr. 12, 2023; in re: Case No. 102-23).

PPC alleging that the county's failure to adjust a lower paid training specialist's pay upward to match that of a higher paid training specialist violates § 19(F) and (H) was summarily dismissed. Any right to an "equity increase" arose out of the employer's personnel rules, not the CBA; and the increase was discretionary and reasonably, non-discriminatorily and consistently applied, so there was no evidence of abuse of discretion. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 2-PELRB-2023 (Jan. 4, 2023; in re: PELRB No. 120-22).

The employer did not refuse to bargain, as required by both Article 19(F) of the CBA and § 17(A) of the PEBA, because it already bargained for such job descriptions to be performed and approved in management's discretion, and it was not required to bargain the specific issue further, midterm. *AFSCME Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, 69-PELRB-2021 (Oct. 15, 2021; Case No. 108-21).

The county violated § 10-7E-19(F) by failing or refusing to bargain over elimination of boundary spanners job positions; and violated §§ 17(A)(1) and § 19(F) by withholding information relevant to the layoff of boundary spanners. *AFSCME Council 18 v. Bernalillo County*, 65-PELRB-2021 (Aug. 6, 2021; in re: Case No. 101-21).

Under the totality of the circumstances, the parties' conduct reflected mutual good faith bargaining over the alleged pay discrepancy and the union did not meet its burden of proving a failure to bargain in good faith, or of violations of §§

17(A)(1), 19(F) § 19(H), by failing to bargain in good faith regarding certain pay inequities resulting from the transfer or promotion of a non-bargaining unit employee into a bargaining unit position. *AFSCME Local 3999 v. City of Santa Fe*, 11-PELRB-2020 (Sep. 21, 2020; in re: Case No. 101-20).

The union failed to prove the department violated §§ 19(F), 19(G), or 19(H) by unilaterally implementing a performance quota for family assistance analysts, because their right to do so has already been bargained for in the management rights clause. *AFSCME Council 18 v. Human Services Dep't*, 12-PELRB-2018 (Oct. 4, 2018; in re: Case No. 123-17).

PPC failed to state a claim under § 19 (F) where complainant alleged unilateral changes in the implementation and administration of rules related to reporting misconduct, the definition of gossip, investigations and progressive discipline; but there was no evidence of a duty to bargain because the topics were already "covered" under the CBA. *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re Case No. 118-17).

Section 19(F) claim for breach of the duty to bargain was dismissed because the evidence only showed a disagreement on SOP interpretation. *NMCP SO & Santa Fe County*, 10-PELRB-2017 (Oct. 3, 2017; in re: Case No. 118-17).

Summary judgment granted for complainant, concluding that the county violated §§ 17(A)(1) and (C) and PEBA §19(F) (refusing to bargain collectively in good faith with the exclusive representative) when it refused to provide the union with home addresses of bargaining unit members requested in connection with a dues increase). *AFSCME Council 18 and Santa Fe County*, 6-PELRB-2016 (May 11, 2016; in re: Case No. 128-15).

The county violated § 19(F) because by its own terms the performance improvement plan (PIP) in question constituted disciplinary action and thus the county failed to bargain in good faith over that issue. *AFSCME Council 18 v. Santa Fe County*, 1-PELRB-2016 (Mar. 14, 2016, in re: Case No. 107-15).

- **Direct dealing**

UNMH did not engage in direct dealing where it was in the process of acquiring a private company and sent the employees engaged in organizing information on what their new pay and benefits would be if they transferred their employment to UNM. *UNM-Sandoval Reg'l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-07978 (Dec. 8, 2025; in re: 36-PELRB-2024, Case No. 109-23).

An employer violates § 19(F) by meeting with an employee outside of the presence of the union, to privately adjust a grievance filed by the union on that employee's behalf. *AFSCME Council 18 v. Corrections Dep't*, 4-PELRB-2007 (Dec. 13, 2007).

- **Duty to provide information**

See also §§ 5, 15(A), 17(A)(1)

UNM-SRMC did not violate Sections §§ 17(A)(1) or 19(F) by refusing to provide required information or making unilateral changes to terms and conditions of employment where it was in the process of acquiring a private company and had no obligation to bargain or provide any information to complainant regarding the terms and conditions of employment at UNMH. *UNM-Sandoval Reg'l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-07978 (Dec. 8, 2025; in re 36-PELRB-2024, Case No. 117-23).

Respondent violated §§ 5, 19(B), 19(C), 19(F) and 19(G) – but was not shown to have violated §§ 19(A) or 19(D) – by refusing to bargain over layoff or provide information related to the layoffs. "This Board has recognized that the duty to bargain includes the duty to provide, upon request, any relevant information necessary not only to negotiate or administer a Collective Bargaining Agreement, but to otherwise fairly and adequately represent all collective bargaining unit employees. An employer's failure to provide information is a per se violation of the PEBA." "The financial information, information related to hours of work and any other benefit or term and condition of employment, information pertaining to possible loss of bargaining unit work, such as that sought by AFT in this case, is recognized as being presumptively relevant." *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23) (citing *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04)), **aff'd** D-202-CV-2024-01995 (6/10/25). **Accord** *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), **aff'd** D-202-CV-2024-01996 (11/4/24).

The PED has satisfied its obligation to bargain the specific effects of the reduction in force (RIF) identified by the union in this case, but it violated its duty to bargain in good faith under § 17(A) [incorporated by reference to § 19(G)] and § 19(F), by not providing the union with information necessary to administer and monitor compliance with the CBA and to fairly and adequately represent all collective bargaining unit employees. Intentionally withholding this information impaired the union and its president in fulfilling the statutory duty to represent all employees in the bargaining unit. The employer's duty to provide information to the union under § 17(A) [incorporated by reference to § 19(G)] and § 19(F) is not met when the employer does the bare minimum of providing notice to, and meeting with, the union while purposely withholding information relevant to a layoff. Additionally, union did not waive bargaining about a RIF by failing to make a

timely demand, where there was insufficient evidence to support a conclusion that the employer provided meaningful and timely notice of the RIF. *CWA Local 7076 v. Public Education Dep't*, D-202-CV-2012-11595 (Aug. 9, 2013; in re: 76-PELRB-2012, Case No. 134-11) (reversing the Board's determination of waiver and remanding for further findings on which RIF effects are covered under the contract).

PPC for violation of § 19(F) sustained where the overwhelming weight of the evidence was that the county knew the response to the request for information was stuck somewhere in the county's legal department or with outside counsel, and the county attorney failed to take adequate steps to ensure no unlawful delay. Because the county fails to rebut the clear evidence of unwarranted delay under the totality of the circumstances, the union established by a preponderance of the evidence that the county engaged in bad faith bargaining under Section 19(F). *Albuquerque Area Fire Fighters, IAFF Local 244 v. Bernalillo County*, 4-PELRB-2026 (Feb. 19, 2026; in re: Case No. 122-25).

Respondent violated §§ 15(F), 19(F), and 19(G) – but not §§ 5(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide requested information. “[A]ll of the information and documents requested are presumptively relevant to the Union's duties to its members under PEBA and to enforce their rights”, “UNM SRMC's actions have the potential effect of undermining the authority of the Union and eroding support for the Union as the certified representative”, and “UNM SRMC's refusal to respond to information requests is a *per se* violation of the Employer's duty to bargain in good faith with the duly authorized representative.” *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

The duty under PEBA to bargain in good faith requires the parties to provide that information necessary to negotiate CBAs and to police and administer existing agreements. A labor organization that has been certified as the exclusive representative has a duty to adequately represent its members. An employer is required to provide upon request such information as would assist the union in determining the extent and number of employees affected by an erroneous wage implementation; work schedules, a list of casual or pool employees; and copies of contracts between the employer and staffing agencies. This type of information is routinely required and requested in implementing a contract, because it concerns wage information, information related to hours and other terms and conditions of employment, employee lists, and information pertaining to possible loss of work. A union's right to information from a public employer is not defined by the Inspection of Public Records Act (IPRA) but rather is defined by the duty to bargain in good faith. Because the public policy and purpose underlying IPRA is to ensure an informed electorate, it cannot define a public employer's obligations under PEBA to provide information. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04) (alleging violations of §§ 17(A)(1) and 19(F), as well as 19(H) regarding CBA based claims).

Accord: *AFSMCE Locals 624, 1888, 2962 and 3022 v. City of Albuquerque Labor Management Relations Board*, Case No. LB 06-033, Hearing Examiner Report (Jun. 12, 2007) (upholding a similarly broad duty to provide contact and other information to certified unions under the city's grandfathered local ordinance; necessary information under the Albuquerque ordinance includes the full name, Social Security number, date of birth, department work address, work phone, email address, home address, home telephone number, date of hire, full or part time status, and salary of each bargaining unit employee).

- **Past Practice**

“A past practice can be binding on the parties notwithstanding the terms of the CBA” and “[g]enerally, factors relevant to a finding of a binding past practice are the duration and consistency of its application and the parties' acquiescence in it”. Past practices are “the ‘common law of the shop,’ i.e., are used to interpret ambiguous phrases contained in a CBA.” *CWA v. State*, 2019-NMCA-031 (Feb. 21, 2019; in re: 1-PELRB-2015, Case No. 122-14), quoting and/or citing *United Steelworkers of Am. v. Warrior & Gulf Navigation*, 363 U.S. 574, 19 581-82 (19 60); *Cruz-Martinez v. Dep't of Homeland Sec.*, 410 F.3d 1366, 1370 (Fed. Cir. 2005); and *Webb v. ABF Freight Sys., Inc.*, 155 F.3d 123, 124 (10th Cir., 1998); and § 10-7E-17(A)(1); **cert. den.** No. S-I-SC-36811 (1/23/18).

A policy or practice that does not conflict with the terms of a CBA can become a binding or established past practice that has the same weight and effect of a right guaranteed by the CBA. Similarly, a final and binding arbitration award between the Parties becomes a part of the CBA unless or until amended through bargaining. If a past practice is established, it is very significant. Thereafter, it can only be amended with notice and opportunity to bargain over the change. In other words, it can only be terminated “at the bargaining table”, like any other contractual right. There is no magic number to establish longevity, but the standard is that it endured “over such a period of time that the employees may rely on and reasonably expect such practice to continue.” In the face of undisputed evidence of a past practice, the employer's bare denials of such will not suffice to rebut that evidence. *IAFF Local 244 v. Bernalillo County*, 32-PELRB-2026 (Sep. 10, 2026; in re: Case No. 106-26), citing *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581-82 (1960); Ed. Ray Schoonhoven, *Fairweather's Practice and Procedure in Arbitration* (4th ed. BNA, 1999); and Ruben Miles, *Elkouri and Elkouri: How Arbitration Works* (6th ed. ABA, 2003) at 606-612.

PPC alleging violations of §§ 17(A)(1) and 19(F) sustained upon determination that the take-home vehicle allowance was a legally binding past practice that required notice and opportunity to bargain before its termination. *Hatch Police*

Officers Ass'n v. Village of Hatch, 9-PELRB-2026 (Mar. 19, 2026, in re: Case No. 128-25); *see also* 35-PLRB-2026 (Sep. 10, 2026) (setting hearing before Board on Village non-compliance).

A past practice will not be found or deemed binding if there is insufficient evidence to establish it. *AFSCME Local 3022 v. ABCWUA*, Hearing Examiner Report at 12-13 (Jul. 20, 2021; in re: PELRB Case No. 106-21) (the Respondent had asserted past practice as an affirmative defense which was rejected, and the Respondent withdrew their request for Board review).

§ 10-7E-19(G) [Prohibited practices by employers; refusal to comply with PEBA]

The school district was found to have violated § 19(G) by assigning extra work to employees and paying them a “foreman stipend” without bargaining. *Central Consol. School Ass’n v. Central Consol. School Dist.*, 27-PELRB-2013 (Oct. 11, 2013; in re Case No. 101-13), *aff’d* D-202-CV-2013-0875, *aff’d* A-I-CA-34843 (11/30/17) (the final appeal “affirmed the order of the...[PELRB] that the school board is required to hear and decide appeals from decisions of the school superintendent under grievance procedures set forth in the collective bargaining agreement”).

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee’s union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), *aff’d* D-202-CV-2024-01099 (2/7/25).

Respondent violated §§ 5(A), 5(B), 19(B), 19(C), 19(F) and 19(G) – but was not shown to have violated §§ 19(A) or 19(D) – by refusing to bargain over layoff or provide information related to the layoffs. *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 8-PELRB-2024 (Feb. 8, 2024; in re: Case No. 109-23); *aff’d* D-202-CV-2024-01995 (6/10/25). *Accord* *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 9-PELRB-2024 (Feb. 8, 2024; in re: Case No. 110-23), *aff’d* D-202-CV-2024-01996 (11/4/24).

There was not substantial evidence that the employer violated §§ 19(B), 19(D), 19(E), or 19(G) based upon allegations that a manager “made disparaging comments about the union in a staff meeting”, or that SRMC “threatened [the employee] with discipline for engaging in concerted activity” that the employer believed violated its social media policy. There was not substantial evidence to support the findings that hospital conduct at the meeting constituted discrimination or other violation of the cited sections. Additionally, the hospital’s anti-solicitation policy was presumptively valid and there was no evidence of discriminatory application to a Union representative; and there was not substantial evidence that the hospital’s social media policy had a chilling effect on union activity. *UNM-Sandoval Reg’l Med. Center, Inc. v. United Health Professionals of N.M.*, Case No. D-202-CV-2022-07805 (Aug. 9, 2023; in re: 28-PELRB-2022, Case No. 111-22), *cert. den.* S-1-SC-40270.

The PED satisfied its obligation to bargain the specific effects of the reduction in force (RIF) identified by the union in this case, but it violated its duty to bargain in good faith under § 17(A) [incorporated by reference to § 19(G)] and § 19(F), by not providing the union with information necessary to administer and monitor compliance with the CBA and to fairly and adequately represent all collective bargaining unit employees. *CWA Local 7076 v. Public Education Dep’t*, D-202-CV-2012-11595 (Aug. 9, 2013; in re: 76-PELRB-2012, Case No. 134-11) (reversing the Board’s determination of waiver, and remanding for further findings on which RIF effects are covered under the contract).

Where a local board is functioning, the Board nevertheless still has jurisdiction over PPC claims alleging violations of § 19(G). Regarding those claims, however, the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local board. *Northern N.M. Community College*, 61-PELRB-2012 (Jul. 2, 2012; in re: consolidated Case Nos. 123-11, 124-11, 125-11, 130-11, 136-11 and 138-11), *aff’d* D-101-CV-2012-02100 (4/18/13).

County violated §§ 17(A)(2), 19(F), and 19(G) – but not § 19(B) – by its unilateral implementation of “substantial, material and significant” changes to staffing policy and overtime past practices, and failure to bargain in good faith over the impacts of the changes. *IAFF Local 244 v. Bernalillo County*, 32-PELRB-2026 (Sep. 10, 2026; in re: Case No. 106-26).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were dismissed/denied upon pre-hearing motion. The union alleged interference through the university’s failure or refusal to fully fund the union president’s annual salary; and placing her under administrative direction of a dean identified as a “hostile actor” in Case 113-25. However, the union’s evidence showed that funding for the president’s position was locked in and approved; the challenged conduct of upper-level administrative reorganization was a legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. As such, the union failed to state a claim over either action; lacked standing or a ripe claim as to the reorganization unless or until the union president is adversely affected or impacted by it; and the union therefore also could not establish irreparable harm or likelihood of success on the merits. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

Refusal to deduct dues of regular employees who are not bona fide temporary employees violates §§ 5(A), 19(B), and 19(G). *CWA and Dep't of Cultural Affairs (DCA) and State Personnel Office (SPO)*, 15-PELRB-2026 (May 12, 2025; in re: Case No. 130-25), pending appeal at D-202-CV-2026-05466; *see also* 31-PELRB-2026 (8-12-26; same case) (ordering the H.E. to conduct a hearing on the issue of “make-whole” relief ordered), pending appeal at D-202-CV-2026-07473.

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that termination was based on multiple grounds of serious misconduct, and was not pretextual. *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25).

The employer violated §§ 5(A), 19(A), 19(B), 19(D) and 19(E) – but not §§ 5(B), 19(F), or 19(G) – by initiating an investigation of a steward for spurious and/or discriminatory purposes under the *Wright Line* test, where the stated justification was not based on facts or a reasonable belief thereof. *AFSCME, Local 2499 v. Bernalillo County*, 37-PELRB-2025 (Dec. 10, 2025; in re: Case 106-25).

Respondent violated §§ 15(F) and 19(F) and (G) – but not §§ 19(A) or (B), or 19(A), (B) or (C) – by failing or refusing to provide presumptively relevant information upon request. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 44-PELRB-2024 (Nov. 19, 2024; in re: Case No. 114-24).

Respondent violated §§ 5(A), 5(B), 14(A) and 19(G) by failing or refusing to provide the union with the list of bargaining unit employees in the proposed unit in PELRB Case No. 303-22, along with their contact information. *AFT and IAMAW v. UNM-Sandoval Reg'l Med. Center*, 29-PELRB-2022 (Nov. 28, 2022; in re: Case No. 112-22).

School and the superintendent violated PEBA §§ 17(F), 19(B), 19(G), and 19(H) by failing to follow the grievance procedure contained in the CBA and by violating its duty to bargain in good faith for a period of no less than 60 days. *Ruidoso Educ. Ass'n and Kesslers v. Ruidoso Munic. School Dist. and Superint.*, 15-PELRB-2020 (Oct. 16, 2020; in re: consolidated Case Nos. 103-20 and 105-20).

The union failed to prove the department violated §§ 19(F), 19(G), or 19(H) by unilaterally implementing a performance quota for family assistance analysts, because their right to do so had already been bargained for in the management rights clause. *AFSCME Council 18 & HSD*, 12-PELRB-2018 (Oct. 4, 2018; in re: Case No. 123-17).

The PPC failed to state a claim under §§ 5 and 19(G) where “[t]he record was devoid of any connection between the events alleged” – investigation, involuntary transfer, and/or implementation of rules – “and Jaramillo’s status as a union member.” *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17).

Section 19(G) claim dismissed because no separate violation of PEBA was alleged aside from § 19 claims, and “it is unlikely the Legislature intended every violation of a subsection of § 19 to result in two separate counts of liability.” *NMCPSO & Santa Fe County*, 10-PELRB-2017 (Oct. 3, 2017; in re: Case No. 118-17).

The complainant failed to make a *prima facie* case with regard to alleged violations of the §§ 19(A), (B), (D), or (E), and failed to rebut reasonable business reasons for management’s actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations of the §§ 19(C), (G), and (H). However, the H.E.’s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

§ 10-7E-19(H) [Prohibited practices by employers; violation of the CBA or “Other Agreements”]

See also § 10-7E-17(A)(1) *supra*, and/or § 10-7E-20(C) *infra*

Summary judgment for the city reversed where it failed to implement the final phase of a salary increase for police officers set forth in the CBA, due to a projected budget shortfall; and the funds for the third year had not yet been appropriated but the city council had, pursuant to § 3-2-18 of the LMRO, adopted the appropriate resolution in 2008 to cover the economic obligation for the new three-year CBA. The court concluded that “[t]he evidence indicated that the Mayor chose to breach the CBA contractual obligation in order to “share the burden so that no single class of employee shoulders an unfair share of the [City’s budgetary shortfall.]” or otherwise increase the City’s unemployment rate through layoffs. These reasons and goals do not legally justify a departure from the City’s contractual obligation to reopen the CBA to address unexpected economic items. Under the appropriate standard of review, APOA, as the party opposing summary judgment, must be given the benefit of all reasonable doubts in determining whether a genuine issue of material fact exists.” *Albuquerque Police Officers Ass’n v. City of Albuquerque et al.*, 2013-NMCA-110.

Under PEBA, upon a demonstration of majority support and certification, all members of the bargaining unit are considered represented, irrespective of their union membership status or agreement with organizational policies. An

employee who was a regular full-time, non-probationary, sworn police officer covered by the CBA between the union and the city was required to follow the negotiated disciplinary, grievances and appeals procedures stated therein, and the employee's request for injunctive relief to permit his appeal under city personnel rules rather than the CBA was denied. The court held that no injunctive relief—whether a writ of prohibition, temporary restraining order, or preliminary injunction—was appropriate because arbitration was the proper forum for the employee's grievance. *Luginbuhl v. City of Gallup and Gallup Police Dep't*, 2013-NMCA-053.

By adopting a benefit definition that contradicted an arbitrator's prior ruling on the subject, the state personnel board breached its obligations under the CBA and substantially impaired an existing contract right. Consequently, the regulation was also unconstitutionally retroactive and violated the contract clauses of both the state and federal constitutions. *AFSCME Council 18 v. State, the State Personnel Board, and Sandra K. Perez, SPB Director*, 2013-NMCA-106.

The PELRB does not have primary jurisdiction over claims for breach of a CBA; union's motion to compel arbitration granted and affirmed. *AFSCME v. City of Espanola*, Ct. App. No. A-1-CA-38804 (unpublished) [undated].

The city violated the parties' CBA when it stopped deducting union dues from member employees based on *Janus v. AFSCME Council 31*, 585 U.S. 878 (2018), which declared mandatory agency fees for non-members to be unconstitutional. The city misinterpreted *Janus* by attempting to require reauthorization for union dues from members, as *Janus* explicitly pertains only to nonmembers. *City of Rio Rancho v. AFSCME Council 18, Local 3277*, D-202-CV-2019-1398 (Oct. 28, 2019; in re: 1-PELRB-2019, Case No. 113-18).

The CBA required the agency to provide the union with a copy of an investigative report, notwithstanding apparent contract language to the contrary that was relied upon by the H.E. *CWA v. Worker's Compensation Administration (WCA)*, 26-PELRB-2026 (Jul. 14, 2026; in re: Case 115-25), pending appeal at D-202-CV-2026-07473. (The Board was amending or clarifying its decision in 25-PELRB-2025, upon reversal and remand from the district court, *see* D-202-CV-2025-09870 (May 15, 2026); and that second decision is now also pending appeal.)

Claim under §19(H) dismissed where no breach of the CBA's grievance procedure, as alleged, was shown and the department responded at each step to the employee's grievance, even if complainant was dissatisfied with the response. The employee had argued that the CBA's grievance procedure requires the department to "meaningfully review and adjust the grievance" and "provide sufficient documentation and explanation" of how it applied her previous experience when deciding her placement in the pay band, but the CBA contains no such language and the hearing officer declined "to find such subjective requirements as 'meaningful' and 'sufficient' are implied." *Cogar v. Dep't of Vocational Rehabilitation*, 30-PELRB-2026 (Aug 12, 2026; in re: Case No. 131-25).

PPC dismissed on cross-filed motions for summary judgement and failure to state a claim; "[a]lthough the PELRB is not intended to serve as a first resort or general forum for 'run of the mill' contract disputes, the PEBA does expressly include breaches of the CBA among its prohibited practices" in §§ 19(H) and 20(D), and "[g]iven that Ms. Wilson appears pro se,...it is appropriate for the PELRB to hear" a contract case, but the plain language did not support the complainant's CBA interpretation about a right to advance notice for investigative meetings into matters affecting teacher and student safety. *Wilson v. Los Lunas School Dist.*, 13-PELRB-2026 (May 12, 2026; in re: Case No. 140-25).

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that termination was based on multiple grounds of serious misconduct, and was not pretextual. *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25).

The employer violated §§ 19(B), (C), (F), and (H) when it unilaterally ceased deducting voluntary contributions to the union's committee on political education (COPE) that were authorized by employees on their dues deduction authorization forms, based on the parties' past practice of deducting COPE dues and base dues, and CBA language stating the parties were to "continue" deducting dues in the same manner. The district's argument that the COPE dues were improper political contributions was rejected on the basis that the U.S. Supreme Court in *Janus v. AFSCME*, 585 U.S. 878 (2018) ruled that all public sector union activity was inherently political; and the subsequently issued N.M. Attorney General's Advisory Letter 2018-15 specifically states "Union member employees may pay dues through a payroll deduction", from which it was inferred the AG recognizes that dues are payable even though political. *MCFUSE Local 3313M v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026, in re: Case No. 124-25).

A steward was not entitled to backpay or expungement where he received a 30-day suspension for proven sexual harassment, but the employer made a harmless technical violation of CBA disciplinary process in issuing the final notice of determination. The Board "makes a distinction between violations of contractual due process occurring before the disciplinary hearing and violations that occur after the hearing; in this case the violations occurred after the employee's disciplinary hearing and had no adverse effects on the employee's right to appeal the discipline", so expungement was not an appropriate remedy. *AFSCME Local 1529 v. Doña Ana County*, 34-PELRB-2025 (Nov. 11, 2025; in re: Case 112-25).

The agency was in violation of the CBA by not making the summarization of an investigative report available on the same conditions established under the CBA. *CWA v. Worker's Compensation Administration (WCA)*, 25-PELRB-2025 (Oct. 10, 2025; in re: Case 115-25), **rev'd on other grounds**, D-202-CV-2025-09870 (May 15, 2026).

A settlement agreement is an "other agreement" that is enforceable under § 19(H). In this case, the "last bargained for roster" under the settlement agreement was the last roster negotiated and agreed to, not merely the last roster bargained over; and that there is disagreement over the term does not mean there was not a meeting of the minds. *AFSCME Council 18 v. Corrections Dep't*, 5-PELRB-2025 (Feb. 15, 2025; in re: Case 104-24), **app. dismissed** upon party stipulation D-202-CV-2025-02137 (8/29/25).

Respondent violated the dues deduction article of the CBA, but the deficiencies had been corrected as the employer was alerted, and bad faith was not demonstrated to support a more expansive remedy than a declaration of liability, particularly one that had not been previously awarded by the PELRB. (Complainant had sought up to 15% interest under NMSA § 56-8-3(A), which provides that "[t]he rate of interest, in the absence of a written contract fixing a different rate, shall be not more than fifteen percent annually in the following cases: A. on money due by contract...") *United Health Professionals of N.M. and UNM-Sandoval Reg'l Med. Center*, 38-PELRB-2025 (Dec. 10, 2025; in re: Case No. 118-25).

PPC alleging that the county's failure to adjust a lower paid training specialist's pay upward to match that of a higher paid training specialist violates §§ 19(F) and (H) was summarily dismissed. The "equity increase" arose out of the employer's personnel rules, not the CBA; and the increase was discretionary and reasonably, non-discriminatorily and consistently applied, so there was no evidence of abuse of discretion. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 2-PELRB-2023 (Jan. 4, 2023; in re: Case No. 120-22).

The city violated § 19(H) and its own rules when it failed to give a 28-day advance notice before furloughing employees; and city employees were economically harmed by the failure to give the required notice. *AFSCME Local 3999 v. City of Santa Fe*, 3-PELRB-2021 (Jan. 15, 2021; in re Case No. 106-20).

School and the superintendent violated PEBA §§ 17(F), 19(B), 19(G), and 19(H) by failing to follow the grievance procedure contained in the CBA and by violating its duty to bargain in good faith for a period of no less than 60 days. *Ruidoso Educ. Ass'n and Kesslers v. Ruidoso Munic. School Dist. and Superint.*, 15-PELRB-2020 (Oct. 16, 2020; in re: consolidated Case Nos. 103-20 and 105-20).

Under the totality of the circumstances, the parties' conduct reflected mutual good faith bargaining over the alleged pay discrepancy and the union did not meet its burden of proving a failure to bargain in good faith, or of violations of §§ 17(A)(1), 19(F) § 19(H), by failing to bargain in good faith regarding certain pay inequities resulting from the transfer or promotion of a non-bargaining unit employee into a bargaining unit position. *AFSCME Local 3999 v. City of Santa Fe*, 11-PELRB-2020 (Sep. 21, 2020; in re: Case No. 101-20).

The union failed to prove the department violated §§ 19(F), 19(G), or 19(H) by unilaterally implementing a performance quota for family assistance analysts, because their right to do so has already been bargained for in the management rights clause. *AFSCME Council 18 & Human Services Dep't*, 12-PELRB-2018 (Oct. 4, 2018; in re Case No. 123-17).

The PPC failed to state a claim under § 19(H) where the CBA did not afford the rights asserted and the employer "took the initiative in conforming its grievance process with the PEBA." *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17).

The complainant failed to make a *prima facie* case with regard to alleged violations of the §§ 19(A), (B), (D), or (E), and failed to rebut reasonable business reasons for management's actions or meet its burden of proof by a preponderance of the evidence to substantiate its claimed violations of §§ 19(C), (G) and (H). However, the H.E.'s reliance on *Connick v. Meyers*, 461 U.S. 138 (1983), was misplaced and the Board reached the same results by instead applying the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). *AFSCME Council 18 v. City of Espanola*, 16-PELRB-2016 (Aug. 9, 2016; in re: Case No. 124-15).

The union did not meet its burden of proof to establish that the county violated §§ 19(A), (B), (C), or (H) by issuing performance improvement plans (PIPs) and letters of caution. *AFSCME Council 18 v. Santa Fe County*, 1-PELRB-2016 (Mar. 14, 2016; in re: Case No. 107-15.)

PPC based upon discipline being issued beyond the 45-day time limit established in the CBA dismissed where "facts and circumstances exist which require[d] a longer time" to investigate the matter, as allowed under the CBA. *Gallegos v. CYFD*, 2-PELRB-2015 (Apr. 15, 2015; in re: Case No. 124-14).

"As has been decided several times, this Board will evaluate alleged contract violations brought as prohibited practices on a case-by-case basis with regard to the applicability of contract arbitration provisions and whether deferral would be appropriate. Matters that allege violations of Sections 10-7E-19 (A) through 10-7E-19 (G), Sections 10-7E-20 (A) through 10-7E-20 (C) or 10-7E-20 (E) through 10-7E-20 (F), or Section 10-7E-21 of PEBA will continue to be heard by the PELRB. Matters that allege a violation of PEBA solely under Sections 10-7E-19(H) or 10-7E-20(D), refusal or failure

to comply with a collective bargaining agreement, will be deferred to the grievance and arbitration process pursuant to NMAC11.12.3.22. The above approach has been embraced by this Board as effectively protecting the PEBA guarantees of public employees' right to organize and bargain collectively with their employers, while promoting harmonious and cooperative labor-management relations and efficiency in government." *AFSCME Council 18 v. Human Services Dep't*, 26-PELRB-2012 (Mar. 19, 2012; in re: PELRB No. 151-11).

The employer did not commit a PPC by refusing to allow a contested union steward to attend, on paid status (e.g. "union time"), meetings agreed to by the parties for purposes of administering their CBA because the CBA's definition of the term "Union officials" entitled to such leave did not include union stewards. The H.E. cautioned, however, that a different result might obtain with regard to the employer's obligation under the CBA to grant leave for the investigation and processing of grievances; and that an employer must be cautious in refusing to honor a steward's appointment (whether or not the name appears on a list is irrelevant, as is the steward's "post of duty"). The H.E. also rejected the union's argument that the employer waived the arbitration deadlines, stating that "PEBA's prohibited practices procedures should not be applied to affect an "end run" around a missed opportunity to arbitrate a claim that the union acknowledges was properly arbitrable without at least making a *prima facie* case under §19." *Santa Fe Police Officer's Association v. City of Santa Fe*, 4-PELRB-2012 (Jan. 22, 2012; in re: Case No. 127-10).

A PPC fails to state a claim under § 19(B), for obstruction of the grievance arbitration process, where it alleges only that the employer denied the arbitrability or validity of grievances; it locked the former employees out of IT and email systems after his termination; and incorrectly asserted that the Step 2 and 3 decision makers were the same. The first two actions are reasonable. Nor did any of the alleged actions impair the employee's functional ability to process his grievance, since he proceeded through the Step 3 denial; and his own evidence rebuts the claim that the Step 2 designee also decided the matter at Step 3. As such, if there was a violation it was *de minimis*. *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Report (Aug. 26, 2026).

§ 10-7E-20 [PPCs by labor organizations and public employees]

See also § 10-7E-19, *supra*

A claim against a union for breach of its statutory duty, as exclusive representative, to fairly and adequately represent a bargaining unit member does not state a prohibited practice by a union under PEBA. Therefore, such claims cannot be brought before a labor relations board and must instead be filed in district court. *Callahan v. N.M. Fed'n of Teachers-TV*, 2006-NMSC-010 (*Callahan I*).

PPC dismissed upon pre-hearing motion for failure to state a claim under §§ 5(A) or (B), 17(A), or 20(B) - (E) where it alleged the union, of which the complainant was the vice president, failed or refused to let him speak for the union; and violated its own bylaws and/or constitution. Here, the dispute was "essentially an intraunion factional quarrel over intraunion policies and politics" and the NLRB – with language nearly identical to that of the PEBA – has 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"; and there has been "no allegation that complainant's relationship with the employer has in any way been affected by the Union's actions" and "no contravention of any policy or purpose of the PEBA." *Hawkins v. Gallup McKinley County Schools*, 34-PELRB-2026 (Sep. 10, 2026; in re: Case No. 107-26), citing *Office and Professional Employees International Union, Local 251*, 331 NLRB 1417, 1426 (2000).

PPC summarily dismissed upon motion where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant's PEBA rights to engage in concerted activity and have Union representation, but Complainant's evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

§ 10-7E-21 [Strikes and lockouts prohibited]

See also § 4(S), definition of "strike"

A union that has been decertified for strike activity cannot be barred from collecting dues. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994). Section 21(C) of PEBA I expressly provided for decertification "for a period of not more than one year." Where a union has engaged in illegal strike activity. Therefore, under PEBA I, a three-year bar on recertification could not be imposed. Additionally, a local ordinance's definition of "strike" violates PEBA where: it fails to include a requirement that the employee's absence be directed to

the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; it permits the county council chairman to appoint an interim member of the local board in the event of a strike emergency, without adhering to the appointment criteria of § 10; and it prohibits certain forms of activity-slow downs, traffic ticket writing campaigns, mass resignations, and willful interference with the operations of the employer-that traditionally are not regarded as strike activity. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

Note: PEBA II, in contrast to PEBA I, provides for an indefinite period of decertification, although the board could still conclude that three years would be excessive under the particular facts of the case.

The Board or local board must examine or investigate on a case-by-case basis to determine whether an exclusive representative caused, instigated, encouraged or supported a strike, before the sanction of decertification can be imposed. An existing CBA cannot be automatically voided as a penalty for strike of voiding, without a case-by-case determination of whether the exclusive representative caused, instigated, encouraged or supported a strike. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

§ 10-7E-22 [Agreements valid; enforcement]

By adopting a benefit definition that contradicted an arbitrator's prior ruling on the subject, the state personnel board breached its obligations under the CBA, and also substantially impaired an existing contract right. Consequently, the regulation was also unconstitutionally retroactive and violated the contract clauses of both the state and federal constitutions. *AFSCME Council 18 v. State, State Personnel Board, and Sandra K. Perez, SPB Director*, 2013-NMCA-106.

Under PEBA, upon a demonstration of majority support and certification, all members of the bargaining unit are considered represented, irrespective of their union membership status or agreement with organizational policies. An employee who was a regular full-time, non-probationary, sworn police officer covered by the CBA between the Union and the city was required to follow the negotiated disciplinary, grievances and appeals procedures stated therein, and his request for injunctive relief to permit his appeal under city personnel rules rather than the CBA was denied. The court held that no injunctive relief—whether a writ of prohibition, temporary restraining order, or preliminary injunction—was appropriate because arbitration was the proper forum for the employee's grievance. *Luginbuhl v. City of Gallup and Gallup Police Dep't*, 2013-NMCA-053 (Mar. 11, 2013).

The union's claims under §§ 15; 22; 24; 25 and 26 for ABCWUA's refusal to negotiate over a successor contract were summarily dismissed upon motion because the union failed to request bargaining within a 30-day window called for under the CBA. However, summary judgment was granted to the union on its claim that ABCWUA violated §19(F) by refusing or failing to comply with its obligation to bargain collectively in good faith with AFSCME. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 18-PELRB-2022 (Aug. 10, 2022; in re: Case No. 106-22).

§10-7E-23 [Judicial enforcement; standard of review]

- **Generally**

"Administrative bodies are creatures of statute" and limited authority. Additionally, when construing a statute, the Court "determine[s] and give[s] effect to legislative intent" by "looking to the plain meaning of the statute's words and reading its provisions together to produce a harmonious whole". *City of Albuquerque v. AFSCME Local 1888, et al.*, 2015-NMCA-023 (internal quotations and citations omitted).

"Upon a grant of a petition for writ of certiorari under Rule 12-505, this Court conducts the same review of an administrative order as the District Court sitting in its appellate capacity, while at the same time determining whether the District Court erred in the first appeal.' ... 'In reviewing an administrative decision, we apply a whole record standard of review.' ... 'We independently review the entire record of the administrative hearing to determine whether the [PELRB]'s decision was arbitrary and capricious, not supported by substantial evidence, or otherwise not in accordance with law.' ... 'When reviewing an administrative agency's conclusions of law, we review de novo.' ... 'apply a de novo standard of review to [administrative] rulings regarding statutory construction.' ... We 'will generally defer to an agency's reasonable interpretation of its own ambiguous regulations, especially where the subject of the regulation implicates agency expertise[.]' ... However, we are 'not bound by the agency's interpretation,' and we may substitute our own "independent judgment for that of the agency if the agency's interpretation is unreasonable or unlawful.'" [Internal citations omitted.] *Corrections Dep't v. AFSCME Council 18*, 2018-NMCA-007 (in re: D-101-CV-2009-3457, 11-PELRB-2009, Case No. 105-09), **cert. den.** No. S-1-SC-36688.

- **Arbitrary and capricious standard**

The party appealing the agency decision has the burden of showing that the agency action is (a) arbitrary and capricious,

(b) not supported by substantial evidence, and/or (c) represents an abuse of the agency's discretion by being outside the scope of the agency's authority, clear error, or a violation of due process. *UNM v. N.M. Fed'n of Teachers and American Ass'n of Univ. Professors*, 1998-NMSC-20.

Accord: *CWA v. Worker's Compensation Admin. (WCA)*, D-202-CV-2025-09870 (May 15, 2026; in re: 25-PELRB-2025, Case 115-25); *AFSCME Local 2851 v. City of Las Vegas and Las Vegas LMRB*, Case No. D-412-CV-2015-0369 (Nov. 22, 2021; in re: 4-PELRB-2021, Case No. 305-20) (remanding it back to the local board after that board's authorizing ordinance had been repealed, and the matter was transferred to the PELRB), **aff'd** A-1-CA-35840 (2/4/19); *Alarcon v. Albuquerque Public Schools et al.*, Case No. A-1-CA-34843, consolidated with *Central Consol. School Dist. 22 v. Central Consol. Educ. Ass'n*, Case No. A-1-CA-34424 (Nov. 30, 2017); *IAFF Local 4384 v. City of Hobbs*, D-506-CV-2025-00320 (In re: 32-PELRB-2024, Case No. 303-24); *UNM-Sandoval Reg'l Med. Center v. United Health Professionals of N.M.*, D-202-CV-2024-1099 (Feb. 7, 2025; in re: 10-PELRB-2024, Case No. 111-23); *Gallup-McKinley County Schools v. MCFUSE Local 3313 and N.M. PELRB*, D-202-CV-2022-07617 (Aug. 8, 2023; in re: 27-PELRB-2022, Case No. 104-22), etc.³¹

A local labor board's ruling was arbitrary and capricious where the decision was not explained and there was no hearing recording or transcript, which "necessarily forecloses effective appellate reviews both at the district court and before us-of whether the Board's decision is supported by substantial evidence in the record when viewed as a whole." *AFSCME Local 2851 v. City of Las Vegas and Las Vegas LMRB*, Case No. D-412-CV-2015-0369 (Nov. 22, 2021; in re: 4-PELRB-2021, Case No. 305-20) (remanding it back to the local board after that board's authorizing ordinance had been repealed, and the matter was transferred to the PELRB), **aff'd** A-1-CA-35840 (2/4/19).

"An agency's ruling is arbitrary and capricious if the agency failed to consider an important aspect of the problem". Accordingly, the board acting arbitrarily and capriciously when it "failed to consider the State's intent in determining whether it presented the Union with a *fait accompli*." *CWA v. State*, 2019-NMCA-031 (Feb. 21, 2019) (In re: re: D-202-CV-2015-03814 (3/15/17); 1-PELRB-2015, Case No. 122-14), quoting *Bernalillo Cty. Health Care Corp. v. N.M. Pub. Reg. Comm'n*, 2014-NMSC-008, ¶ 9 (internal quotation marks and citation omitted); **cert. den.** No. S-I-SC-36811 (1/23/18).

The PELRB was arbitrary and capricious in reversing the hearing examiner's determination that "[u]nder the plain language of Articles 6 and 12" of the CBA, which incorporated by reference SPB rule 1.7.1.12(C) and the Inspection of Public Records Act (IPRA), "the Agency was correct to limit Union access to the requested confidential information without employee permission." The court reversed the Board because it had reasoned that IPRA did not control rights to information under PEBA, but the H.E.'s decision had not turned on IPRA. *CWA v. Worker's Compensation Admin. (WCA)*, D-202-CV-2025-09870 (May 15, 2026; in re: 25-PELRB-2025, Case 115-25). (**Note:** thereafter, the Board clarified that it determined based upon the findings and evidence that the CBA and PEBA required disclosure of the investigative report, in 26-PELRB-2026 (7/14/26), which is pending appeal at D-202-CV-2026-07473.)

- **Deference to Board**

When reviewing administrative agency decisions, the courts begin by looking at two interconnected factors: (a) is the question one of law, fact or both; and (b) is the matter within the agency's specialized field of expertise. If the agency decision is based upon its interpretation of its statute, the court will accord some deference, especially if the legal question implicates agency expertise. However, the court may always substitute its interpretation of the law for that of the agency because it is the function of the court to interpret the law. If the court is addressing a question of fact, the court will accord greater deference to the agency's determination, especially if the factual issues concern matters in which the agency has specialized expertise. *UNM v. N.M. Fed'n of Teachers and American Ass'n. of Univ. Professors*, 1998-NMSC-20.

- **Harmless error**

The Courts will not reverse the Board, even where arbitrary and capricious, if it was a harmless error. *AFSCME Council 18 v. Santa Fe County et. al.*, D-101-CV-2014-01195 consolidated with D-101-CV-2014-01700 (Jun 11, 2015; in re: 7-PELRB-2014).

- **Substantial evidence and whole record review**

"Substantial evidence" is evidence that a reasonable mind would regard as adequate to support a conclusion. If the agency's factual findings are not supported by substantial evidence, the court *may* adopt its own findings and conclusions based upon the information in the agency's record. When reviewing an administrative agency's findings of fact, courts apply the whole record standard of review, meaning the reviewing court looks at both favorable and unfavorable evidence. The reviewing court may not exclusively rely upon a selected portion of the evidence and disregard other convincing evidence if it would be unreasonable to do so. The decision of the agency will be affirmed if

³¹ All of the judicial appeals will discuss the standard of review to some extent and most are available on our website. See [Court Decisions - Public Employee Labor Relations Board](#).

it is supported by substantial evidence in the record as a whole. *UNM v. N.M. Fed'n of Teachers and American Ass'n of Univ. Professors*, 1998-NMSC-20.

In reviewing a labor board's decision on a claim of insufficiency of the evidence, the appellate court resolves all disputes of facts in favor of the prevailing party and indulges all reasonable inferences in support of the prevailing party. The courts do not reweigh the evidence or substitute their own judgment for that of the board. The question is not whether substantial evidence exists to support the opposite result but rather whether substantial evidence supports the result reached. To conclude substantial evidence exists to support an administrative decision, the court need only find there is credible evidence for a reasonable mind to accept as adequate the result reached by the agency. *Las Cruces Prof'l Fire Fighters v. City of Las Cruces ("Fire Fighters I")*, 1997-NMCA-44, citing *Clovis Nat'l Bank v. Harmon*, 1984-NMSC-119; *Sanchez v. Homestake Mining Co.*, 1985-NMCA-022; *Hernandez v. Mead Foods, Inc.*, 1986-NMCA-020; and *Nat'l Council on Compensation Ins. v. State Corp. Comm'n*, 1988-NMSC-036.

Board orders are reviewed based on substantial evidence and lack of error under a whole record review. *AFSCME Council 18 v. Dep't of Health*, Case No. D-202-CV-2017-08953 (Mar. 15, 2019; in re: 13-PELRB-2017, PELRB 305-16), citing *Selmeczki v. N.M. Dep't of Corr.*, 2006-NMCA-024, ¶ 13.

§ 10-7E-24(A) [Existing collective bargaining units; grandfathered bargaining unit]

By using the term "employee" this section incorporates the definition of "public employee" under PEBA and requires the extension of rights under the ordinance to all "public employees" that would be covered under PEBA. *UNM v. N.M. Fed'n of Teachers and American Assoc. of University Professors*, 1998-NMSC-20.

Certification of a "wall-to-wall" bargaining unit under the PEBA's grandfather clause for bargaining units established before July 1, 1999, was not arbitrary or capricious because that provision does not refer to occupational groups but rather states that any bargaining unit established before July 1, 1991, shall continue to be recognized as appropriate. *Deming Public Schools v. NEA-Deming and N.M. PELRB*, consolidated Case Nos. D-202-CV-2017-06276 and D-202-CV-2018-05580 (Feb. 21, 2019; in re: 9-PELRB-2017, consolidated Case Nos. PELRB 304-17 and 305-17). **Accord** *N.M. Coalition of Public Safety Officers Ass'n v. Santa Fe County*, 70-PELRB-2012 and 78-PELRB-2012 (Oct. 24, 2012).

A bargaining unit recognized as appropriate prior to January 1, 1992, under State Personnel Board Rules for Labor Management Relations continues to be recognized as appropriate pursuant to § 24, notwithstanding the inclusion of certain positions with the title of "manager" being included. *CWA and State*, 1 PELRB No.8 (Mar. 17, 1995).

§ 10-7E-24(B) [Existing collective bargaining units; incumbent labor organizations]

- **Generally**

The Board reversed the H.E.'s determination that the union was not grandfathered because it had ceased to legally exist before the effective date of PEBA, concluding it was "compelled by the use of the word 'shall' in Section 24 of the PEBA to recognize IAFF Local 3602 as the incumbent exclusive representative of the incumbent bargaining unit". *Clovis Firefighters Ass'n, IAFF Local 3602 and City of Clovis*, 10-PELRB-2026 (Apr. 13, 2026, in re: Case No. 321-25) (the Board ordered the employer to recognize IAFF Local 3602 as the incumbent exclusive representative; and ordered the parties to bargain over who is included in the incumbent bargaining unit).

The union's claims under §§ 15; 22; 24; 25 and 26 for ABCWUA's refusal to negotiate over a successor contract were summarily dismissed upon motion because the union failed to request bargaining within a 30-day window called for under the CBA were summarily denied. However, summary judgment was granted to the union on its claim that ABCWUA violated §19(F) by refusing or failing to comply with its obligation to bargain collectively in good faith with AFSCME. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 18-PELRB-2022 (Aug. 10, 2022; in re: Case No. 106-22).

Under § 24(B), a petition to represent certain employees will be dismissed where another union was the grandfathered exclusive representative of those employees, despite claims that the grandfathered union had not acted timely to renew collective bargaining for this group of employees. Section 24(B) does not impose a time limit for an incumbent union to exercise its grandfathered status. *Teamsters Local 492 and Alamogordo Public Schools*, 1-PELRB-2006 (Apr. 13, 2006).

By using the term "labor organization" this section incorporates a requirement that local ordinances follow the § 4 PEBA definition of "labor organization." *Santa Fe County and AFSCME*, 1 PELRB No. 1(Nov. 18, 1993).

- **Continuity of Representation**

There was substantial evidence of continuity of representation between the union and the school board from 1994 to

the present to support the PELRB's finding of such in certifying the union as the incumbent labor organization. *Deming Public Schools v. NEA-Deming and N.M. PELRB*, D-202-CV-2017-06276 (Feb. 21, 2019) (Consolidated with D-202-CV-2018-05580) (In re: PELRB 304-17 and 305-17, 9-PELRB-2017).

N.M. Coalition of Public Safety Officers' (NMCPSO's) disaffiliation from CWA did not constitute a change in representation because there was substantial continuity in the union's identity. "...[C]ontinuity, as a proxy for a union's 'identity' in the eyes of the majority of unit employees, is the proper focus of judicial and administrative determinations." *AFSCME Council 18 v. Santa Fe County et. al.*, D-101-CV-2014-01195 consolidated with D-101-CV-2014-01700 (Jun. 11, 2015; in re: 7-PELRB-2014), citing *Raymond F. Kravis Ctr. for the Performing Arts*, 351 N.L.R.B. 143, 146 (2007), enforced, 550 F.3d 1183 (D.C. Cir. 2008).

Affiliation and/or name change does not generally raise a question of representation. "...[A]s...long as continuity of representation and due process are satisfied, affiliation is considered an internal matter that does not affect the union's status as the employees' bargaining representative. *NMCPSO and AFSCME Council 18 v. Santa Fe County*, 7-PELRB-2014 (Apr. 18, 2014; in re: consolidated Case Nos. 313-13, 314-13, 315-13 and 316-13), *aff'd* D-101-CV-2014-01195 (Jun. 11, 2015), citing *NLRB v. Financial Inst. Employees*, 475 U.S. 192 (1986) (holding that the NLRB exceeded its authority under the NLRA in requiring that nonunion employees be allowed to vote for affiliation before it would order the employer to bargain with the affiliated union, due to continuity of representation).

- **Duty to bargain with**

Under § 24(B), an employer is required to negotiate in good faith with an incumbent labor organization prior to its demonstration of majority support, even though it is barred from reducing that agreement to writing prior to a demonstration of majority support. Otherwise, the incumbent labor organization could not meet the duties imposed on it under § 15 and § 17, as the unit's exclusive representative. *American Fed'n of Teachers Local 4212 and Gadsden Indep. School Dist.*, 3-PELRB-2006 (May 31, 2006; in re: Case No. 169-06). (**Note:** This decision was issued as part of a representation case, PELRB Case No. 309-05, and was adopted without further review by the Board after the school district withdrew its appeal.)

- **Stay of negotiations or execution of contract pending judicial review**

Stay of negotiations pending any judicial appeal is not warranted under the Act but stay of the obligation to reduce any agreement into a contract is appropriate. Stay of negotiations is denied because the school is not likely to prevail on merits and neither public policy nor the equities favor such a stay. *Fed'n of Teachers and Pecos Indep. Schools*, 7-PELRB-2006 (Sep. 10, 2006).

§ 10-7E-25 [Existing Collective Bargaining Agreements]

The union's claims under §§ 15; 22; 24; 25 and 26 for ABCWUA's refusal to negotiate over a successor contract were summarily dismissed upon motion because the union failed to request bargaining within a 30-day window called for under the CBA were summarily denied. However, summary judgment was granted to the union on its claim that ABCWUA violated §19(F) by refusing or failing to comply with its obligation to bargain collectively in good faith with AFSCME. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 18-PELRB-2022 (Aug. 10, 2022; in re: Case No. 106-22).

§ 10-7E-26 [Existing ordinances] (REPEALED 2020) – See Appendix for historical case information]

BOARD RULES

11.21.1.13 NMAC [Disqualification]

"The Board did not act arbitrarily or capricious by not recusing a Board Member who was a practicing labor attorney alleged to have had negative professional interactions with the School because the law presumes that those serving as administrative adjudicators act with honesty and integrity...and the Board's tripartite structure has a "neutral and balanced character". *Gallup-McKinley County Schools v. MCFUSE and N.M. PELRB*, Case No. D-202-CV-2022-07617 (Aug. 8, 2023; in re: 27-PELRB-2022, Case No. 104-22), citing *Jones v. NM Sate Racing Comm'n*, 1983-NMSC-089; and *AFSCME v. Martinez*, 2011-NMSC-018.

Board denied the employer's motion to disqualify the hearing examiner, "find[ing] no extrajudicial evidence of bias..." where motion was based on H.E. having written, regarding a related PPC, that both parties were "admonished" to

maintain the status quo as instructed in the representation case. *Ruidoso Prof. Firefighters, IAFF Local 3545 v. Village of Ruidoso*, 11-PELRB-2026 (Apr. 13, 2026, in re: Case Nos. 105-26 and 303-26).

The Board denied as without merit the respondent's request for recusal of the Chair for bias, ordering that "[n]o further requests for recusal will be entertained by the Board in this case". *MCFUSE Local 2212 v. Gallup-McKinley County Schools*, 53-PELRB-2021 (in re: Case No. 102-21).

Respondent's request that a board member disqualify himself because of past union related activities denied. *MCFUSE Local 2212 v. Gallup-McKinley County Schools*, 23-PELRB-2021, PELRB 122-20 (Jan. 20, 2021).

The Board rejected as without merit the respondent's motion that "the Board" disqualify itself from hearing the matter. *AFSCME Local 3999 v. City of Santa Fe*, 2-PELRB-2021 (Jan. 15, 2021; in re: Case No. 106-20).

A Board member declined to recuse himself for reasons stated on the record. *AFSCME Council 18 and Human Services Dep't*, 21-PELRB-2016 (Oct. 17, 2016; Case No. 309-15).

The initial investigation does not create bias, since it is authorized under PELRB rule NMAC 11.21.3.8. Additionally, "[t]he independence of the Executive Director in conducting the investigation and making the record is consistent with the objective stated in NMAC 11.21.3.6 that the goal of the procedural rules governing PPCs "... to set forth an efficient and effective investigative process for collection and evaluating information to determine whether public employers, public employees or labor organizations have engaged in activities or conduct that constitutes a violation of the [PEBA]." (Citations omitted). *State v. CWA*, 47-PELRB-2012 (May 10, 2012; in re: Case No. 145-11). **Accord** 48-PELRB-2012, 52-PELRB-2012 (same parties); **see also** 11.21.3.12(B) NMAC

"The fact that the Executive Director reached a decision adverse to the State's position in another case decision does not state grounds for disqualification in this case and the State's counsel cites no authority for that position." Additionally, "[t]he Motion misstates the Director's Decision" in the other case. *State v. CWA*, 46-PELRB-2012 (May 10, 2012; in re: Case No. 134-11).

The Board granted the hearing examiner's "request to extend all deadlines in this case for completing screening and deciding any representational issues, etc. in order to allow for retaining a temporary outside contractor to decide issues and monitor the election in this case", given that the H.E. had represented the petitioner within two years prior. *See* NMAC 11.21.1.13. *N.M. Coalition of Public Safety Officers Ass'n v. Santa Fe County*, 49-PELRB-2012 (May 10, 2012; in re: Case No. 304-12).

The Board denied the state's motion to disqualify the hearing examiner from hearing a PPC regarding the furlough of employees, rejecting the argument that the H.E., as a state employee, has a financial interest in the matter, because he was not a bargaining unit employee to be affected by the ruling. *AFSCME Council 18 v. State*, 3-PELRB-2010 (Mar. 2, 2010; in re: Case No. 144-09).

Disqualifying bias must be personal not judicial, meaning it must "stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his [or her] participation in the case". *AFSCME Council 18 v. Corrections Dep't*, 1-PELRB-2009 (Apr. 6, 2009; in re: Case No. 136-09).

Motions to disqualify a hearing examiner are denied where based on statements or conduct in a previous unrelated case between the same parties. *AFSCME Council 18 v. Corrections Dep't*, 3-PELRB-2009 (Apr. 6, 2009; in re: Case No. 136-08); **accord** *AFSCME Council 18 v. Corrections Dep't*, 1-PELRB-2009 (in re: Case No. 136-09) and *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2009 (in re: Case No. 148-08) (both also Apr. 6, 2009).

11.21.1.14 NMAC [Motion to disqualify]

Note: Motions to disqualify either hearing examiners or Board Members are typically denied without explanation; they are also notable for sometimes coming in batches and being raised by the same party. **See, e.g.,** *Ruidoso Prof. Firefighters, IAFF Local 3545 v. Village of Ruidoso*, 11-PELRB-2026 (Apr. 13, 2026, in re: Case Nos. 105-26 and 303-26) (motion for disqualification based on bias in issuing a TRO denied, along with a motion to quash the TRO; *MCFUSE Local 2212 v. Gallup-McKinley County Schools*, 23-PELRB-2021 (Jan. 20, 2021); *AFSCME Local 3999 v. City of Santa Fe*, 2-PELRB-2021 (Jan. 15, 2021); *AFSCME Council 18 and Luna County Sheriff's Dep't*, 14-PELRB-2016 (Jul. 13, 2016); *AFSCME Council 18 and Luna County*, 13-PELRB-2016 (Jul. 13, 2016); *Luna County v. AFSCME Council 18*, 12-PELRB-2016 (Jul. 13, 2016); *AFSCME Council 18 and Verduzco v. Luna County*, 11-PELRB-2016 (Jul. 13, 2016); *AFSCME Council 18 and Gilmore v. Luna County*, 8-PELRB-2016 (May 13, 2016); *AFSCME Council 18 and Gilmore v. Luna County*, 3-PELRB-2016 (Apr. 11, 2016); and *AFSCME Council 18 and Sangalli v. Corrections Dep't*, 1-PELRB-2009; *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2009, and *AFSCME Council 18 v. Corrections Dep't*, 3-PELRB-2009 (all three dated Apr. 6, 2009).

Additionally, repeated unwarranted motions in the same case may result in sanctions. **See, e.g.,** *MCFUSE Local 2212 v. Gallup-McKinley County Schools*, 53-PELRB-2021, PELRB 102-21 (denying respondent's request for

recusal of the Chair on the basis of bias as without merit, ordering that “[n]o further requests for recusal will be entertained by the Board in this case”).

A motion to disqualify is untimely where filed after there had been two material hearings already, because NMAC 11.21.1.14(A) requires that “[a] motion to disqualify a board agent, member or hearing examiner in any matter...shall be filed with the board...prior to any hearing or the making of any material ruling involving the pending issues.” *State v. CWA*, 52-PELRB-2012 (Jun. 6, 2012; in re: PELRB No. 145-11).

11.21.1.20 NMAC [Exchange of Evidence; circumstances to compel]

PELRB Rule 11.21.1. 20 governs discovery requests, stating explicitly that “[n]o party may compel discovery other than as provided in this rule and Section 19 (subpoenas), except by a specific order of the board upon good cause shown.” *Id.* This is consistent with both National Labor Relations Board (NLRB) precedent, and New Mexico and other states’ case law governing due process in administrative procedures. See *AFSCME, Council 18 v. NM Dep’t of Workforce Solutions*, Case No. 102-17, H.E. Letter Decision dated 4/11/17 (summarily denying a motion to compel discovery without requiring a response); see also *Firefighters v. City of Las Cruces (Fire Fighters II)*, 1997-NMCA-031 (that NLRB precedent is persuasive and generally followed because the PEBS is modeled after the National Labor Relations Act (NLRA)). Good cause is commonly used in the legal context as a legally sufficient ground or reason. See Black’s Law Dictionary; see also [The Law Dictionary](#), available online. Therefore, there must exist some legal grounds or reason for the discovery, meaning it must be relevant to a material claim of the PPC, and it also must not be confidential. See, e.g., NM Rules of Evid., Rule 1-026(B)(1) (“[i]n general”, “[p]arties may obtain discovery of any information, not privileged, which is relevant”). *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Order (Aug. 26, 2026)

11.21.1.21 NMAC [Ownership and confidentiality of showing of interest]

11.21.1.21 NMAC, providing for the confidentiality of a showing of interest in support of a petition for representation, is an authorized exception “as otherwise provided by law” to the Inspection of Public Records Act (IPRA), under § 14-2-1 (F) of IPRA, because 11.21.1.21 NMAC is a properly promulgated regulation that effects the legislative intent behind PEBA. Exclusion of the showing of interest from IPRA’s coverage is appropriate as a matter of public policy because any benefit to the public from inspecting the cards would be significantly outweighed by the employees’ privacy interest. *City of Las Cruces v. PELRB*, 1996-NMSC-24. See also *Republican Party of N.M. v. N.M. Taxation and Revenue Dep’t*, 2012-NMSC-26, ¶12 (that “[o]ur Legislature enacted IPRA to promote the goal of transparency in our state government”).

11.21.1.24 NMAC [Service of pleadings]

A document is deemed “served” the date it is placed into the mail, as evidenced by the postmark. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

See also 11.21.1.10(B) NMAC (providing for three additional days for service by mail, although most filings today are by email).

11.21.1.27 NMAC [Appeal or review by the Board]

Note: The Board and staff typically deny petitions for interlocutory appeal, although the rules and thus the practice are unclear as to the details of how the motion should be made. Typically, the interlocutory appeal is made directly to the Board and denied without explanation. See, e.g., *Hawkins v. Cibola County Fed’n of United School Employees*, 20-PELRB-2026 (Jun. 9, 2026; in re: Case No. 107-26); *United Health Professionals of N.M. v. UNM-Sandoval Reg’l Med. Center*, 23-PELRB-2024 (Apr. 3, 2024; in re Case No. 121-23); *UHPNM v. SRMC*, 22-PELRB-2024 (Apr. 3, 2024; in re Case No. 117-23); *AFSCME Council 18 & Dep’t of Health*, 2-PELRB-2017 (Jan. 19, 2017; in re: Case No.305-16); *AFSCME Council 18 and Human Services Dep’t*, 5-PELRB-2016 (Apr. 11, 2016; in re: Case No. 309-15).

In one case in which interlocutory appeal was granted, the Board adopted the hearing examiner’s denial of respondent’s motion to dismiss or, in the alternative, for summary judgment. That motion had raised issues about waiver, the requirement of a meaningful manner and time to bargain over effects, and arbitration deferral. *CWA Local 7076 v. Public Education Dep’t*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-11).

Motion for stay of proceedings in light of the pending appeal of the Board’s decision that PRNs are regular employees (see PELRB 304-22 and D-202-CV-2023-02118) was denied because the request was interlocutory in nature, and

under NMAC 11.21.1.27, Board review “shall be permitted only after completion of proceedings by a hearing examiner”. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 40-PELRB-2023 (Sep. 5, 2023; in re: Case No. 109-23). **Accord** 41-PELRB-2023 and 42-PELRB-2023 (same parties, issue and decision).

Board rules NMAC 11.21.1.27(Appeal or review by the Board), NMAC 11.21.2.22 (Board review of hearing examiner reports and Director decisions), NMAC 11.21.3.13 (Appeal to Board of Director's dismissal), and NMAC 11.21.3.19 (Appeal to Board of hearing examiner's recommendation), construed together, permit the filing of a cross-appeal within 10 days of an appeal being filed. *AFSCME Council 18 v. Santa Fe County*, 20-PELRB-2016 (Oct. 17, 2016; in re: Case No. 128-15).

11.21.2.13 NMAC [Representation petitions; initial investigation of petition-cards]

Under NMAC 11.21.2.13, there is a presumption that the showing of interest is valid, and objections are denied where the county alleged coercion in obtaining cards but did not present sufficient evidence to rebut that presumption. *Prof'l Fire Fighters of Torrance County, IAFF Local 5441 and Torrance County*, 68-PELRB-2023 (Dec. 14, 2023; in re: Case No. 332-23).

Respondent's objection that the cards were stale is without a factual basis where none of the cards submitted were more than a year old at the time of their submission, and the requirements of NMAC 11.21.2.13 were met in that the cards were reviewed for assurance that the cards are signed, dated and sufficiently current. UNM-SRMC's objection that cards were obtained by fraud or coercion, is similarly unsupported by the evidence where not articulated based on facts, but instead “[u]pon information and belief,” which is not a sufficient basis to invalidate any particular cards. *Int'l Union of Machinists and Aerospace Workers and UNM-Sandoval Reg'l Med. Center*, 24-PELRB-2022 (Dec. 9, 2022; in re: Case No. 303-22).

11.21.2.18 NMAC [Representation petitions; investigation, report, notice of hearing]

The time limits established in PELRB rules for the Board (or its agents) to investigate complaints and conduct hearings are directory rather than mandatory and exceeding those limits does not support dismissal of the complaint under the facts of this case. *AFSCME Council 18 v. State*, 33-PELRB-2012 (Mar. 19, 2012; in re: 144-09); **accord** *N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, “mandatory statutory requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute”).

11.21.2.19 NMAC [Representation petitions; representation hearing]

The time limit established in PELRB rules for the Board (or its agents) to conduct a hearing are directory rather than mandatory, so its violation does not deprive the Board of jurisdiction. The Board will reject exceptions based on technical violations of rules by Board agents that are not alleged or proven to cause prejudice, and do not affect the outcome *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994); **accord** *N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, “mandatory statutory requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute”).

11.21.2.20 NMAC [Representation petitions; briefs]

There is no right to file post-hearing briefs. Rather, the matter lies in the discretion of the hearing examiner. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n, FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

Note: This rule is also relevant to 11.21.3.17 NMAC, which provides that when any party requests permission to file a post hearing brief and that request is granted, then the hearing examiner shall permit all parties to file briefs. The Board has interpreted its rule to mean that if one party's request for submission of a written brief is granted, then all parties shall likewise submit briefs. Permission to submit written briefs in lieu of oral argument, however, remains in the discretion of the hearing examiner and the rule should not be read to make the submission of written briefs mandatory upon request of any party, although individual H.E.'s may have a general practice preference.

11.21.2.21 NMAC [Representation petitions; hearing examiner reports]

The time limit established in PELRB rules for the issuance of a hearing examiner's report are directory rather than

mandatory, so its violation does not require Board rejection of the report unless there is a demonstration of prejudice to the appellant by the delay in the issuance of the report. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996), citing *Littlefield v. State*, 114 N.M. 390 (1992); *accord N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, "mandatory statutory requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute").

Compare *AFSCME Council 18 v. State*, 33-PELRB-2012 (Mar. 19, 2012; in re: 144-09) (that the time limits established in PELRB rules for the Board (or its agents) to investigate complaints and conduct hearings are directory rather than mandatory and exceeding those limits does not support dismissal of the complaint under the facts of this case).

11.21.2.22(A) NMAC [Representation petitions; Board review-requirements for notices of appeal]

- **See also** 11.21.3.19(A) regarding PPCs.

The department is time-barred in 2009 from objecting to the decisions made years ago in prior PELRB representation cases. *AFSCME and State*, PELRB No. 357-04; *AFSCME and HSD*, PELRB No. 336-04; and *AFSCME and HSD*, PELRB No. 312-09. *AFSCME Council 18 and Human Services Dep't*, 23-PELRB-2016 (Nov. 8, 2016; in re: Case No. 309-15).

Objections to hearing procedures must be raised first with the hearing examiner, and then with the Board by exception, to be preserved and timely raised for review by the PELRB. *Classified School Employees Council-Las Cruces and Las Cruces Public Schools*, 1 PELRB No. 20 (Feb. 13, 1997).

Request for review may not rely on any evidence or argument not presented to the hearing examiner. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

Notwithstanding the hearing examiner's duty to determine an appropriate bargaining unit, he or she does not err by failing to consider whether a disputed position is an excluded confidential employee, if the employer did not raise that defense at the representation hearing. Additionally, the ten-day time limit to seek review in a representation matter begins to run on day after receipt of a report, and the request for review is timely filed if deposited into the mail on the tenth day as evidenced by the postmark. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

The Board will reject exceptions based on technical violations of rules by Board agents that are not alleged or proven to cause prejudice, and do not affect the outcome. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

A party requesting review must cull from the record and affirmatively present to the Board the particular facts applicable to its exception. Merely referring to page numbers without particulars does not satisfy Rule 2.22(A). *NEA-Belen and Belen Fed'n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994).

11.21.2.22(C) NMAC [Representation petitions; Board review-scope of review]

A five-minute time limitation on oral presentations to the Board as part of a request for Board review of a hearing examiner's decision does not violate due process. Such a time limit is reasonable under the circumstances because the decision to permit oral arguments at this stage of the proceedings resides solely in the Board's discretion, and the parties are afforded an opportunity to fully develop their cases prior to that stage of the proceedings. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

11.21.2.22(C) NMAC requires the Board to independently review any recommended decision by a hearing examiner regarding the scope of the bargaining unit. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

11.21.2.22(D) NMAC [Representation petitions; Board review-Board decisions]

Under 11.21.2.22(D) NMAC, an un-appealed recommended decision adopted by the Board in a representation matter can constitute binding precedent unlike an un-appealed recommended decision concerning a PPC that is *pro forma* adopted by the Board under 11.21.3.19(D) NMAC. Reliance on Board-adopted recommended decisions regarding the scope of a bargaining is also warranted under 11.21.2.22(C) NMAC, which requires the Board to independently review any recommended decision by a hearing examiner regarding the scope of the bargaining unit. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

But see *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995) (the Board may, upon review

of the whole record, summarily adopt a Recommended Decision regarding unit inclusion or exclusion in the absence of exception, but that part of the Board's Decision will not have precedential effect).

11.21.2.24(A) NMAC [Representation petitions; eligibility to vote]

Probationary employees are not properly included in an eligible employee list. *AFSCME Council 18 and Middle Rio Grande Conservancy Dist.*, 21-PELRB-2024 (Apr. 3, 2024; in re: Case No. 305-24).

Employees on probationary status at the time the petition was filed should not be included in the employee list for the purposes of an election or card check. *Int'l Union of Machinists and Aerospace Workers and UNM-Sandoval Reg'l Med. Center*, 21-PELRB-2022 (Sep. 14, 2022; in re: Case No. 303-22).

The list of employees eligible to vote in an election must include those individuals who have resigned, retired or whose contract has not been renewed for the next school year, if those individuals are eligible to vote pursuant to 11.21.2.24(A) NMAC at the time of filing. *NEA-Carrizozo and Carrizozo Municipal Schools*, 1 PELRB No. 11 (May 19, 1995).

11.21.2.35 NMAC [Representation petitions; amendment of certification]

Amendment of certification under NMAC 11.21.2.35, by the removal of certain positions, approved based upon change of circumstances due to loss of positions from bargaining unit, with the closure of the detention center. *Cibola County & NMCP SO*, 9-P

ELRB-2018 (Jul. 20, 2018; in re: Case No. 303-18).

11.21.2.36 NMAC [Representation petitions; certification of incumbent unions]

- **Certification under PEBA I**

Under PEBA I, there was no explicit provision for incumbent unions as for incumbent bargaining units. However, the rules promulgated under PEBA I provided for the certification of incumbent unions as the exclusive representative of an incumbent bargaining unit for which the union had previously been recognized as the exclusive representative. Such certification was done without any requirement for a showing of majority support, unlike under current rules, so these cases are of questionable precedential value under PEBA II. **See, e.g.,** *Local 1687 Int'l Ass'n of Firefighters and City of Carlsbad*, 1 PELRB No. 9 (May 2, 1995); *CWA and State*, 1 PELRB No. 8 (Mar 17, 1995); *Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America and Fort Bayard Med. Center*, 1 PELRB No. 7 (Mar. 16, 1995); *USWA and City of Carlsbad*, 1 PELRB No. 5 (Jan. 12, 1995); and *Local 1193 AFSCME and Taos County*, PELRB No. 4 (Jan 12, 1995).

- **Certification under PEBA II**

A §10 local board's certification procedures for incumbent labor organizations violate PEBA where they permit an election upon the employer's request, contrary to 11.21.2.36 NMAC and the PELRB's interpretations of § 24(B) and § 14(A) (Amended 2020) and (e) in *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006 (Jun. 1, 2006). *MCFUSE Local 3313 v. Gallup-McKinley County School Dist. and School Dist. Labor Mgmt. Relations Board*, 3-PELRB-2007.

An incumbent labor organization may demonstrate majority support by card count, even over employer's objection and demand for an election. Elections, which attend initial representation proceedings and are extensively regulated, are not required under the language of either § 24(B) or 11.21.2.36 NMAC. The right of an employer to demand an election under § 14(C) (Amended 2020) relates only to the certification of an appropriate bargaining unit, while § 24(A) has already recognized the incumbent unit as appropriate. Finally, 11.21.2.36 NMAC authorizes a card count and is a reasonable implementation of § 24(B). *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006 (Jun. 1, 2006).

Note: These cases represent instances, before the 2020 amendments, in which the Board had imposed on local boards the requirement to follow PELRB interpretations of PEBA, and even PELRB rules in the case of *Gallup-McKinley*. The Board's authority to do this was made clear in the 2020 amendments, so these cases are primarily of historical interest.

11.21.2.37 NMAC [Unit clarification]

See also 11.21.22(A) (Burden of proof; clarification petition)

- **Generally**

The Board did not act arbitrarily or capriciously in ordering the school to rescind its unilateral elimination of the instructional coach position and reassignment of its duties outside of the bargaining unit; and ordering the school to engage in bargaining with the union to impasse or agreement over any changes to the instructional coach position and duties. The Board also did not act arbitrarily or capriciously in not requiring the issue to be resolved through a petition for clarification, instead, because PPCs or petitions for representation or accretion may be alternative procedures when the dispute is about whether certain positions are included in a unit or not. *Gallup-McKinley County Schools v. MCFUSE Local 3313 and N.M. PELRB*, Case No. D-202-CV-2022-07617 (Aug. 8, 2023; in re: 27-PELRB-2022, Case No. 104-22).

A petition for clarification is not the proper procedure for resolving the current dispute between the parties; and HSD was time-barred from objecting to the decisions made years earlier, in PELRB cases *AFSCME and State*, PELRB No. 357-04; *AFSCME and HSD*, PELRB No. 336-043; and *AFSCME and HSD*, PELRB No. 312-09. *AFSCME Council 18 and HSD*, 23-PELRB-2016 (Nov. 8, 2016; in re: Case No. 309-15).

Sergeants were not included in the bargaining unit certified by the PELRB in PELRB 303-13 because that rank did not exist at the time of the 2013 petition. The H.E. rejected the union's argument that the term "deputy" used in the petition for recognition and related documents encompassed all deputies commissioned or appointed by the Sheriff regardless of rank so would include any sergeants, since the rank did not exist at the time. *AFSCME COUNCIL 18 and Hidalgo County*, 9-PELRB-2014 (Jun. 3, 2014; in re: Case No. 310-13).

- **Change of circumstances**

Rule 11.21.2.37 provides for the filing of a petition for unit clarification when circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit; or a merger or realignment of previously existing bargaining units represented by the same labor organization is appropriate. Accordingly, such a change of circumstances must be alleged and established. Neither the refusal to deduct dues, the creation of new positions, nor a change in supervision were changes sufficient to justify a petition for clarification. Such claims confuse the merits of the underlying dispute with the threshold requirement to demonstrate changed circumstances. Changed circumstances is the threshold requirement for resolving the dispute in a unit clarification proceeding. *AFSCME Council 18 v. Human Resources Services Dep't and N.M. PELRB*, Case No. D-202-CV-2016-07671 (Jul. 19, 2017; in re: 23-PELRB-2016, Case No. 309-15), citing *Kaiser Found. Hosps.*, 337 NLRB 1061 (2002) (describing longstanding doctrine that NLRB will not entertain unit clarification petition seeking to accrete historically excluded classification into the unit unless the classification has undergone recent, substantial changes).

11.21.2.38 NMAC [Representation petitions; accretion]

- **Generally**

A petition to amend the certification of representation to include probationary school employees was dismissed as an improper accretion under PEBA pursuant to a prior agreement between the parties to exclude probationary employees notwithstanding their inclusion in the definition of public employee and PEBA's coverage, pursuant to § 4(Q). *Peñasco Fed'n of United School Employees, Local 4284 and Peñasco Indep. School Dist.*, 26-PELRB-2024 (Jul. 9, 2024; in re: Case 308-24).

For a petition for accretion, the burden of proof is on the union to establish the following five elements: (1) the employees to be accreted must not yet belong to a bargaining unit, (2) they must share a community of interest with the existing group, (3) their inclusion must not render the unit inappropriate, (4) if the petition is accompanied by a 30% showing of interest among the employees sought to be accreted and the group to be accreted is less than 10% of the existing unit, the Board shall presume that their inclusion does not raise a question concerning representation (QCR) requiring an election, and the petitioner may proceed by unit clarification petition, and (5) if the number to be accreted is greater than 10%, the Board shall presume a QCR is raised and the petitioner may proceed only by filing a petition for an election. *AFSCME Council 18 and Santa Fe County*, 5-PELRB-2015 (Sep. 21, 2015, in re: Case No. 305-15).

Note: despite the requirement to plead and establish a change in circumstances, in practice the petitioning union often simply pleads that the change is that this group of employees now desire to be recognized, and this is accepted where no objection is raised.

Note: Historically, only a 30% showing of interest had been required, consistent with NLRB and PEBA I practice. See, e.g., *AFSCME Council 18 v. Corrections Dep't*, 60-PELRB-2012 (Jul. 13, 2012) (clarifying its Order in 8-

PELRB-2012, that if the position was appropriately included in the bargaining unit, only a thirty percent showing of interest would be required). In the last few years, the PELRB has shifted to also requiring a showing of majority support under the theories that the purposes of PEBA favor and presume democratic expression of employees' desires, and that therefore the lack of QCR discussed in Rule 2.38 is not relevant to whether or not the petition must ultimately be shown to have majority support.

"[A]ccretion raises three issues under PELRB rules": (1) "[w]hether there was 'sufficient change of circumstances' from the creation of the original bargaining unit to now warrant a change in that unit"; (2) "[w]hether a grandfathered bargaining unit may be accreted or clarified at all"; (3) "[a]nd whether accretion is otherwise appropriate, i.e. requiring a community of interest between the new and existing groups of employees." *N.M. Coalition of Public Safety Officers Ass'n v. Santa Fe County*, 70-PELRB-2012 (Oct. 24, 2012, in re: Case No. 304-12), citing 11.21.2.38; 11.21.2.37; 11.21.38(A), and PELRB case 308-06 (2006). **Accord** 78-PELRB-2012 (same case).

- **Accretions greater than 10%**

If the group petitioned for accretion exceeds 10% of the existing unit, the union must proceed by petition for election under 11.21.2.38(C) NMAC. *Silver City Prof'l Firefighters, IAFF Local 2430 v. Town of Silver City*, 2-PELRB-2008, PELRB Case No. 308-07 (May 2, 2008).

- **Community of interest**

There is sufficient community of interest to support the accretion of interpreters and dieticians into an existing unit of nurses and professional employees where they work under the same discipline rules, supervision and holiday schedules, work at the same location, get paid the same day, participate equally in the process of patient care, interact and work closely with the members of the existing unit to carry out the hospital's core function of patient care, and their positions require a certain amount of medical related training. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

See also § 13 (Appropriate bargaining units)

11.21.2.41 NMAC [Severance petition]

It was not abuse of discretion to deny a petition to sever police dispatchers into a bargaining unit apart from police officers, because the dispatchers did not constitute one of the listed occupational groups as required under the PELRB severance rule, even if they shared a clear and identifiable community of interest, which is not referenced in the severance rule. *New Mexico Coalition of Public Safety Officers Ass'n. v. City of Rio Rancho*, D-202-CV-2018-01350 (Sep. 7, 2018) (In re: PELRB 307-17, 2-PELRB-2018).

Joint petition to sever the deputies from a wall-to-wall unit including white- and blue-collar workers approved. *AFSCME Local 2911 & Taos County*, 14-PELRB-2018 (Jan. 18, 2019; in re: Case No. 309-18).

A severance petition is a petition filed by a labor organization to sever a group of employees comprising an occupational group listed in § 13, from an existing bargaining unit. The procedure for filing a severance petition is the same as that for a basic petition for recognition, including the requisite 30% showing of interest among the group of employees to be severed, pursuant to 11.21.2.41 NMAC. Additionally, the group to be severed must be one of the occupational groups listed in § 13, e.g., blue-collar, secretarial, clerical, technical, professional, paraprofessional, police, fire or corrections. *N.M. Coalition of Public Safety Officers and Rio Rancho Police and Dispatch Ass'n*, 2-PELRB-2018 (Jan. 17, 2018; in re: Case No. 307-17), **aff'd** D-202-CV-2018-01350 (9/7/18).

11.21.3.9 NMAC [Limitations period]

Board affirmed dismissal of a PPC as untimely because filed after the six-month limitation period in NMAC 11.21.3.9. *Akins v. New Mexico Taxation and Revenue Dep't*, 10-PELRB-2020 (Aug. 19, 2020; in re: Case NO. 115-20) (also dismissed for failing to state a claim under the Act).

A hearing examiner may consider facts outside of the statute of limitations where those facts were relied upon in negatively evaluating and then terminating or non-renewing the contract of an employee, and the employee timely alleged upon discovery that the evaluation and investigating leading up to termination/non-renewal violated the parties' CBA. *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Report (Aug. 26, 2026).

11.21.3.10 NMAC [Filing of answer]

"...[A] responsive pleading may serve as an 'Answer' under our rules but at the risk that if it fails to address specific allegations of the complaint, those allegations may be deemed admitted in the Hearing Officer's discretion." *State v.*

AFSCME Council 18, 31-PELRB-2012 (Mar. 19, 2012; in re: Case No. 146-11), citing *In re: Forfeiture of Fourteen Thousand Six Hundred and Thirty Nine Dollars*, 120 N.M. 408 (Ct. App. 1995) (that a motion to dismiss can be filed in lieu of an answer under N.M. rules of civil procedure).

11.21.3.11 NMAC [Default determination]

A default determination of retaliation and discrimination was set aside upon the employer's motion (thereafter, the matter settled or was withdrawn). *Prof'l Firefighters of Torrance County, IAFF Local 5441 v. Torrance County*, 31-PELRB-2024 (Aug. 9, 2024; in re: Case 111-24).

The Board sustained findings and determination of default liability where respondent withdrew a motion for reconsideration of the default judgment. *Central Consol. School Dist. v. Central Consol. Educ. Ass'n*, 7-PELRB-2015 (Dec. 21, 2015; in re: Case No. 109-15).

Default judgments are disfavored by the law. Therefore, procedural safeguards such as Rule 55(a) of the state rules of procedure "make default appropriate only when there has been no responsive pleading at all", and Rule 55(b) requires "advance notice to the party against whom judgment by default is sought..." *State v. AFSCME Council 18*, 31-PELRB-2012 (Mar. 19, 2012; in re: Case No. 146-11), citing *Daniels Ins. Agency v. Jordan*, 102 N.M. 162 (1984) and *Franco v. Federal Building Service*, 98 N.M. 333, 334 (1982).

11.21.3.12(A) NMAC [Screening; facial adequacy]

PPC dismissed as facially inadequate where it alleged that the university was attempting to assign bargaining unit work outside the bargaining unit, and the attached exhibit(s) did not support the allegations. *United Electrical, Radio and Machine Workers of America v. UNM*, 25-PELRB-2024 (Jul. 9, 2024; in re: Case 108-24).

PPC dismissed as facially deficient because it failed to cite to any specific provision of PEBA. *Cullison & Santa Fe County*, 1-PELRB-2018 (Jan. 17, 2018; in re: Case No. 125-17).

PPC dismissed as facially deficient because it failed to specify the provisions of the PEBA alleged to have been violated. *Cullison v. Santa Fe County*, 14-PELRB-2017 (Nov. 16, 2017; in re: Case No. 120-17).

The time limits established in PELRB rules for the Board (or its agents) to investigate complaints are directory rather than mandatory and exceeding those limits does not support dismissal of the complaint under the facts of this case. *AFSCME Council 18 v. State*, 33-PELRB-2012 (Mar. 19, 2012; in re: 144-09); *accord N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, "mandatory statutory requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute").

11.21.3.12(B) NMAC [Screening; investigation and presentation of evidence]

- **Investigation not a basis for disqualification**

The initial investigation does not create bias, since it is authorized under rule 11.21.3.8. Additionally, "[t]he independence of the Executive Director in conducting the investigation and making the record is consistent with the objective stated in NMAC 11.21.3.6 that the goal of the procedural rules governing PPCs "... to set forth an efficient and effective investigative process for collection and evaluating information to determine whether public employers, public employees or labor organizations have engaged in activities or conduct that constitutes a violation of the Public Employee Bargaining Act." *State v. CWA*, 47-PELRB-2012 (May 10, 2012; in re: Case No. 145-11). *Accord* 48-PELRB-2012, 52-PELRB-2012 (same parties).

11.21.3.12(C) NMAC [Screening Investigation; failure to produce evidence]

PPCs are summarily dismissed based on the complainant's failure to produce evidence in support of the PPC upon direction from the H.E. to do so. *Goold v. Fuller*, 28-PELRB-2012 (Mar. 19, 2012; in re: Case No. 155-11).

11.21.3.14 NMAC [PPCs; notice of hearing]

The time limits established in PELRB rules for the Board (or its agents) to investigate complaints and conduct hearings are directory rather than mandatory and exceeding those limits does not support dismissal of the complaint under the

facts of this case. *AFSCME Council 18 v. State*, 33-PELRB-2012 (Mar. 19, 2012; in re: 144-09); **accord** *N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, "mandatory statutory requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute").

11.21.3.15(D) NMAC [PPCs; settlement efforts-when approval is required to withdraw the PPC]

Board approval is required to withdraw a matter after a hearing examiner's report has been issued in the matter. *UNMH and NUHHCE Dist. 1199*, 6-PELRB-2006 (Jun. 16, 2006).

11.21.3.16(A) NMAC [PPCs; hearings-burden of proof]

See also 11.21.1.22(B) (Burden of proof; PPCs)

The standard of proof applied in administrative proceedings is a preponderance of the evidence. Preponderance of the evidence simply means the greater weight of the evidence. To prove by the greater weight of the evidence means to establish that something is more likely true than not true [or] what is sought to be proved is more probably true than not true. *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25), citing *Foster v. Bd. of Dentistry*, 1986-NMSC-009 at ¶10; *Campbell v. Campbell*, 1957-NMSC-001 at ¶24; and NMRA 13-304 (uniform jury instruction).

Where the county fails to rebut the clear evidence of unwarranted delay in providing requested document, under the totality of the circumstances, the union establishes by a preponderance of the evidence that the county engaged in bad faith bargaining under § 19(F). *Albuquerque Area Fire Fighters, IAFF Local 244 v. Bernalillo County*, 4-PELRB-2026 (Feb. 19, 2026, in re: Case No. 122-25).

11.21.3.19(A) NMAC [PPCs; appeal to Board-procedural requirements for notice of appeal]

A party must cite to specific record evidence in its Notice of Appeal of a PPC to the Board, rather than simply "incorporating by reference" record citations in its post hearing brief. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

See also 11.21.2.22(A), regarding representation matters.

11.21.3.19(D) NMAC [PPCs; appeal to Board-effect of review in absence of request]

An un-appealed recommended decision concerning a PPC that is pro forma adopted by the Board, for purposes of making the recommended decision binding on the parties, cannot constitute binding precedent. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

Compare 11.21.2.22(D), *supra*, regarding un-appealed decisions regarding representation petitions.

11.21.3.21 NMAC [PPCs; administrative agency deferral]

Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion under *Wright Line* where the adopted record from the school board personnel hearing, to which these proceedings were deferred, established that termination was based on multiple grounds of serious misconduct, and was not pretextual. *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25).

A PELRB hearing examiner is collaterally estopped from reviewing another agency's decision for compliance with the PEBA when the elements of collateral estoppel are met. *CWA v. Environment Dep't*, 9-PELRB-2009 (Jul. 6, 2009).

PPC deferred to pending matter before the Human Rights Commission where the facts alleged in the two complaints were nearly identical. *Katz v. Belen Consol. Schools, Case No. 113-26*, Amended Hearing Examiner Report (Aug. 26, 2026)

11.21.3.22(A) NMAC [PPCs; arbitration deferral-discretionary, if conditions met]

The PELRB does not have primary jurisdiction over claims for breach of a CBA; union's motion to compel arbitration

granted and affirmed. *AFSCME v. City of Espanola*, Ct. App. No. A-1-CA-38804 (unpublished) [undated].

The respondent does not establish that arbitration deferral is appropriate where the circumstances contemplated by Board Rule 11.21.3.22(A), are not present; *i.e.*, the dispute does not arise over the application or interpretation of an existing collective bargaining agreement. Deferral is not appropriate when the PPC instead arises out of allegations that employer violated the PEBA by failing to negotiate in good faith. *CWA Local 7076 v. Public Education Dep't*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-1).

"As has been decided several times, this Board will evaluate alleged contract violations brought as prohibited practices on a case-by-case basis with regard to the applicability of contract arbitration provisions and whether deferral would be appropriate. Matters that allege violations of Sections 10-7E-19 (A) through 10-7E-19 (G), Sections 10 7E-20 (A) through 10-7E-20 (C) or 10-7E-20 (E) through 10-7E-20 (F), or Section 10-7E-21 of PEBA will continue to be heard by the PELRB. Matters that allege a violation of PEBA solely under Sections 10-7E-19(H) or 10-7E-20(D), refusal or failure to comply with a collective bargaining agreement, will be deferred to the grievance and arbitration process pursuant to NMAC11.12.3.22. The above approach has been embraced by this Board as effectively protecting the PEBA guarantees of public employees' right to organize and bargain collectively with their employers, while promoting harmonious and cooperative labor-management relations and efficiency in government." *AFSCME Council 18 v. Human Services Dep't*, 26-PELRB-2012 (Mar. 19, 2012; in re: PELRB No. 151-11).

A hearing examiner does not abuse his or her discretion when he or she declines to defer to arbitration, particularly where the applicable § 26(B) local labor resolution would permit a public employer dominated local labor board to review and reverse or modify any arbitration award. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

Deferral is particularly appropriate where the contract language at issue is ambiguous and therefore requires an arbitrator's special expertise in contract interpretation. *AFSCME v. State*, PELRB Case No. 143-07, H.E. letter decision (Jan. 15, 2008).

Accord: *AFSCME Local 3999 v. City of Santa Fe*, PELRB No. 111-14., H.E. letter decision (May 30, 2014), citing *Caritas Good Samaritan Med. Center*, 340 NLRB 61, 62-63 (2003) (where the terms of the CBA are "clear and unambiguous ... the expertise of an arbitrator was not required to interpret the language to establish whether the Respondent violated the Act"); *Grane Health Care, Inc.*, 337 NLRB 432, 436 (2002) (where the terms of the CBA are "clear and unambiguous," the matter did not "turn on contract interpretation," and "therefore the special interpretation skills of an arbitrator would not be helpful"); and *Struthers Wells Corp.*, 245 NLRB 1170, 1171 n. 4 (1979) (that a claim should not be deferred where the CBA "provision is on its face clear and ambiguous," such that the issue "does not involve contract interpretation").

Deferral is allowed where the subject matter of the PPC requires interpretation of the CBA, the parties waive in writing any objections to timeliness or other procedural impediments to the processing of the grievance-arbitration and the resolution of the contract dispute will likely resolve the issues raised in the PPC. *AFSCME Local 3999 v. City of Santa Fe*, PELRB No. 111-14., H.E. letter decision (May 30, 2014), citing *Collyer Insulated Wire*, 192 NLRB 837, 842 (1971).

"§ 19(H) and § 20(D) of PEBA are best understood as providing an alternate forum for contract disputes in the event that grievance-arbitration cannot provide an adequate remedy or is otherwise inappropriate, in exactly the same way that the LMRA provides an alternate forum in the courts for such a contingency." "[W]hether contract claims should be deferred must be determined on a case-by-case basis, after examining the gravamen of the complaint to determine whether it primarily calls for interpretation of contract rights or statutory rights. If the complaint presents both types of claims, the question will be whether they are conceptually distinct and severable claims, or whether they are based on essentially the same facts." Even then, "the NLRB still frequently refuses to defer even cases turning on contract interpretation where a break down or repudiation of the collective bargaining or grievance-arbitration process has been alleged, such as allegations of direct dealing, surface bargaining, retaliation for resort to the grievance procedure, hindering access to the Board's processes, or antiunion animus with a pattern of alleged violations." *AFSCME v. Department of Health*, PELRB Case No. 168-06. *Id.*, Hearing Examiner Decision at 11 (Jul. 17, 2007) (underlined emphasis in original).

KEYWORD AND PHRASES

ACQUIESCENCE

"A past practice can be binding on the parties notwithstanding the terms of the CBA" and "[g]enerally, factors relevant to a finding of a binding past practice are the duration and consistency of its application and the parties' acquiescence in it". *CWA v. State*, 2019-NMCA-031 (Feb. 21, 2019; in re: 1-PELRB-2015, Case No. 122-14), quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation*, 363 U.S. 574, 19 581-82 (19 60); and *Cruz-Martinez v. Dep't of Homeland Sec.*, 410 F.3d 1366, 1370 (Fed. Cir. 2005); **cert. den.** No. S-I-SC-36811 (1/23/18).

Doctrines of *res judicata* or collateral estoppel apply to arbitration awards (e.g., decisions) and subsequent district court judgments about them; and the employer did not establish the union acquiesced in the employer's refusal to pay longevity upon promotion. *AFSCME Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, 68-PELRB-2021 (Oct. 18, 2021; in re: Case No. 107-21)

ADMINISTRATIVE REMEDIES

- **Duty to exhaust**

Writ of mandamus against the PELRB to prevent it from asserting jurisdiction over matters arising in locations with a local board is inappropriate if the petitioner has not exhausted the administrative procedures available to it before the PELRB for further review. *Gallup-McKinley County Schools v. N.M. PELRB and MCFUSE Local 3313*, Ct. of App. Case No. 26,376 (Jun. 8, 2006).

The courts lack jurisdiction to hear a suit for declaratory relief regarding the PELRB's jurisdiction in matters arising in locations with a local board, until after the PELRB has rendered a decision on the PPCs pending before it. *UNM v. American Ass'n of Univ. Professors, Gallup Branch Chapter and the N.M. Fed'n of Teachers*, D-202-CV-95-002376 (Sep. 15, 1995).

The union's argument that the employer waived the arbitration deadlines was rejected: "PEBA's prohibited practices procedures should not be applied to affect an "end run" around a missed opportunity to arbitrate a claim that the union acknowledges was properly arbitrable without at least making a *prima facie* case under §19. *Santa Fe Police Officer's Association v. City of Santa Fe*, 4-PELRB-2012 (Jan. 22, 2012; in re: Case No. 127-10).

A *pro se* complainant adequately exhausted the grievance-arbitration procedures for purposes of the PEBA where he went through all steps of the grievance process, and the union declined to represent the employee at arbitration. It would be impractical and would create a significant obstacle to effecting rights under § 19(H) if unemployed *pro se* litigants were required to go through arbitration, paying half of the fees and costs, before being heard on their § 19(H) rights. As such, there is no basis to infer from either the text of § 19(H) or the purposes of the that the Legislature intended all complainants to exhaust their grievance-arbitration remedies in all cases. *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Report (Aug. 26, 2026).

The PELRB will not require exhaustion where the State Personnel Office (SPO) has indicated that it would oppose grievance and arbitration on grounds that challenged action was consistent with SPO rules and could therefore only be appealed to the SPO Director under Article 14, Section 1(B) of the CBA. See *AFSCME Local 477 v. Public Reg. Comm'n*, PELRB Case No. 154-07, Hearing Examiner letter decision (Oct. 23, 2007) (denying motion to dismiss).

Where there were no obstructions or impediments to the union's utilizing the grievance arbitration processes, "failure to timely exhaust the grievance-arbitration proceedings as to claims turning on contract interpretation will constitute a jurisdictional defect requiring dismissal of the PPC". *AFSCME v. Department of Health*, Case No. 168-06, Hearing Examiner Decision at 11 (Jul. 17, 2007).

AFFIRMATIVE DEFENSES

The respondent bears the burden of proof for its affirmative defenses. *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re 59-PELRB-2012, Case No. 151-11).

AGENCY RELATIONSHIP

There is no legal agency relationship between a county and its instrumentality or institution such as would make the alleged principal the public employer and appropriate governing body under PEBA, where the institution routinely acts independently of the county, disregards county commission recommendations, and where the county has historically denied legal liability related to the operation of the institution. *United Steelworkers of America, Gila Reg'l Med. Center and Grant County*, 1 PELRB No. 14 (Nov. 17, 1995).

AMENDMENT OF A PPC TO CONFORM TO EVIDENCE

A motion for reconsideration based on the hearing examiner having made findings and conclusions based on evidence introduced without objection at the trial will be denied if not supported by information demonstrating unfair surprise or undue prejudice. *AFSCME v. Dep't of Health*, 1-PELRB-2008 (Jan. 31, 2008).

Where evidence has been received in the course of litigation without objection, a prohibited practice complaint may be

amended to conform to the evidence if it does not prejudice the respondent. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

ARBITRATION

See also 11.21.3.22(A) NMAC, regarding arbitration deferral

An employee may waive their right to litigate issues by arbitrating discipline and failing to obtain a scope-of-arbitration ruling first from the arbitrator, to preserve the employee's rights to litigate other factually related claims. *Horne v. Los Alamos Nat'l Sec.*, 2013-NMSC-004 (Jan. 31, 2013).

In reviewing an arbitration award, "[t]he district court is not to apply de novo review" and "should simply conduct an evidentiary hearing and enter findings of fact and conclusions of law" with respect to each statutory basis raised as a ground for vacating or modifying the award." In its review, "the district court determines, based on the evidence presented to it, whether the award was the result of "fraud, partiality, misconduct, excess of powers, or technical problems in the execution of the award." "Even if the arbitrators committed legal or factual error" that will not be a "permissible basis for reviewing the merits of the issues that were arbitrated" because "[l]egal and factual mistakes, such as applying the wrong standard of proof, do not comprise an abuse of power" under § 44-7A-24(a)(4). *State v. ASCME Council 18 and CWA*, 2012-NMCA-114, citing *In re Town of Silver City*, 115 N.M. 662 (1993) (an arbitrator did not exceed his power by applying the incorrect standard of proof); *Fernandez v. Farmers Ins. Co. of Arizona*, 115 N.M. 622, (1993) at 625-26 (an arbitrator did not exceed his power in interpreting a statute concerning uninsured motorist benefits, even if the interpretation was arguably incorrect, because his actions were within the scope of the arbitration agreement and the award was fairly and honestly made); and *K.R. Swerdfeger Constr.*, 2006-NMCA-117, ¶ 26 ("[a]n arbitrator's incorrect interpretation of a statute is not sufficient to show that enforcement of the arbitration award would violate public policy"); *aff'd* N.M. Sup. Ct. No. 33,792 (5/30/13).

The PELRB does not have primary jurisdiction over claims for breach of a CBA; union's motion to compel arbitration granted and affirmed. *AFSCME v. City of Espanola*, Ct. App. No. A-1-CA-38804 (unpublished) [undated].

The Court's review of an arbitration award is limited in scope and does not permit a de novo review. "Having bitten once at the arbitration apple, [the unsuccessful party] cannot now take a second bite from the judicial one. So long as the award is made fairly and honestly and is restricted to the scope of the submission, it must be confirmed by the district court." If "the conclusion of the arbitrator is not so completely irrational or mistaken as to violate public policy...the Court will not substitute its interpretation of the facts or conclusions of law for that of the arbitrator, who had the benefit of firsthand review of the testimony, and subject matter expertise." *Doña Ana County v. CWA Local 7911*, D-307-CV-2013-02250 (Jan. 14, 2014).

A non-renewed employee is not entitled to participate in arbitration, and the grievance is therefore not arbitrable. *Northern Fed'n of Educ. Employees, AFT Local 4935 v. Northern N.M. College*, D-202-CV-2010-0703 (Nov. 3, 2010).

"As has been decided several times, this Board will evaluate alleged contract violations brought as prohibited practices on a case-by-case basis with regard to the applicability of contract arbitration provisions and whether deferral would be appropriate. Matters that allege violations of Sections 10-7E-19 (A) through 10-7E-19 (G), Sections 10 7E-20 (A) through 10-7E-20 (C) or 10-7E-20 (E) through 10-7E-20 (F), or Section 10-7E-21 of PEBA will continue to be heard by the PELRB. Matters that allege a violation of PEBA solely under Sections 10-7E-19(H) or 10-7E-20(D), refusal or failure to comply with a collective bargaining agreement, will be deferred to the grievance and arbitration process pursuant to NMAC11.12.3.22. The above approach has been embraced by this Board as effectively protecting the PEBA guarantees of public employees' right to organize and bargain collectively with their employers, while promoting harmonious and cooperative labor-management relations and efficiency in government." *AFSCME Council 18 v. Human Services Dep't*, 26-PELRB-2012 (Mar. 19, 2012; in re: PELRB No. 151-11).

The union's argument that the employer waived the arbitration deadlines was rejected, because the evidence was "insufficient to establish a clear and unmistakable waiver of the express terms of the CBA regarding the time in which a request for arbitration must be filed." Additionally, "PEBA's prohibited practices procedures should not be applied to affect an 'end run' around a missed opportunity to arbitrate a claim that the union acknowledges was properly arbitrable without at least making a *prima facie* case under §10-7E-19 NMSA 1978." *Santa Fe Police Officer's Association v. City of Santa Fe*, 4-PELRB-2012 (Jan. 22, 2012; in re: Case No. 127-10).

AUTHORIZATION CARDS

See also § 14 [Elections]

Signed authorization cards evidence employees' desire for union representation, and PELRB staff determination of sufficiency of the showing of interest is not subject to question or review. If a group of employees were not interested in

representation by a particular union, they could have chosen not to sign the cards, they could have sought representation by a different union, or they could have organized their own independent union. They pursued none of these alternatives, and therefore the only evidence of their desire to be represented by a union is expressed in the showing of interest presented by the particular union seeking to represent them. *NEA-Belen and Belen Fed'n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994).

COLLATERAL ESTOPPEL

Doctrines of *res judicata* or collateral estoppel apply to arbitration awards and subsequent district court judgments about them; and an arbitration award affirmed by a court becomes a binding judgment under the New Mexico Uniform Arbitration Act, §§ 44-7A-24 (A) and (C) (2001). *AFSCME Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, 68-PELRB-2021 (Oct. 18, 2021; in re: Case No. 107-21).

When a PELRB litigant is collaterally estopped from pursuing his or her PPC due to a previously rendered State Personnel Board (SPB) decision, that SPB decision shall only apply to that specific case, and shall not preclude the PELRB from reaching a different conclusion in a subsequent case involving similar facts. A PELRB hearing examiner is collaterally estopped from reviewing another agency's decision for compliance with PEBA, in a matter based on essentially the same facts and issues, when the elements of collateral estoppel are met. *CWA v. Environment Dep't*, 9-PELRB-2009 (Jul. 6, 2009).

CONTRACT INTERPRETATION

Claim under §19(H) dismissed where no breach of the CBA's grievance procedure, as alleged, was shown and the department responded at each step to the employee's grievance, even if complainant was dissatisfied with the response. The employee had argued that the CBA's grievance procedure requires the department to "meaningfully review and adjust the grievance" and "provide sufficient documentation and explanation" of how it applied her previous experience when deciding her placement in the pay band, but the CBA contains no such language and the hearing officer declined "to find such subjective requirements as 'meaningful' and 'sufficient' are implied." *Cogar v. Dep't of Vocational Rehabilitation*, 30-PELRB-2026 (Aug 12, 2026; in re: Case No. 131-25).

"This Board is therefore compelled to follow the arbitrator's interpretation of the CBA's longevity clause by the doctrines of *res judicata* and collateral estoppel", because an arbitration award affirmed by a court becomes a binding judgment under the New Mexico Uniform Arbitration Act, §§ 44-7A-24 (A) and (C) (2001), and doctrines of *res judicata* or collateral estoppel therefore apply to them. *AFSCME Local 3022 v. ABCWUA*, 68-PELRB-2021 (Oct. 18, 2021; in re: Case No. 107-21).

Where the terms of a collective bargaining agreement are plainly stated, the intention of the parties must be ascertained from the language of the contract. Absent a finding of ambiguity, provisions of a contract need only be applied, rather than construed or interpreted, and in that case, it is unnecessary and improper to consider witness testimony supporting an alternate interpretation of the contract language. The mere fact that the parties disagree on construction to be given to the contract does not necessarily establish an ambiguity. *Nat'l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

COSTS OF PROCEEDINGS³²

A § 26(B) (Repealed, 2020), local ordinance violates PEBA where it imposes any costs for hearings, even when those costs are equally apportioned between parties, because this creates an impermissible chilling effect upon employees' rights to participate in the collective bargaining process. *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

A § 10 local ordinance provision that imposes the cost of any hearing, and the cost of election on the parties equally, violates PEBA, unless the public employer assesses a comparable amount for invoking the administrative procedures before other boards and commissions and/or such assessments are comparable to the fees assessed by other boards or by the courts. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

A § 10 local ordinance requiring a party to pay fees in the range of \$300 per day for PPC hearings is a substantial barrier to the realization of PEBA rights and violates PEBA. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

³² These cases concerned local boards but the principles are presumably equally valid as against the PELRB, as well as the remaining local boards.

DIRECTED VERDICT

Claims for violation of §§ 5(A) - (B), and 19(A), (B), (D), (E), and (G) dismissed by directed verdict because there was a substantial, non-discriminatory reason for taking the disciplinary action at issue apart from the employee's union activities and affiliation: that the employee allowed an unauthorized person (the union organizer) into non-public work and patient care areas contrary to work rules. *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 10-PELRB-2024 (Feb. 8, 2024; in re: PELRB 111-23), **aff'd** D-202-CV-2024-01099 (2/7/25).

A directed verdict is granted if, after reviewing all of the evidence in a light most favorable to the nonmoving party, the evidence as a matter of law is insufficient to justify judgment in favor of the moving party. Claims under §§ 19(A), 19(B), and 19(C) dismissed because nexus not shown between union-related calls and a reprimand where a union member used state phones to conduct union business for only two of her 40 hours of personal use of the state phone, and restriction of union-related calls to the last 15 minutes of the day was not shown to interfere with union business. *AFSCME Council 18 v. NM Tax & Rev. Dep't*, 55-PELRB-2012 (in re: Case No. 104-12).

DUTY OF FAIR REPRESENTATION (DFR) CLAIMS³³

The New Mexico Supreme Court has declined to limit a union's liability for breach of a DFR by imposing a *per se* exclusion of punitive damages much as the U.S. Supreme Court has done for similar actions against federally regulated labor unions, underscoring the public policy served by punitive damages. *Akins v. USWA*, 2010-NMSC-031,

A union member stated a claim for relief for breach of the duty of fair representation when he pleaded that the union had acted arbitrarily, in bad faith, and in violation of its trust when it refused to press the member's grievance to arbitration. Mere negligence, however, will not state a claim for breach of the duty of fair representation. *Jones v. Int'l Union of Operating Engineers*, 1963-NMSC-118.

The court reversed the summary judgment entered in favor of defendants on the issue of breach of union's duty of fair representation; affirmed the summary judgment in favor of the international union because they were not a party to the CBA; and remanded the matter back to the district court for further proceedings as to whether the Federation's pursuit of plaintiff's grievances was arbitrary, including perfunctory. *Callahan v. N.M. Fed'n of Teachers-TVI*, 2010-NMCA-004, (*Callahan II*).

Summary judgment by the district court in favor of the union in a DFR case was reversed on appeal, where the union settled a PPC with the city on behalf of four police sergeants; did not include non-dues paying members of the bargaining unit in the settlement; and was sued for breach of its duty of fair representation to Appellants. It is for a jury to resolve the question of whether appellants were precluded from recovery by a particular APOA bylaw and whether APOA's actions breached its duty of fair representation, whether appellants suffered damages, and whether APOA's actions were the proximate cause of those damages. *Granberry v. Albuquerque POA*, 2008-NMCA-094; **see also** *Howse v. Roswell Indep. School Dist.*, 2008-NMCA-095.

A union member stated a claim for relief for breach of the duty of fair representation when he pleaded that the union had acted arbitrarily, in bad faith, and in violation of its trust when it refused to press the member's grievance to arbitration. However, a claim against a union for breach of its statutory duty as exclusive representative to fairly and adequately represent a bargaining unit member does not state a prohibited practice under PEBA. Therefore, such claims cannot be brought before a labor relations board and must instead be filed in district court. Additionally, the claim for breach of the duty of fair representation cannot be premised upon mere negligence. *Callahan v. N.M. Fed'n of Teachers-TVI*, 2006-NMSC-010 (*Callahan I*), *citing Jones v. Int'l Union of Operating Engineers*, 1963-NMSC-118, ¶¶ 13-15 (that "the breach of duty of fair representation requires a showing of arbitrary, fraudulent, or bad faith conduct"); and *Vaca v. Sipes*, 386 U.S. 171 (1967) (that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith").

See also *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 372-73 (1990) (mere negligence will not state a claim for breach of the duty of fair representation); and *Webb v. ABF Freight Sys., Inc.*, 155 F.3d 1230, 1240 (10th Cir.1998) (stating that a union does not "violate[] its duty of fair representation by mere negligent conduct; carelessness or honest mistakes are not sufficient to impose liability on a union").

Claims for DFR dismissed upon motion for summary judgment because there was no evidence of arbitrary or discriminatory action, nor was there evidence of bad faith. Mere negligence is not sufficient to state a claim for breach of a duty of fair representation under the standard set forth in *Granberry v. Albuquerque Police Officers Ass'n*, 2008-NMCA-094, and AFSCME had no obligation to assist the employee in his private appeal to the court. *Trujillo v. AFSCME*

³³ Note that DFR claims now have a 6-month limitation period, under the 2020 amendments. See Note 21.

JURISDICTION

- **Generally**

Interpretation and enforcement of the Governmental Conduct Act (GCA), NMSA §§ 10-16-1 *et seq.*, is beyond the authority of the PELRB, but the PEBA supersedes the GCA, in any event, under § 3. *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 5-PELRB-2026 (Feb. 19, 2026; in re: Case No. 124-25).

The Board does not have jurisdiction to hear a motion for reconsideration of its prior order (23-PELRB-2016) after the union appealed the same case to the district court. *AFSCME Council 18 & Human Services Dep't*, 1-PELRB-2017 (Jan. 23, 2017; in re: Case No. 309-15).

The Board does not have jurisdiction to determine violations of the Open Meetings Act (OMA), NMSA §§ 10-15-1 *et seq.* *AFSCME Council 18 and Human Services Dep't*, 23-PELRB-2016 (Nov. 8, 2016; in re: Case No. 309-15).

The PELRB is not the proper forum to address claims of gender discrimination, even where union asserts the county withheld proper rank from an employee on the basis of her gender and that such action interfered with the designation of an appropriate bargaining unit. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

- **Death of a Complainant during proceedings**

The Board has personal jurisdiction where the complainant died before the local board issued its decision. "...[T]he absence of an established procedure for substitution" did not "irrevocably deprived the Board of personal jurisdiction"; and "the Board had the means and authority to substitute a party to fulfill its function under the Ordinance", including by looking to New Mexico civil rules of procedure for guidance. *Luis Lopez v. City of Belen*, Ct. of App. Docket No. A-1-CA-39109 (Mar. 15, 2022; in re PELRB 113-22) (an appeal from Valencia County district court, remanded to the PELRB after the disbandment of Belen's local board).

- **Divestment of Board's jurisdiction over PPCs**

Where respondent's local labor board is duly constituted and fully functional, the PELRB does not have jurisdiction over the parties or the subject matter for PPCs alleging violations that would come under the jurisdiction of the local board. *AFSCME v. Martinez and the State*, 2011-NMSC-018.

Where a local board is functioning, the Board nevertheless still has jurisdiction over PPC claims alleging a violations of §19(G). Regarding those claims, however, the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local board. *Northern N.M. Community College*, 61-PELRB-2012 (Jul. 2, 2012; in re: consolidated Case Nos. 123-11, 124-11, 125-11, 130-11, 136-11 and 138-11), *aff'd* D-101-CV-2012-02100 (4/18/13).

Interlocutory appeal denied where based on lack of jurisdiction because the PELRB files from the 2003 and 2004 certification(s) were not complete, and the later petition was not approved by the Board. *AFSCME Council 18 and Human Services Dep't*, 5-PELRB-2016 (Apr. 11, 2016; in re: Case No. 309-15).

The PELRB is not divested of jurisdiction by the CBA's grievance-arbitration provision stating that it shall be the exclusive remedy for certain claims. "The Board does not lose its jurisdiction merely by virtue of parties having negotiated a grievance procedure culminating in arbitration." *CWA Local 7076 v. Public Educ. Dep't*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-11).

- **Home rule jurisdictions**

Being a home rule jurisdiction under Article X, Sections 5 and 6 of the N.M. Constitution does not shield a public employer other than the state from the PELRB's jurisdiction. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

- **PELRB's violation of its regulations, Jurisdictional effect of**

The time limits established in PELRB rules for the Board (or its agents) to investigate complaints and conduct hearings are directory rather than mandatory and exceeding those limits does not support dismissal of the complaint under the facts of this case. *In re: AFSCME Council 18 v. State*, 33-PELRB-2012.

The time limit established in PELRB rules for the Board, or its agents, to conduct a hearing are directory rather than mandatory, so its violation does not deprive the Board of jurisdiction. The Board will reject exceptions based on technical violations of rules that are not alleged or proven to cause prejudice and that do not affect the outcome, such as holding a hearing more than 45 days after the filing of the case. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994), citing *Littlefield v. State*, 1992-NMCA-083; *accord N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶¶ 12-13 (although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review and under New Mexico case law, "mandatory statutory

requirements...raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute”).

- **PPCs raised in petitions.**

PPCs may not be raised as part of a representation petition, even where the claims (discrimination and interference with the bargaining unit) are closely related to the petition because they derive from the employer's opposition to the proposed bargaining unit. Instead, a separate PPC must be filed. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996).

- **Reconsideration authority**

An administrative body such as the PELRB does not have the authority to reverse or reconsider its final action unless the legislature expressly granted the Board the power to do so, and the legislature did not do so. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

Disting. *AFSCME Council 18 v. Dep't of Health* (Dec. 3, 2007, in re: Case No. 6-PELRB-2007) (permitting reconsideration of a hearing examiner's final order or recommendation where the H.E. considered evidence introduced without objection at trial to find violation of a PEBA provision not alleged in the PPC, provided the department could demonstrate undue prejudice); and *AFSCME Council 18 v. Dep't of Health*, 1-PELRB-2008 (Apr. 6, 2009) (subsequent motion for reconsideration denied for failure to demonstrate prejudice).

MANDAMUS

Writ of mandamus against the PELRB to prevent it from asserting jurisdiction over matters arising in locations with a local board is inappropriate if the petitioner has not exhausted the administrative procedures available to it before the PELRB for further review. Where an appeal process is available to a litigant, mandamus is not an appropriate vehicle for challenging an administrative decision and the extraordinary remedy of mandamus is not proper where the only consequences alleged are the usual delay and expense inherent in all litigation. *Gallup-McKinley County Schools v. N.M. PELRB and MCFUSE Local 3313*, Ct. of App. Case No. 26,376 (Jun. 8, 2006), citing *State ex rel. Hyde Park Co., LLC v. Planning Comm'n of the City of Santa Fe*, 1998-NMCA-146, footnotes 11 and 13.

The court issued a writ of mandamus, requiring the PELRB to cease all proceedings PELRB Case 306-21, and to dismiss them for lack of jurisdiction, under the University Research Park and Economic Development Act, NMSA §§ 21-28-1 to 25 (“URPEDA”); and other related cases were dismissed at the same time on the same grounds. *UNM-Sandoval Reg'l Med. Center v. UHPNM*, D-202-CV-2021-06067 (Dec. 9, 2021; in re: *AFT and IAMAW v. UNM-Sandoval Reg'l Med. Center*, 1-PELRB-2022, Case No. 127-21; and *UHPNM and UNM Sandoval Reg'l Med. Center*, 3-PELRB-2022, Case No. 309-21 (both dated Jan. 27, 2022)). (**Note:** thereafter, URPEDA was amended to deem URPEDA entities to be public employers under the PEBA.)

The PELRB, by exercising concurrent jurisdiction after a local board had been approved, does not infringe on a clear legal right of the school and does not exceed its authority under PEBA, such as to support a mandamus action. *Gallup-McKinley County Schools v. N.M. PELRB and MCFUSE Local 3313*, D-202-CV-2005-07443 (Nov. 23, 2005).

But see/Disting. *City of Albuquerque v. Juan B. Montoya and the N.M. PELRB*, 2012-NMSC-007 (that the PELRB does not have concurrent jurisdiction over grandfathered local boards); and *AFSCME v. Martinez and the State*, 2011-NMSC-018 (where respondent's local labor board is duly constituted and fully functional, the PELRB does not have jurisdiction over the parties or the subject matter for PPCs alleging violations that would come under the jurisdiction of the local board). **Note:** these were regular appeals rather than mandamus actions, but the 2020 amendments clarify, in any event, the PELRB's supervisory authority over local boards.

MOOTNESS DOCTRINE

“As a general rule, this Court does not decide moot cases...When no actual controversy exists for which a ruling by the court will grant relief, an appeal is moot and ordinarily should be dismissed...In New Mexico, however, courts recognize two exceptions to the prohibition on deciding moot cases: cases which present issues of substantial public interest, and cases “which are capable of repetition yet evade review.”...A case presents an issue of substantial public interest if it involves a constitutional question or affects a fundamental right such as voting...An issue is “capable of repetition” yet evading review if the issue is likely to arise in a future lawsuit, regardless of the identity of the parties...The Court's review of moot cases that either raise an issue of substantial public interest or are capable of repetition yet evading review is discretionary.” *Republican Party of N.M. v. N.M. Taxation and Revenue Dep't*, 2012-NMSC-26, ¶¶ 10-14 (internal citations and quotation marks omitted).

Resumption of suspended negotiations and ultimate agreement on a contract does not end a controversy over whether a prohibited labor practice of bad faith bargaining had occurred. *NEA-NM v. Española Public Schools*, 4-PELRB-2011

(Sep. 27, 2011; in re: Case No. 114-10) (denying motion for directed verdict).

The PELRB will hear a matter in which the issues have become moot if the matter involves issues of substantial public interest or issues capable of repetition yet evading review. *Chamas-Ortega v. Second Judicial Dist. Court*, 1-PELRB-2004 (Nov. 9, 2004), **overruled on other grounds** 7th Judicial. Dist. Ct. Case No. CV-047883 (Mar. 10, 2006).

MOTION TO DISMISS

PPC dismissed upon pre-hearing motion for failure to state a claim under §§ 5(A) or (B), 17(A), or 20(B) - (E) where it alleged the union, of which the complainant was the vice president, failed or refused to let him speak for the union; and violated its own bylaws and/or constitution. *Hawkins v. Gallup McKinley County Schools*, 34-PELRB-2026 (Sep. 10, 2026; in re: Case No. 107-26).

PPC and TRO application alleging violation of §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) were summarily dismissed upon pre-hearing motion and denied where the union alleged interference through the university's failure or refusal to fully fund the union president's annual salary, and placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25; but the union's evidence showed that funding for the president's position was locked in and approved; the challenged conduct of upper-level administrative reorganization was legitimate exercise of management rights; and the union could not rebut that legitimate justification under *Wright Line*. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

PPC dismissed on cross-filed motions for summary judgement and failure to state a claim; "[a]lthough the PELRB is not intended to serve as a first resort or general forum for 'run of the mill' contract disputes, the PEBA does expressly include breaches of the CBA among its prohibited practices" in §§ 19(H) and 20(D), and "[g]iven that Ms. Wilson appears pro se,...it is appropriate for the PELRB to hear" a contract case, but the plain language did not support the complainant's CBA interpretation about a right to advance notice for investigative meetings into matters affecting teacher and student safety. *Wilson v. Los Lunas School Dist.*, 13-PELRB-2026 (May 12, 2026; in re: Case No. 140-25).

PPC summarily dismissed upon motion where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant's PEBA rights to engage in concerted activity and have Union representation, but complainant's evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. Additionally, documents integral to the PPC may be relied upon by movants without converting a motion to dismiss into a motion for summary judgment, under N.M. case law. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association*, NEA-NM, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25), citing *Ruegsegger v. Board of Regents*, 2007-NMCA-030, ¶ 41; *Beddall v. State St. Bank and Trust Co.*, 137 F.3d 12, 17 (1st Cir. 1998); and *Fudge v. Penthouse Int'l Ltd.*, 840 F.2d 1012, 1015 (1st Cir.1988); appeal pending at D-412-CV-2026-278.

The purpose of a motion to dismiss is to test the legal sufficiency of the claim, not the facts that support it. The pleadings must tell a story from which the essential elements prerequisite to the granting of the relief sought can be found or reasonably inferred. Dismissal under Rule 1-012(B)(6) is appropriate only where the non-moving party is not entitled to recover under any theory of the facts alleged in their complaint. The N.M. Court of Appeals has noted that granting a motion to dismiss is an extreme remedy that is infrequently used. *Professional of New Mexico v. UNM-Sandoval Reg'l Med. Center*, 70-PELRB-2021 (Oct. 18, 2021; in re: Case No. 306-21), citing *McCasland v. Prather*, 1978-NMCA-098, ¶ 5, *Derringer v. State*, 2003-NMCA-073, ¶ 5, and *Town of Mesilla v. City of Las Cruces*, 1995-NMCA-058, ¶ 4.

When deciding motions to dismiss the PELRB has historically applied the standard found in N.M. Rule of Civil Procedure 1-012(B)(6), whereby the hearing examiner accepts all well-pleaded factual allegations as true and resolves all doubts in favor of sufficiency of the complaint. Dismissal on 12(B)(6) grounds is appropriate only if the complainant is not entitled to recover under any theory of the facts alleged in their complaint; a motion to dismiss is predicated upon there being no question of law or fact; and granting a motion to dismiss is an extreme remedy that is infrequently used. *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17), citing *Herrera v. Quality Pontiac*, 2003 NMSC 18, ¶ 2; *Callahan v. N.M. Fed'n of Teachers-TV*, 2006-NMSC-010 (*Callahan I*); *Park Univ. Enter's., Inc. v. Am. Cas. Co.*, 442 F.3d 1239, 1244 (10th Cir. 2006); and *Town of Mesilla v. City of Las Cruces*, 1995-NMCA-058, ¶ 4.

Where there were no obstructions or impediments to the union's utilizing the grievance arbitration processes and deferral was otherwise appropriate, "failure to timely exhaust the grievance-arbitration proceedings as to claims turning on contract interpretation will constitute a jurisdictional defect requiring dismissal of the PPC". *AFSCME v. Department of Health*, Case No. 168-06, Hearing Examiner Decision at 11 (Jul. 17, 2007); **but see** *AFSCME Local 477 v. Public Reg. Comm'n*, PELRB Case No. 154-07, Hearing Examiner letter decision (Oct. 23, 2007) (denying motion to dismiss

after distinguishing *DOH*, Case No. 168-06, *supra*, and equating the employer's position to one that rendered grievance arbitration futile).

PARAMILITARY STRUCTURE

That the fire department is organized into a paramilitary structure does not create a conflict of interest in having fire captains represented in a bargaining unit with subordinates or destroy the community of interest among these employees. *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

PAYROLL DEDUCTION OF DUES

See also § 17(D), scope of bargaining; payroll dues deduction; and certain §§ 19(F) and (H) cases

Payroll deduction of dues is a mandatory, not permissive, subject of bargaining. Additionally, the amount of dues to be deducted is a matter squarely within the province of the labor organization involved. *AFSCME and Los Alamos County Firefighters v Los Alamos County*, 1 PELRB NO. 3 (Dec. 20, 1994).

PERMISSIVE SUBJECTS OF BARGAINING

An employer or a labor organization violates its duty to bargain in good faith by placing unreasonable conditions on bargaining, such as by insisting upon agreement concerning "permissive" subjects of bargaining. Because ground rules for negotiation are permissive subjects of bargaining, it is a violation of the duty to bargain in good faith to impose them through a local ordinance as a precondition to bargaining. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

PRECEDENT

- **Effect of PELRB precedent before the PELRB**

Under 11.21.22(D) NMAC, an un-appealed recommended decision adopted by the Board in a representation matter can constitute binding precedent, unlike an un-appealed recommended decision concerning a PPC that is *pro forma* adopted by the Board, which is governed by NMAC 11.21.3.19(D). Reliance on Board-adopted recommended decisions regarding representation petitions is also authorized under 11.21.2.22(C) NMAC, which requires the Board to independently review any recommended decision by a hearing examiner regarding the scope of the bargaining unit. *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996); **but see** *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995) (the Board may, upon review of the whole record, summarily adopt a recommended decision regarding unit inclusion or exclusion in the absence of exception, but that part of the Board's decision will not have precedential effect).

The Board's hearing officers are bound by the formal decisions of the Board. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

- **Effect of NLRB precedent before the PELRB**

Absent cogent reasons to the contrary, we should interpret language of the PEBA in the manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well settled, long-standing interpretation of the NLRA at the time the PEBA was enacted. NLRA precedent should generally be followed when it concerns a PELRB provision that is identical or substantially similar and there is no cogent reason for varying from the NLRA precedent. *UNM v. N.M. Fed'n of Teachers and American Ass'n of Univ. Professors*, 1998-NMSC-20, citing *Firefighters v. City of Las Cruces (Fire Fighters II)*, 1997-NMCA-031.

The definition of "supervisor" in PEBA is not the same as or closely similar to the definition contained in the NLRA, because PEBA's definition is narrower than the one found in the NLRA. Consequently, positions that may be supervisory under the NLRA and excluded from the bargaining unit under that act may not be supervisory under PEBA given the provisos contained in § 4(T). Similarly, although the NLRA precludes the inclusion of security guard positions with other positions in the same bargaining unit, NLRA precedent is *not* persuasive here because PEBA and the NLRA are not the same as or closely similar in this matter: (1) PEBA does not contain a security guard provision; (2) § 13 permits the consolidation of occupational groups by the parties and the Board may, in fashioning an appropriate unit, consolidate them; and (3) § 21(A), unlike the NLRA, unequivocally prohibits strikes and lockouts on which the NLRA prohibition is based. *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995).

As noted in *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993), the PELRB will give special weight to

interpretations of similar NLRA provisions based on the 60-year history of interpreting and applying that act. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994); *accord NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995) (the Board will give great weight to interpretations of the NLRA by the NLRB and reviewing courts where the relevant provisions are the same or closely similar to those of PEBA).

- **Effect of other labor boards' decisions before the PELRB**

Where the parties present decisions from other labor boards in representation proceedings, the fact specific nature of representation proceedings requires that each party's reliance upon such opinions be buttressed with (1) the specific wording from the labor law of the jurisdiction from which the decision issued; (2) how the wording is similar or dissimilar to comparable wording in the N.M. PEBA; and (3) justification why the PELRB should find such decisions persuasive in the circumstances of the instant proceeding. Additionally, decisions from other jurisdictions cannot substitute for performing the community of interest analysis under § 13(A). *Santa Fe Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995).

PRELIMINARY INJUNCTION / TRO

When considering the NLRB's request for a preliminary injunction under §10(j) of the NLRA, district courts must apply the traditional four factors articulated in *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S. 7 (2008): that the complainant seeking a preliminary injunction is likely to succeed on the merits, that she is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. SCOTUS expressly considered and rejected the "possibility" standard proffered. *Starbucks Corporation v. M. Kathleen McKinney, Reg'l Director of Region 15 of the NLRB*, 602 U.S. 339 (Jun. 13, 2024).

To obtain a preliminary injunction, a petitioner must present sufficient evidence demonstrating that (1) they will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the Respondent; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood petitioners will prevail on the merits. Request for preliminary injunction was denied where the union alleged interference through the university's failure or refusal to fully fund the union president's annual salary, and placing her under administrative direction of a dean identified as a "hostile actor" in Case 113-25; but the union's evidence showed that funding for the president's position was locked in and approved, and the challenged conduct of upper-level administrative reorganization was legitimate exercise of management rights. As such, the union could not establish irreparable harm or likelihood of success on the merits of its §§ 17(A)(1), 19(A), (B), (C), (D), (E), and (G) claims, because it failed to state claim as to funding, and lacked both a ripe claim or standing as to the reorganization unless or until the union president is affected or impacted by it. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

The respondent's motion to quash a TRO denied; H.E. ordered to conduct a hearing on the complainant's motion for preliminary injunction within ten days; and the respondent granted leave to respond to the motion for preliminary injunction. *Ruidoso Prof'l Firefighters, IAFF Local 3545 v. Village of Ruidoso*, 12-PELRB-2026 (Apr. 15, 2026, in re: Case Nos. 105-26 and 303-26) (Thereafter, an evidentiary hearing was held and TRO issued, upon the determination that the village imposed a "shift shake up" without legitimate business interest or bargaining. **See** H.E. Report (May 11, 2026).)

TRO or preliminary injunction issued regarding use of software to observe teachers under NLRB authority that permits an employer, under its inherent management rights, to overtly surveil its employees' protected, concerted activities where necessary to further the company's legitimate security concerns, but prohibits such surveillance in a manner having a tendency "to interfere with, restrain, or coerce employees in the exercise of" such activity, under § 8(a)(l) of the NLRA. *McKinley County Fed. of United School Employees Local 2212 v. Gallup McKinley County Schools*, 19-PELRB-2020, Case No. 122-20 (Dec. 23, 2020), citing *Nat'l Steel Shipbuilding Co.*, 324 N.L.R.B. 499 (1997), enf'd, 156 F.3d 1268 (D.C. Cir. 1998); and *Nat'l Steel Corp.*, 335 N.L.R.B. 747 (2001).

PEBA grants the PELRB and its designated hearing examiners authority to issue preliminary injunctions as appropriate, upon a finding of irreparable harm. (The case concerned withholding dues shortly after issuance of the *Janus* decision.) *AFSCME Local 3277 & City of Rio Rancho*, 15-PELRB-2018 (Nov. 13, 2018; in re: Case No. 113-18).

Immediate injunctive relief to prevent the employer from threatening termination of a worker after he provided testimony at a representation hearing was denied in a special meeting, as not well-taken on the pleadings. *AFSCME Council 18 and Gilmore v. Luna County*, 4-PELRB-2016 (Apr. 11, 2016; in re: Case No. 105-16).

A temporary injunction may be issued to enjoin parties from taking further action to ratify a successor CBA between one union and the county pending an election scheduled to take place as a result of the Board's order in another matter involving the same employees and another union. *AFSCME COUNCIL 18, NMCP SO and Santa Fe County*, 8-PELRB-

2014 (Jun. 3, 2014, in re: Case No. 303-14); **see also** 7-PELRB-2014 (same parties, different cases).

The Board issued a pre-adjudicatory injunction after an emergency hearing, where the union alleged bad faith bargaining during impasse, including the district's announced intent to unilaterally impose a schedule change not agreed to by the union. It determined that PELRB has jurisdiction to grant pre-adjudication injunctive relief based on §23(A); and that because § 18(D) requires an existing contract to remain in effect, unless injunction is granted the union will suffer irreparable harm. *NEA v. West Las Vegas School Dist.*, 21-PELRB-2013 (Aug. 19, 2013); **but see** D-412-CV-2013-00347 (the court dissolved the injunction and referred the matter to pending arbitration pursuant to the impasse proceeding and the matter thereafter settled).

PROHIBITED SUBJECTS OF BARGAINING

Note: pre-2020 amendments, PEBA II expressly identified fair share payments as a permissive subject of bargaining, whereas PEBA I had interpreted it as a mandatory subject. *Cf.* § 10-7E-9(G) and § 10-7D-9(G), but that provision was rendered moot after *Janus v. AFSCME*, 585 U.S. 878 (2018), which held that union dues deduction agreements for agency fees (e.g., fair share payments) are no longer enforceable under the federal Constitution.

The amount of dues to be deducted is a matter squarely within the province of the labor organization involved, and therefore is not subject to bargaining. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

RES JUDICATA

Doctrines of *res judicata* or collateral estoppel apply to arbitration awards and subsequent district court judgments about them. *AFSCME Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, 68-PELRB-2021 (Oct. 18, 2021; in re: Case No. 107-21).

RIPENESS

PPC and request for preliminary injunction not ripe where the union alleged the university failed or refused to fully fund the union president's annual salary, and placed the president under administrative direction of a dean identified as a "hostile actor" in Case 113-25; but the union's evidence showed that funding for the president's position was locked in and approved, and the challenged conduct of upper-level administrative reorganization was legitimate exercise of management rights. A claim concerning the legitimate exercise of management rights is not ripe until the employee or union is adversely impacted or affected by it. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

A claim that a local ordinance violates PEBA on its face is ripe even before the ordinance is applied. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993). **Accord** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

SANCTIONS

Request for sanctions against the union for filing a PPC and application for TRO based on out-of-date and superseded documents was denied as moot or unwarranted where the respondent sought dismissal of that PPC and a prior PPC, the former of which was being dismissed and the latter of which was insufficiently related to the offending PPC. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

Sanctions were not warranted upon the hearing examiner's referral, against petitioner or the union president for failure to timely affect service of its petition on the employer. *Los Lunas Firefighters Ass'n, Local 4297 and Village of Los Lunas*, 15-PELRB-2023 (Apr. 12, 2023; in re: Case No. 301-23).

As a remedy for violations of §§ 19(A), 19(B), § 19(D), and § 19(E), the county was ordered – among other things – to pay costs of the merits hearing based upon the county's failure to cooperate in PELRB prehearing procedures, and for its default at the merits hearing, "and not in the way of a sanction or punitive damages". *AFSCME Council 18 and Chris Verduzco v. Luna County*, 19-PELRB-2016 (Sep. 20, 2016; in re: Case No. 108-16); **see also** 26-PELRB-2016 (assessing costs at \$16.00).

Sanctions ordered where the respondent willfully and intentionally refused to provide information during the petition process; the sanction was estopping it from raising further objections on the question of representation, which is settled

as “law of the case from this point forward.” *AFSCME Council 18 v. Corrections Dep’t*, 8-PELRB-2012 (Jan. 22, 2012; in re: Case Nos. 139-11 and 311-11).

Declining to sanction a *pro se* and non-attorney complainant for mis-citing and/or mis-characterizing a judicial decision relied upon. *Katz v. Belen Consol. Schools*, Case No. 113-26, Amended Hearing Examiner Report (Aug. 26, 2026), distinguishing *Hatch Police Officers Ass’n v. Village of Hatch*, 9-PELRB-2026 (Mar. 19, 2026; in re: Case No. 128-25), and *Rivas v. NMHU and NMHU Faculty Association*, NEA-NM, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25) (employer cited these two cases but both involved attorney misconduct, for which they were referred to the State Disciplinary Board for further investigation).

STANDING

The union lacks standing to challenge management’s upper-level reorganization of administration, even where it placed the union president under a dean accused by her of PEBA violations in another case, unless or until the union president is affected or impacted by the dean’s actions thereafter in violation of the PEBA. *US-UNM v. UNM*, 33-PELRB-2026 (Sep. 10, 2026; in re: 114-26).

N.M. courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke authority to decide the merits of a case. If these elements are not met as a logical matter, a plaintiff generally cannot show that he or she has stated a cause of action entitling him or her to a remedy. Thus, while a plaintiff’s failure to state a cognizable claim for relief and a plaintiff’s lack of prudential standing are not strictly jurisdictional, both implicate the “properly limited ... role of courts in a democratic society” and are relevant concerns throughout a litigation. Here, the PPC was dismissed on summary judgment for lack standing or failure to state a claim where the complainant was not within the unit covered by the CBA at issue and therefore, was not entitled to claim its protections. The employer’s failure or refusal to extend contract coverage to an employee who is not within the bargaining unit for whom the contract was negotiated cannot reasonably be construed to constitute an impairment of the complainant’s bargaining rights under the PEBA. Similarly, complainant’s disagreement with the employer’s classification of her job as supervisory and therefore, exempt from collective bargaining, without more, does not lead to a conclusion that PEBA rights have been violated. *Rhonda Goodenough & CYFD*, 20-PELRB-2019 (Sep. 17, 2019; in re: Case No. 103-19; *aff’d* D-101-CV-2020-01743 (Apr. 30, 2021), citing *ACLU of N.M.*, 2008-NMSC-045, ¶ 9; *Deutsche Bank Nat’l Trust Co. v. Johnston*, 369 P.3d 1046 (N.M., 2016); *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 733 (2008) (“[t]o qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling”); *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶¶ 10-11; and *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16.

Lack of standing and jurisdiction are not established based on a discrepancy in names used by CWA over the years (CWA Local 7076 and CLC- State Employee Alliance). *CWA Local 7076 v. Public Educ. Dep’t*, 45-PELRB-2012 (May 10, 2012; in re: Case No. 134-11).

While a petition seeking certification as the exclusive representative for a “wall to wall” was pending, the employer unilaterally altered employees work schedules; it sought summary dismissal on the ground that, because the union not yet been certified, it is not a “labor organization” representing employees of the OSE and therefore the PPC provisions of PEBA do not apply. The PELRB held that certification as an exclusive bargaining representative for a designated bargaining unit is not what defines a “labor organization”. That status is independent of and pre-exists the filing of a petition for certification of a bargaining unit. Pursuant to § 4(L) all that is required is that the organization be one whose purposes is that of representing public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations. *CWA v. Office of the State Engineer*, 3-PELRB-2012

Whether a union is the certified exclusive bargaining representative for a group of employees is not dispositive of the question whether a union has standing to prosecute a PPC. Exclusive representative status concerns who is empowered to advocate the employees’ interests at the bargaining table. §10-7E-4 (I) and (F). There is nothing in the definition of the term “exclusive representative” to support a claim that only the exclusive representative may prosecute PPCs. *Motor Transp. Employees Ass’n and FOP v. Dep’t of Public Safety*, 13-PELRB-2011.

A statewide parent union has standing to bring claims on behalf of a local union. Here, there is an affiliation and comity of interest between “parent” NEA-NM and ‘sibling’ NEA-Bernalillo, including (1) negating or lessening a potential loss of members and dues; (2) eliminating or minimizing the potential harm flowing from an abridgement or denial of statutory rights; and (3) seeking to influence the PELRB’s interpretation of PEBA. *NEA v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996).

An uncertified union’s standing to bring a claim that a local ordinance violates PEBA is even stronger where the union has filed a petition for certification as exclusive representative or where the union is actively organizing the county employees. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

The Article III case or controversy requirement is not applicable to matters pending before administrative agencies. The PELRB standard is whether the complainant has a reasonable interest in the outcome and is potentially subject to harm. An uncertified union has standing to bring a claim that a local ordinance violates PEBA. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

Accord *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

STATUTORY CONSTRUCTION

Where there is a conflict between general and specific statutory provisions, the specific provision shall control over the general provision. *Santa Fe Police Officers Ass'n v. City of Santa Fe*, 2-PELRB-2007 (Oct. 14, 2007), citing *Crutchfield v. New Mexico Dept. of Tax & Rev.*, 2005-NMCA-022; and *Stinbrink v. Farmers Inc. Co.*, 1990-NMSC-108.

It is the policy of N.M. courts to determine legislative intent primarily from the legislation itself, because New Mexico has no state-sponsored system or recording the legislative history of particular enactments. Thus, New Mexico courts do not attempt to divine what legislators read and heard and thought at the time they enacted a particular item of legislation. If the intentions of the legislature cannot be determined from the actual language of the statute, then our courts resort to rules of statutory construction, not legislative history. *UNM v. N.M. Fed'n of Teachers and American Ass'n of Univ. Professors*, 1998-NMSC-20. **But See** *Santa Fe Police Officers Ass'n v. City of Santa Fe*, 2-PELRB-2007 (Oct. 14, 2007) (considering legislative history in support of its construction of § 5).

In construing a statute, our charge is to determine and give effect to the Legislature's intent. In the quest to give effect to the Legislature's intent "[w]e will construe the entire statute as a whole so that all the provisions will be considered in relation to one another." Statutes must also be construed so that "no part of the statute is rendered surplusage or superfluous" and we will not "read into a statute...language which is not there." Here, the plain language of § 18(A) indicates that the October 1 mediation, and November 1 arbitration time deadlines uniquely applicable to the State under § 18(A) (3), (4) and (5), are only invoked "... if an impasse occurs during negotiations between the parties, and if an agreement is not reached by the parties by October 1..." and "the impasse continues after November 1". *State v. AFSCME and CWA*, 15-PELRB-2017 (Nov. 16, 2017; in re: Case No. 107-17) (PPC dismissed on the ground that the Parties are not at "statutory impasse" by operation of § 18(A)(5)), citing *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 9; *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020; *In re: Rehab. of W., Investors Life Ins. Co.*, 100 N.M. 370, 373 (1983); and *Burroughs v. Bd of Cnty. Comm'rs*, 88 N.M. 303, 306 (1975).

A word is properly interpreted out of the statute, and its presence is not accorded a special meaning, where it was not used elsewhere and the Board finds its inclusion to be the result of awkward drafting. *NEA-New Mexico/Bernalillo v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996).

The Board may rely on the express purposes of PEBA and the specific wrongs prohibited, as indicia of legislative intent. Construction must not render a statute's application absurd or unreasonable or lead to injustice or contradiction. Additionally, as long as a lawful interpretation is reasonable, the Board will not read an unlawful interpretation into the words of an ordinance. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

STAY OF PROCEEDINGS

Motion for stay of proceedings in light of the pending appeal of a Board order that could have reaching classification and monetary impacts denied. *CWA and Dep't of Cultural Affairs (DCA) and State Personnel Office (SPO)*, 31-PELRB-2026 (8-12-26; in re: Case No. 130-25) (ordering the H.E. to conduct a hearing on the issue of "make-whole" relief ordered), pending appeal at D-202-CV-2026-07473; **see also** 15-PELRB-2026 (May 12, 2025; in re: Case No. 130-25) (original order), pending appeal at D-202-CV-2026-05466.

Motion for stay of proceedings in light of the pending appeal of the Board's decision that PRNs are regular employees (see PELRB 304-22 and D-202-CV-2023-02118) was denied because the request was interlocutory in nature, and under NMAC 11.21.1.27, Board review "shall be permitted only after completion of proceedings by a hearing examiner". *United Health Professionals of N.M. v. UNM-Sandoval Reg'l Med. Center*, 40-PELRB-2023 (Sep. 5, 2023; in re: Case No. 109-23). **Accord** 41-PELRB-2023 and 42-PELRB-2023 (same parties, issue and decision).

Respondent's motion for a stay of implementation of the Board's order in 28-PELRB-2022, pending appeal of that order in D-202-CV-2022-07805, was denied. *Int'l Union of Machinists and Aerospace Workers v. UNM-Sandoval Reg'l Med. Center*, 7-PELRB-2023 (Feb. 13, 2023; in re: Case No. 303-22). (That appeal ultimately reversed the Board's determination of liability.)

Employer's motion to stay Implementation of Order 24-PELRB-2022 was denied as being without merit the, notwithstanding the union having filed a notice of appeal. *Int'l Union of Machinists and Aerospace Workers v. UNM-*

SUMMARIES OF EVIDENCE

It is not reasonable to produce, on the day of the hearing, fifteen (15) boxes of original documents on which a summary is based. Summaries of evidence may be properly excluded in the hearing examiner's discretion when the opposing party and/or hearing examiner raise issues with the summaries' reliability, accuracy and relevancy and the proponent fail to produce the original documents on which the summaries are based at a "reasonable time and place" prior to the hearing. *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n, FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996).

SUMMARY JUDGMENT

PPC summarily dismissed upon motion for lack of genuine dispute of material fact and as a matter of law, where it alleged union disclosure of confidential representation information to the university, and that respondents interfered with complainant's PEBA rights to engage in concerted activity and have Union representation; but complainant's evidence and own statements showed he was not engaged in concerted, protected activity because the activity was contrary to the CBA or CBA procedures and/or opprobrious; and the complainant proffered no additional evidence in support of his claims of protected concerted activity, which were speculative and conclusory. (The university was alleged to have violated §§ 5, 19(B), 19(E), and the union was alleged to have violated §§5, 20(B), and 20(E).) *Rivas v. NMHU and NMHU Faculty Association, NEA-NM*, 25-PELRB-2026 (Jul. 14, 2026; in re: Case No. 133-25); appeal pending at D-412-CV-2026-278.

Although an extraordinary remedy, summary judgment serves a vital function: to avoid unnecessary litigation and expense associated with full-blown trials over claims or defenses that are frivolous, without merit, or that cannot be proven. Claims for violation of §§ 5, 15, 19(A), 19(B), 19(C), 19(D), 19(E), 19(F), 19(G), and 19(H) dismissed upon pre-hearing motion where the adopted record from the school board personnel hearing (to which these proceedings were deferred) established that the union president's termination was based on multiple grounds of serious misconduct, and was not pretextual. 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." It was emphasized that "[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." See *MCFUSE Local 3313 v. Gallup McKinley County Schools*, 8-PELRB-2026 (Mar. 19, 2026; in re: Case No. 102-25, and cites therein. i

The union's claims under §§ 15; 22; 24; 25 and 26 for ABCWUA's refusal to negotiate over a successor contract were summarily dismissed upon motion because the union failed to request bargaining within a 30-day window called for under the CBA were summarily denied. However, summary judgment was granted to the union on its claim that ABCWUA violated §19(F) by refusing or failing to comply with its obligation to bargain collectively in good faith with AFSCME. *AFSCME Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*, 18-PELRB-2022 (Aug. 10, 2022; in re: Case No. 106-22).

When deciding a motion for summary judgment the PELRB has long followed N.M. Rules of Civil Procedure, Rule 1-056. Applying that rule, the movant shall set out a concise statement of all material facts about which it is contended there is no genuine dispute. The facts set out shall be numbered and the motion shall refer with particularity to those portions of the record upon which the party relies. Summary judgment will be granted only when there are no issues of material fact with the facts viewed in the light most favorable to the non-moving party. The movant has the burden of producing "such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." If that threshold burden is met by the movant, the non-moving party then must "demonstrate the existence of specific evidentiary facts which would require trial on the merits." The non-moving party "cannot stand idly by and rely solely on the allegations contained in its complaint or upon mere argument or contentions to defeat the Motion once a *prima facie* showing has been made." As the non-movant, petitioner's response must contain specific facts showing that there is an actual issue to be tried. *N.M. Coalition of Public Safety Officers v. Santa Fe County*, 3-PELRB-2018 (Jan. 17, 2018; in re: Case No. 118-17), citing *AFSCME Council 18 v. Dep't of Labor*, 1-PELRB-2007 (Oct. 15, 2007; in re: Case No. 149-06); *Summers v. Ardent Health Serv.* 150 N.M. 123 (2011); *Smith v. Durden*, 2012-NMSC-010; *Blauwkamp v. UNMH*, 114 N.M. 228, 231 (Ct. App. 1992); *Bartlett v. Mirabal*, 2000-NMCA-36, 917, quoting *Eoff v. Forest*, 109 N.M. 695, 701 (1990); *Gardner-Zemeke*, 1990-NMSC-034, ¶ 11; *Ochswald v. Cristie*, 1980-NMSC-136, ¶ 6; and *Livingston v. Begay*, 1982-NMSC-121.

Summary judgment granted for complainant, concluding that the county violated the §§ 17(A)(1) and 19(F) (refusing to bargain collectively in good faith with the exclusive representative) when it refused to provide the union with home addresses of bargaining unit members requested in connection with a dues increase. *AFSCME Council 18 and Santa Fe County*, 6-PELRB-2016 (May 11, 2016; in re: Case No. 128-15).

Granting a motion for summary judgment “is predicated on there being no material questions of law or fact that would preclude judgment in favor of the movant...Once the moving party has made a *prima facie* showing of the absence of a genuine issue of material fact, the burden shifts to the non-moving party to show a reasonable doubt as to a genuine issue for trial on the merits.” PPC dismissed because “[o]n that threshold question of Complainant’s qualifications it is management’s assessment that is determinative in this case” and they concluded she was not qualified due to the prior demotion for poor performance”. *Thuman v. Public Defender Dep’t*, 54-PELRB-2012 (Jul. 13, 2012, in re: Case No. 103-12), citing *Cain v. Champion Window Co. of Albuquerque*, 142 N.M. 209 (Ct. App. 2007), and *Ransier v. Bass*, 106 N.M. 382 (Ct. App. 1987).

A hearing is necessary if there are disputes of relevant facts. *N.M. Coalition of Public Safety Officers Ass’n and Santa Fe County*, 78-PELRB-2012 (Dec. 5, 2012).

A motion for summary judgment, and the response thereto, shall follow N.M. Rules of Civil Procedure, specifically Rule 1-056 NMRA, for guidance. Accordingly, the movant shall set out a concise statement of all material facts to which it is contended there is no genuine dispute, the facts set out shall be numbered, and the motion shall refer with particularity to those portions of the record upon which the party relies. The respondent shall file a response that includes a concise statement of all material facts to which it is contended there is a genuine dispute, the facts set out shall be numbered, and the response shall refer with particularity to those portions of the record upon which the party relies. Both sides may include supporting affidavits, based on personal knowledge and setting forth evidence that would be admissible at trial. If a motion for summary judgment is made and properly supported, the opposing party may not rely upon the mere allegations or denials of his pleadings on in the PPC, but rather must by affidavit and reference to the record, set forth specific facts showing there is a genuine issue of material dispute for trial. The summary judgement procedures used must enable the PELRB to accurately assess whether the undisputed material facts entitle the movant to summary judgment. *AFSCME Council 18 v. Dep’t of Labor*, 1-PELRB-2007 (Oct. 15, 2007; in re: Case No. 149-06).

Note: in practice, R-056 is not as strictly applied as this last case suggests; decisions to relax the technical requirements of Rule 1-056 derive by way of analogy to NMAC 11.21.1.17, which provides that the technical rules of evidence do not apply to PELRB proceedings.

VENUE

The proper venue for district court appeal of an action involving the City of Hobbs is in Lea County, not Bernalillo County, because the cause of action originated in Lea County, where both parties reside, the collective bargaining agreement was made and performed, and the PELRB hearing on the matter occurred. The court rejected the argument that the cause of action originated in Bernalillo County simply because the petition was filed with the PELRB there. Additionally, the court found that § 38-3-2 supports venue in Lea County, as it mandates that actions involving municipalities must be brought in the district court of the county where the municipality is located. *Hobbs Prof’l Firefighters Ass’n, Local 4384 v. City of Hobbs*, D-202-CV-2024-07148 (Jan. 6, 2025; in re: 32-PELRB-2024, Case No. 303-24). **Note:** thereafter, the case was dismissed and refiled in the Sixth District, D-506-CV-2025-00320, which affirmed the Board.

WAIVER

- **Of the right or duty to bargain** See § 17(A)(1), Duty to bargain, Waiver
- **Of arbitration**

A case will be remanded where the union fails to invoke its right to arbitrate a PPC concerning a city proposal to close a drug treatment program and lay off bargaining unit employees, and any waiver intent and reliance is not clear. The court evaluated the waiver based on three principles set forth in *Bd. Of Educ., Taos Mun. Sch. v. the Architects, Taos (Architects)*, 103 N.M. 462, 463 (1985). First, mere delay or dilatory conduct does not automatically constitute waiver. Second, the court considers whether the party urging arbitration previously invoked the judicial system. If so, this could indicate an intent to waive arbitration. And finally, the extent to which the other party relied on the manifested intent to waive arbitration during court proceedings is also relevant. *AFSCME Local 3022 v. City of Albuquerque Police Dep’t and Mayor Richard J. Berry*, 2013-NMCA-049 (Dec. 28, 2012) (concluding the union waived its right to arbitration by invoking the court’s discretionary powers through a petition for temporary injunction).

APPENDIX

LOCAL BOARD RELATED CASE LAW

Issues related to local boards or ordinances and resolutions, and particularly those related to boards or ordinances and resolutions grandfathered under § 26 of PEBA, were regularly addressed in PEBA case law under PEBA I and for the first 16 years under PEBA II. Additionally, in 2019 there was a raft of orders about and revocations of non-functioning local boards, which continued into 2020. See PEBA II Board Orders, at <https://www.pelrb.nm.gov/decisions-and-research-aids/board-orders/peba-ii/> (indexed in reverse annual chronology); see also [PELRB 2026 Annual Report](#), pp. 50-51, Statements of former Directors.

However, under the 2020 PEBA Amendments that became effective on July 1, 2020,³⁴ all local boards and ordinances or resolutions are now § 10 PELRB-approved boards; no more local boards may be formed; and all local boards now have the same duty to meet and conduct meetings and pass rules as the PELRB, as well as having biennial certification requirements and automatic revocation by operation of law in the event that a local board is not staff, functioning or in compliance with the PEBA for 60 consecutive days. See §§ 9-10; see also [NMAC 11.21.5, Part 5](#) (Local Boards) (amended in July of 2020 to implement the 2020 amendments by establishing procedures and strict deadlines to facilitate verification and affirmation or revocation. As a result of these changes, only three (3) local boards now remain as of January 1, 2025: the City of Albuquerque, Albuquerque Public Schools (APS), and the Town of Silver City. See [Local Labor Boards - Public Employee Labor Relations Board](#).³⁵

TABLE OF CONTENTS – LOCAL BOARD CASE LAW

PEBA PROVISIONS RELATED TO LOCAL BOARDS	92
§ 10-7E-3 [Conflicts] (Amended 2020)	92
§ 10-7E-4(G) [Definitions-Confidential employee]	92
§ 10-7E-4(K) [Definitions-Labor Organization]	92
§ 10-7E-4(N) [Definitions-Management Employee] (Amended 2020)	92
§ 10-7E-4(Q) [Definitions-Public Employee] (Amended 2020)	92
§ 10-7E-4 (S) [Definitions-Strike]	93
§ 10-7E-4(T) [Definitions-Supervisor]	93
§ 10-7E-10 [Local boards – conditions of continued existence; transfer of authority upon termination; prohibition of new local boards; and pre-2020 amendment case law] (Repealed and reenacted 2020)	94
• Generally	95
• Jurisdiction and assumption of duties	95
• Method of appointment	96
§ 10-7E-13(A) [Appropriate bargaining units-designation of]	96
§ 10-7E-14(A) [Elections; when and how conducted] (Amended 2020)	97
§ 10-7E-17(A)(1) [Scope of bargaining; duty to bargain in good faith] (Amended 2020)	97
§ 10-7E-18(B) [Impasse procedures; for State, and for public employers other than the State] (Am. 2020)	97
§§ 10-7E-19 or 10-7E-20 [PPCs] (Amended 2020 at § 19(B))	98
§ 10-7E-26 [Existing ordinances] (Repealed 2020)	98
• Generally	98
• Substantial changes after January 1, 2003	99
• Superseding and replacing ordinances after October 1, 1991	99
• Variances from PEBA allowed	99
• Selection of board members	99
• System of provisions and procedures for collective bargaining	100
PELRB RULES RELATED TO LOCAL BOARDS	100
11.21.5.10 NMAC [Local board approval; application for variance from templates] (Amended 2020)	100
11.21.5.13 NMAC [Local board approval; post approval reporting requirements] (Amended 2020)	100
KEYWORDS	100
Election of remedies	100
Jurisdiction	101
PELRB Precedent	101

³⁴ The Act's amendments were also implemented by 2020 amendments to Part 5 [Local Boards] of the PELRB rules, to facilitate verification and affirmation or revocation.

³⁵ Note that due to the drastically reduced relevance and significance of local board related case law, the updated Digest does not include the local board related cases from 2013-2020 that had not been previously digested, although those cases remain available on our website.

PEBA PROVISIONS RELATED TO LOCAL BOARDS

§ 10-7E-3 [Conflicts] (Amended 2020)

A § 10 local labor ordinance's conflicts provision violates the PEBA by providing that the local labor ordinance shall not supersede previously enacted local legislation. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-4(G) [Definitions-Confidential employee]

A § 26(B) (Repealed 2020) local ordinance's definition of "confidential employee" violates the PEBA where it defines such employees as "a person who assist and acts in a confidential capacity with respect to a management employee" because such definition is overbroad, does not comport with the definition of PEBA as written or as subsequently interpreted by the Board in *CWA Local 7076 and Worker's Compensation Administration*, 5-PELRB-09 (Apr. 6, 2009), and could exclude employees otherwise covered under PEBA. *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

See also *MCFUSE Local 3313 v. Gallup-McKinley County School Dist. and Gallup-McKinley County School Dist. LMRB*, 3-PELRB-2007 (undated) (imposing a requirement on local boards to follow PELRB interpretations of PEBA);

But see *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994) (because a legislative enactment is entitled to a presumption of validity, the absence of a PEBA proviso from a local ordinance's definition of "manager" cannot deny, by implication, statutory rights guaranteed under PEBA to any class of employees covered thereunder).

A § 10 local labor ordinance's definition of "confidential employee" violates PEBA where it identifies as confidential employees a broader class of employees than that defined in PEBA, such as secretaries to department heads and any person privy to confidential information concerning employee relations. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994).

§ 10-7E-4(K) [Definitions-Labor Organization]

By using the term "labor organization", this section incorporates a requirement that local ordinances follow the § 4 PEBA definition of "labor organization." A § 10 local ordinance's definition of a labor organization as an employee organization that represents employees in collective bargaining violates PEBA because it does not protect the rights guaranteed under PEBA concerning those labor organizations that are not yet exclusive representatives. *Santa Fe County and AFSCME*, 1 PELRB No.1 (Nov. 18, 1993). **Accord** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-4(N) [Definitions-Management Employee] (Amended 2020)

A § 10 local ordinance's definition of management employee does not violate PEBA by substituting the word "effectuating" with the word "officiating" or by omitting PEBA's proviso that an employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis. These are *de minimis* and insignificant departures from the Act that are not likely to have the effect of sweeping any employee into the management category who would not be in that category under PEBA. Because a legislative enactment is entitled to a presumption of validity, the PELRB will presume that the absence of the proviso from the ordinance does not imply denying statutory rights guaranteed to any class of employees under PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-4(Q) [Definitions-Public Employee] (Amended 2020)

By using the term "employee" this section incorporates the definition of "public employee" under § 4(Q) and requires the extension of rights under the ordinance to all "public employees" that would be covered under PEBA. A provision of a § 26 (Repealed 2020) grandfathered labor ordinance or resolution shall be denied grandfathered effect where it denies the right to bargain collectively to any employees who are afforded this right under PEBA. *UNM v. N.M. Fed'n of Teachers and American Ass'n. of Univ. Professors*, 1998-NMSC-020; **accord** *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069 (in re: 1 PELRB No. 2005) (relying on *UNM v. N.M. Fed'n of Teachers*, 1998-NMSC-0202, to find that the grandfather clause did not apply to provisions of Deming's LMRO that excluded fire department officers).

A local labor ordinance's definition of public employee violates PEBA where it excludes from its coverage part-time regular, non-probationary employees who are covered under PEBA. *AFSCME and Los Alamos County Firefighters v.*

Los Alamos County, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-4(S) [Definitions-Strike]

See also § 21, strikes and lockout prohibited

A local ordinance's definition of "strike" violates PEBA where: it fails to include a requirement that the employee's absence be directed to the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; it permits the county council chairman to appoint an interim member of the local board in the event of a strike emergency, without adhering to the appointment criteria of § 10; and it prohibits certain forms of activity – slow downs, traffic ticket writing campaigns, mass resignations, and willful interference with the operations of the employer – that traditionally are not regarded as strike activity. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

A local ordinance may not provide greater or additional penalties for strike than that provided for under PEBA, because such provisions would not "promote the principles established in Sections 19 through 21 of the [PEBA]". A local ordinance's provision that mandates automatic decertification and/or contract nullifications in the event of strike, even if the union had no knowledge or involvement, fails to promote the principles of § 21.

§ 10-7E-4(T) [Definitions-Supervisor]

A provision of a grandfathered local ordinance that defines certain classes of employees as supervisors, and thus excluded them from the ordinances or resolution's coverage, shall be denied grandfathered effect under PEBA. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-686.

Local boards approved by the PELRB under § 10 are required to follow all procedures and provisions of PEBA and therefore must follow PEBA's definition of "supervisor". *Las Cruces Prof'l Fire Fighters, IAFF Local 2362 v. City of Las Cruces*, 1997-NMCA-044.

A local ordinance may not expand the pool of employees covered from that covered under PEBA, by providing for a narrower definition of "supervisor". A § 26(B) (Repealed 2020) local ordinance's definition of "supervisor" violated PEBA where it required the employee to "devote a substantial amount of work time in supervisory duties," rather than a "majority of work time" as under PEBA II. *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

Notes: The *Las Cruces* decision imposed on grandfathered boards (§ 26, Repealed 2020) an obligation to follow PELRB precedent in interpreting the local ordinance. Previously, the PELRB had only imposed such an obligation on a PELRB approved local board. See *MCFUSE Local 3313 v. Gallup-McKinley County School Dist. and Gallup-McKinley County School Dist. Labor Mgmt. Relations Board*, 3-PELRB-2007 (undated). Now there are no more grandfathered boards and all local ordinances and resolutions must abide by the PELRB template or show cause for variance.

PEBA II amended PEBA I by requiring that a "majority of work time" be devoted to supervisor duties. See § 10-7E-4(T). Thereafter, the 2020 amendments repealed § 26 altogether. As such, PELRB jurisprudence concerning the older § 26(B) local ordinances and the "substantial amount of time" while not overruled are "old law" and rendered moot by the 2020 amendments.

See also *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995) (that substantial is not as little as either 25-40%); *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996) (same); and *Local 7911, CWA and Doña Ana Deputy Sheriffs Ass'n, FOP and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996) (same); and *NMCP SO-CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009, in re: Case No. 319-08) (basing its alternative reasoning on the meaning of "substantial" as interpreted by the first PELRB under PEBA I).

A § 10 local ordinance's definition of supervisor violates PEBA by expressly including police and fire department sergeants, lieutenants, captains and higher ranks, because it thereby expands the PEBA definition and denies organizing and bargaining rights to classes of employees who may be guaranteed rights under PEBA. Unilateral designation of certain job positions as supervisory usurps the function of the Board or local board, in a representation proceeding, to determine bargaining unit composition. Additionally, the absence from a local ordinance's definition of supervisor of the statutory proviso is significant because its absence, unlike in the case of the proviso for management employees, is likely to sweep some employees into the category of supervisor who would not be supervisors under PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

§ 10-7E-10 [Local boards – conditions of continued existence; transfer of authority upon termination; prohibition of new local boards] (Repealed and reenacted 2020)³⁶

³⁶ The 2020 repeal and reenactment of § 10 and repeal of § 11 largely enacted prior Board and court rulings, and made express the duties and obligations of local boards, and the ability of the PELRB to police them for compliance. Section 10 now provides as follows:

- A. All local boards shall continue to exist except as provided in Subsections B through J of this section.
- B. No later than December 31, 2020, each local board shall submit to the board copies of a revised local ordinance, resolution or charter amendment authorizing continuation of the local board. A local board that fails to meet the submission deadline set forth in this subsection shall cease to exist on January 1, 2021. No later than February 15, 2021, the board shall determine whether the local ordinance, resolution or charter amendment authorizing continuation of a local board provides the same or greater rights to public employees and labor organizations as the Public Employee Bargaining Act, allows for the determination of, and remedies for, an action that would constitute a prohibited practice under the Public Employee Bargaining Act and contains impasse resolution procedures equivalent to those set forth in Section 10-7E-18 NMSA 1978. If the board determines that a local ordinance, resolution or charter amendment authorizing continuation of a local board does not satisfy the requirements of this subsection, defects may be cured by June 30, 2021 or the local board will cease to exist. The board shall certify by written order whether the requirements of this subsection have been met.
- C. No later than April 30, 2021, each local board shall submit to the board copies of its rules. A local board that fails to meet the submission deadline set forth in this subsection shall cease to exist on July 1, 2021. No later than May 30, 2021, the board shall determine whether the rules of a local board conform to the rules of the board, or for good cause shown, any variances meet the requirements of the Public Employee Bargaining Act. If the board determines that the rules of a local board do not meet the requirements of this subsection, the local board may cure any defects by June 30, 2021, or it will cease to exist. The board shall certify by written order whether the requirements of this subsection have been met by a local board.
- D. A local board existing as of July 1, 2021 shall continue to exist after December 31, 2021 only if it has submitted to the board an affirmation that: (1) the public employer subject to the local board has affirmatively elected to continue to operate under the local board; and (2) each labor organization representing employees of the public employer subject to the local board has submitted a written notice to the board that it affirmatively elects to continue to operate under the local board.
- E. The affirmation required pursuant to Subsection D of this section shall be submitted to the board by each local board between November 1 and December 31 of each odd-numbered year. A local board that fails to timely submit the affirmation required by this subsection shall cease to exist as of January 1 of the next even-numbered year.
- F. Beginning on July 1, 2020, if at any time thereafter a local board has a membership vacancy exceeding sixty days in length, the local board shall cease to exist.
- G. A local board may cease to exist upon: (1) a repeal of the local ordinance, resolution or charter amendment authorizing continuation of the local board; or (2) a vote of a local board, which vote is filed with the board.
- H. Once a local board ceases to exist for any reason, it may not be revived.
- I. Whenever a local board ceases to exist, all matters pending before such local board shall be transferred to the board for resolution.
- J. After June 30, 2020, no new local board may be created.

Prior law had provided as follows:

§ 10-7E-10. Local board; created (2003) (Repealed and reenacted 2020)

- A. With the approval of the board, a public employer other than the state may, by ordinance, resolution or charter amendment, create a local board similar to the public employee labor relations board. Once created and approved, the local board shall assume the duties and responsibilities of the public employee labor relations board. A local board shall follow all procedures and provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] unless otherwise approved by the board.
- B. The local board shall be composed of three members appointed by the public employer. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of individuals representing management and one member shall be appointed on the recommendation of the first two appointees.
- C. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.
- D. During the term for which he is appointed, a local board member shall not hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.
- E. Each local board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

10-7E-11. Local board; powers and duties (2003) (Repealed 2020)

- A. The local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978], including the establishment of procedures for:
 - (1) the designation of appropriate bargaining units;
 - (2) the selection, certification and decertification of exclusive representatives; and
 - (3) the filing of, hearing on and determination of complaints of prohibited practices.
- B. The local board shall:
 - (1) hold hearings and make inquiries necessary to carry out its functions and duties;
 - (2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and
 - (3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board

- **Generally**

A grandfathered ordinance is compliant where the city council president makes interim or *ad hoc* appointments during a local board member's absence. The city council president was characterized by the union as "managerial personnel" and it raised concerns about the neutral composition of the local board due to the appointment of a third member. The Supreme Court disagreed with that characterization and held that they did not serve in either a "management" or "labor" capacity. Consequently, the provision allowing the city council president to appoint a third member to the local board did not violate PEBA's grandfather clause. Arguably, the Court's decision also clarified that administrative appointments during temporary absences do not contravene PEBA's core principles. *City of Albuquerque v. Montoya, et al.*, 2012-NMSC-007 (Mar. 6, 2012).

The PELRB has jurisdiction to review a local ordinance, "whether grandfathered or not", for compliance with PEBA. *City of Deming v. Deming Firefighters Local 4251*, 1 PELRB No. 2005 (Mar. 31, 2005), **aff'd** *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069 (overruled on other grounds).

The PELRB has jurisdiction and authority to review the content of § 10 local ordinances for compliance with PEBA, although the PELRB does not have the authority to pass on the constitutionality of local ordinances. Additionally, so long as a lawful interpretation is reasonable, the Board will not read an unlawful interpretation into the words of an ordinance, such as an LMRO. Lastly, being a home rule jurisdiction under Article X, Sections 5 and 6 of the New Mexico Constitution does not shield that employer from PELRB review of its local ordinance. *Santa Fe County and AFSCME*, 1 PELRB No.1 (Nov. 18, 1993), **aff'd** D-101-1993-02174 (Jul. 8, 1994).

Accord: *Otero County et al. v. N.M. PELRB*, Twelfth Judic. Dist. Case No. CV-93-187 (Jul. 13, 1993) (dismissing mandamus action against the PELRB to enjoin it from hearing a local board related case).

The Declaratory Judgment Act, NMSA §§ 44-6-1 to -15, does not grant the district courts exclusive authority to determine the validity of a local labor ordinance. Section 10(A) expressly empowers the Board to approve or disapprove local collective bargaining boards "created by ordinance," depending on whether the ordinance meets specified criteria for structure, tenure, appointment and payment of the board members. Section 10(A) also reflects the legislature's delegation of authority to the Board to determine whether the other provisions of a local bargaining ordinance comply with the state statute by stating that "[a] local board shall follow all procedures and provisions of the [PEBA] that apply to the [state] board unless approved by the state board." Thus, the legislature has clearly delegated to the Board the authority to determine whether provisions of a local public body's collective bargaining ordinance comply with the standards PEBA establishes for such ordinances, when a PPC filed with the Board challenges those provisions. However, because a legislative enactment is entitled to a presumption of validity, the PELRB will presume that the absence of a proviso from the local ordinance does not imply denying statutory rights to any class of employees who are guaranteed them under PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994) (reviewing the ordinance, among other issues, the Board determined that a three-day time limit to file PPCs is unreasonably restrictive of the rights of public employees, public employers and labor organizations and therefore violates PEBA).

- **Jurisdiction and assumption of duties**

The PELRB does not have concurrent jurisdiction over grandfathered local boards. *City of Albuquerque v. Juan B. Montoya, et al.*, 2012-NMSC-007.

Where respondent's local labor board is duly constituted and fully functional, the PELRB does not have jurisdiction over the parties or the subject matter for PPCs alleging violations that would come under the jurisdiction of the local board. *AFSCME v. Martinez and the State*, 2011-NMSC-018.

Where a local board is functioning, the Board nevertheless still has jurisdiction over PPC claims alleging a violations of §19(G). Regarding those claims, however, the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local board. *Northern N.M. Community College*, 61-PELRB-2012 (Jul. 2, 2012; in re: consolidated Case Nos. 123-11, 124-11, 125-11, 130-11, 136-11 and 138-11), **aff'd** D-101-CV-2012-02100 (4/18/13).

The PELRB does not infringe on a clear legal right of a public employer, and does not exceed its authority under PEBA,

in carrying out its functions.

C. The local board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The local board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The local board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The local board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The local board has the power to enforce provisions of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] or a local collective bargaining ordinance, resolution or charter amendment through the imposition of appropriate administrative remedies.

when it exercises jurisdiction to hear a matter after a local board had been approved but where the local board lacked board members and was not meeting for business. *Gallup-McKinley County Schools v. PELRB* and *MCFUSE Local 3313*, D-202-CV-2005-07443 (Nov. 23, 2005) (denying school's petition for writ of mandamus and stay of proceedings; in this case, it was undisputed that the local board lacked board members and was not meeting for business when the PPC was filed, although the Order does not reference these facts).

If the local board is not fully functional and operational, the PELRB *may* exercise jurisdiction over the matter. However, the PELRB shall transfer a matter to a local board when the local board is "fully functional and operational". A local board is "fully functional and operational" where all members of the local board have been appointed, it has promulgated rules and it is meeting and conducting business. *In the Matter of the Disqualification of Deputy Director Pilar Vaile, AFT v. Gadsden Indep. School Dist.*, Oral Ruling, *see* Minutes, PELRB Board Meeting (Aug. 19, 2005; in re: consolidated Case Nos. 132-05 and 309-05).

The Board will order the reinstatement and continued processing of a PELRB matter where the local board to which it was transferred was not yet in fact created or appointed and where the complainant alleges that the public employer has used the process of setting up a local board to delay the processing of pending matters. *AFSCME v. NMSU*, 2-PELRB-2005 (Jun. 22, 2005).

- **Method of appointment**

The PEBA requires that the local board be balanced in membership and therefore a neutral body, and § 10(B) requires that a local board shall be composed of three members appointed by the public employer; one appointed on the recommendation of individuals representing labor, one appointed on the recommendation of individuals representing management and one appointed on the recommendation of the first two appointees. N.M. courts have confirmed the Board's authority under PEBA I to review the content of labor ordinances and resolutions, as part of the process of approving local boards. However, under PEBA II, grandfathered ordinances enacted prior to October 1, 1991 no longer have to provide "substantially equivalent" rights as provided under PEBA I. City Council President interim or *ad hoc* appointments during a local board member's absence do not render a local board or ordinance non-compliant with PEBA. *City of Albuquerque v. Montoya*, 2012-NMSC-007 (Mar. 6, 2012).

Following the *Montoya* analysis, the Board concluded that where a local ordinance uses its personnel board together with the city council as the functional equivalent of the PELRB, that ordinance does not meet the requirements of §10(B) and does not meet the fundamental requirement of PEBA for ensuring balance and neutrality, because representatives of labor have no recommendation for appointment to the board in any real sense and there exists the real possibility that management controls at least four of the five positions. *Raton Fire Fighters Ass'n, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (Jun. 20, 2013), citing *City of Albuquerque v. Montoya*, 2012-NMSC-007 (Mar. 6, 2012).

A § 26(B) (Repealed 2020), local board's member selection process must comply with the selection procedures stated in § 10(B). A local ordinance does not comply with §10(B) where it provides that bargaining units and the city manager shall submit a list of up to three recommended individuals, but further provides "[h]owever, nothing contained herein shall mandate the mayor and city council to select from the nominations submitted by the bargaining units and the city manager." *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

A § 10 local ordinance violates PEBA where it permits the county council chairman to appoint an interim member of the local board. It also violates PEBA where it requires that the union recommendation be from a certified union actively involved in representing employees in the county. Lastly, it violates PEBA where it permits the city council to appoint the third member, if the labor and management representatives cannot agree within 30 days. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994). **Accord** *Northern N.M. Community College*, 61-PELRB-2012 (Jul. 2, 2012; in re: consolidated Case Nos. 123-11, 124-11, 125-11, 130-11, 136-11 and 138-11), **aff'd** D-101-CV-2012-02100 (4/18/13). **Disting.** *City of Albuquerque v. Montoya*, 2012-NMSC-007 (Mar. 6, 2012) (*ad hoc* interim appointment to a grandfathered local board, by the chair of the city counsel does not violate the PEBA).

§ 10-7E-13(A) [Appropriate bargaining units-designation of]

A local ordinance that unilaterally consolidates the three presumptively appropriate groups of secretarial clericals, technical and paraprofessionals into a single "white collar" occupational group usurps the unit determination duty and function of the Board or local board, and therefore is not equivalent to the unit determination procedures of PEBA. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994); **but see** *NEA-Belen and Belen Fed'n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994) (the occupational groups listed in § 13(A) are advisory and it was not the drafter's intent that only the listed occupational groups would constitute appropriate units).

§ 10-7E-14(A) [Elections; when and how conducted] (Amended 2020)

A § 26(B) (Repealed 2020), local ordinance's election procedure is not equivalent to PEBA's where it requires a 60% rather than 40% turnout for a valid election. *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

A local board may not promulgate a rule that violates § 14(A) or § 14(D), and the PELRB's decision in *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006, by permitting an employer to demand a secret ballot election for an incumbent union and by requiring a voter turnout of at least 50% + 1 of bargaining unit. *MCFUSE Local 3313 v. Gallup-McKinley County School Dist. and Gallup-McKinley County School Dist.* LMRB, 3-PELRB-2007 (undated).

A local ordinance's provision for a 24-month election bar violates PEBA because it is not "equivalent" to PEBA's election procedures. Additionally, a local ordinance's provision that "no representation" option be included in all run-off elections, even when it was not a top choice in the original election, violates PEBA because this is not "equivalent" to PEBA's election procedures. Lastly, however, a requirement of in-person balloting does not violate PEBA because PEBA does not state or imply that other forms of balloting must be permitted. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

Note: the 2020 amendments expressly allow card count as the presumptive norm.

Where alternative procedures to secret ballot election are authorized for employers other than the state, they must be equivalent to and protect PEBA rights to the same extent. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

§ 10-7E-17(A)(1) [Scope of bargaining; duty to bargain in good faith] (Amended 2020)

A local ordinance violates PEBA by subjecting the duty to bargain in good faith to other county ordinances; by substituting the duty to bargain over "terms and conditions of employment" with a duty to bargain over "working conditions," which implies only physical or environmental conditions; by placing unreasonable conditions on bargaining, including by insisting upon agreement to subjects that are considered "permissive," such as ground rules. Lastly, a local ordinance cannot limit the subjects over which a public employer must negotiate through an improperly broad reservation of exclusive management rights. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993); **accord** *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994) (accord)

§ 10-7E-18(B) [Impasse Resolution; public for employers other than the State]

The absence of an evergreen provision in a § 26(B) (Repealed 2020) LMRO does not fundamentally violate the PEBA because the LMRO includes provisions for impasse resolution through mediation and voluntary binding arbitration and these provisions ensure that the unions are participants in the determination of employment conditions even after a CBA has expired. *AFSCME Council 18, AFSCME Local 1888, AFSCME Local 3022, AFSCME Local 624, and AFSCME Local 2962 v. City of Albuquerque*, 2013-NMCA-063 (Apr. 17, 2013); **accord** *AFSCME v. City of Albuquerque*, 2013-NMCA-012 (Oct. 29, 2012).

Local labor ordinances grandfathered under § 26(A) (Repealed 2020) are not required to have a provision for final and binding arbitration. Final and binding arbitration is not a fundamental requirement of an effective collective bargaining system, and advisory arbitration is sufficient. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069 (in re: 1-PELRB-2005, Case Nos. 102-04 and 309-04) (reversing the Board's determination to the contrary).

A local ordinance that permits the governing body to "accept, reject, or modify the fact finders recommendations as they see fit" is not equivalent to the impasse procedure of PEBA; final and binding arbitration is the tradeoff for public employees giving up their right to strike. *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

A local ordinance that permits the governing body to "accept, reject, or modify the fact finder's recommendations as they see fit" is not equivalent to the impasse procedure of PEBA; is inimical to the concept of collective bargaining; and could deter the duty to bargain in good faith. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

A local ordinance that permits the governing body to make a final and binding settlement of impasse if the parties cannot agree as to the fact finder's report is not equivalent to the impasse procedure of PEBA; is inimical to the concept of collective bargaining; and could deter the duty to bargain in good faith. *Santa Fe County and AFSCME*, 1 PELRB NO. 1 (Nov. 18, 1993).

Note: Both *Los Alamos County* and *Santa Fe County* dealt with § 10 PELRB-approved boards, but at that time the PELRB treated them as being subject only to the requirements of § 26(B) rather than all provisions of PEBA, as required under § 10 even before the 2020 amendments.

§§ 10-7E-19 or 10-7E-20 [PPCs] (§ 19(B) Amended 2020)

Prohibitions against interference with officials to obtain concessions, and against interference with “normal” negotiation processes are so vague and so broad as to chill employee rights guaranteed by PEBA and the local labor ordinance, including the right to organize and assist a labor organization. Prohibitions on communications regarding negotiations to any persons not directly involved in such negotiations infringes on the right to assist labor organizations by prohibiting unions from communicating with their membership regarding the progress of negotiations. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No.3 (Dec. 20, 1994).

Prohibitions in a local ordinance on soliciting union membership during duty hours, and on using county time, property, or equipment for union business without advance approval of the County Administrator, do not promote the principles of the prohibited practice sections of PEBA. Such prohibitions do not exist in PEBA and are best addressed by employer rules and disciplinary procedures that are subject to the rights guaranteed by PEBA and are therefore not a proper subject for a PPC. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

The prohibited practices of a local ordinance must be approximately equal in number as between public employers on one hand and unions or public employees on the other. A local ordinance that is replete with prohibited practices against public employees and labor organizations tilts the playing field and does not promote the labor relations principles mandated by PEBA. However, there is no violation of PEBA where a local ordinance has only three additional employee or labor organization prohibited practices, all of which are, at most, only peripherally related to collective bargaining. A prohibition on unions or employee groups who represent Santa Fe County employees from endorsing or publicly supporting any candidates for county commissioner, and a prohibition on elected officials and employees or labor organization representatives from discussing any issue that is a subject of negotiations, does not violate PEBA. *Santa Fe County and AFSCME*, 1 PELRB No. 1 (Nov. 18, 1993).

§ 10-7E-26 [Existing ordinances] (Repealed 2020).³⁷

• Generally

Local labor ordinances grandfathered under § 26(A) (Repealed 2020) are not required to have a provision for final and binding arbitration. Final and binding arbitration is not a fundamental requirement of an effective collective bargaining system. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069 (in re: 1-PELRB-2005, Case Nos. 102-04 and 309-04) (reversing the Board’s determination that a grandfathered labor ordinance’s impasse arbitration provision violated the minimum or core requirements of PEBA, and was therefore not entitled to grandfathered status, where it

³⁷ Section 26 had provided as follows:

10-7E-26. Existing ordinances providing for public employee bargaining (Repealed 2020)

A. A public employer other than the state that prior to October 1, 1991 adopted by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives may continue to operate under those provisions and procedures. Any substantial change after January 1, 2003 to any ordinance, resolution or charter amendment shall subject the public employer to full compliance with the provisions of Subsection B of Section 26 [10-7E-26 NMSA 1978] of the Public Employee Bargaining Act.

B. A public employer other than the state that subsequent to October 1, 1991 adopts by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives freely chosen by its employees may operate under those provisions and procedures rather than those set forth in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978]; provided that the employer shall comply with the provisions of Sections 8 through 12 and Subsection D of Section 17 [10-7E-17 NMSA 1978] of that act and provided the following provisions and procedures are included in each ordinance, resolution or charter amendment:

- (1) the right of public employees to form, join or assist employee organizations for the purpose of achieving collective bargaining;
- (2) procedures for the identification of appropriate bargaining units, certification elections and decertification elections equivalent to those set forth in the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978];
- (3) the right of a labor organization to be certified as an exclusive representative;
- (4) the right of an exclusive representative to negotiate all wages, hours and other terms and conditions of employment for public employees in the appropriate bargaining unit;
- (5) the obligation to incorporate agreements reached by the public employer and the exclusive representative into a collective bargaining agreement;
- (6) a requirement that grievance procedures culminating with binding arbitration be negotiated;
- (7) a requirement that payroll deductions for the exclusive representative’s membership dues be negotiated if requested by the exclusive representative;
- (8) impasse resolution procedures equivalent to those set forth in Section 18 [10-7E-18 NMSA 1978] of the Public Employee Bargaining Act; and
- (9) prohibited practices for the public employer, public employees and labor organizations that promote the principles established in Sections 19 through 21 [10-7E-19 to 10-7E-21 NMSA 1978] of the Public Employee Bargaining Act.

provided for advisory arbitration only rather than final and binding arbitration).

PEBA §26(A) (Repealed 2020) allowed a public employer to preserve an existing collective bargaining system created prior to October 1, 1991, as long as the “system of provisions and procedures permits employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives”. The PELRB lacks concurrent jurisdiction over grandfathered local boards; and the city’s interim appointment process for the local board members did not render that board un-neutral. *City of Albuquerque v. Juan B. Montoya and the N.M. PELRB*, 2012-NMSC-007.

The PEBA defines “collective bargaining” as “the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment”, and that it says nothing about the relative effectiveness of the procedures adopted. *AFSCME Council 18, AFSCME Local 1888, AFSCME Local 3022, AFSCME Local 624, and AFSCME Local 2962 v. City of Albuquerque*, 2013-NMCA-063 (Apr. 17, 2013), citing *City of Deming*, 2007-NMCA-069, ¶¶ 22-24.

Where a local ordinance uses its personnel board together with the city council as the functional equivalent of the PELRB, that ordinance does not meet the requirements of § 10(B), and does not meet the fundamental requirement of PEBA for ensuring balance and neutrality, because representatives of labor have no recommendation for appointment to the board in any real sense and there exists the real possibility that management controls at least four of the five positions. Following the decision in *UNM v. N.M. Fed’n of Teachers and AAUP*, 98-NMSC-020, the Board held that where provisions of the city’s grandfathered ordinance do not meet the requirements of § 26(A) (Repealed 2020) for grandfathered status, the particular provision shall be denied grandfathered status, but not the ordinance as a whole. *Raton Fire Fighters Ass’n, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (Jun. 20, 2013).

The PELRB may review and invalidate portions of § 26(A) (Repealed 2020) grandfathered ordinances that violate PEBA. *NEA v. Bernalillo*, 1 PELRB No. 17 (May 31, 1996).

- **Substantial changes after January 1, 2003**

A grandfathered local labor resolution loses its § 26(A) (Repealed 2020) grandfathered status where, after January 1, 2003, it issues labor policies pursuant to its labor ordinance that amount to a substantial change to the pre-October 1, 1991, policy, by instituting fixed, static bargaining units. A change to a grandfathered ordinance that adds a grant of right-such as arbitration procedures for the hearing of grievances is a substantive and therefore substantial change. *Nat’l Union of Hos. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

- **Superseding and replacing ordinances after October 1, 1991**

A grandfathered local labor resolution loses its § 26(A) (Repealed 2020)] grandfathered status where it is replaced after October 1, 1991 by an ordinance that expressly states that it supersedes in its entirety any earlier policy. *Nat’l Union of Hosp. and Health Care Employees, Dist. 1199 v. UNMH*, 3-PELRB-2005 (Jul. 22, 2005; in re: Case Nos. 106-04 and 315-04).

- **Variances from PEBA allowed**

The other provisions of PEBA do not apply to a properly grandfathered public employer and local labor ordinance; and the PELRB lacks jurisdiction to enforce the City’s LMRO. Accordingly, the PELRB properly dismissed a PPC but it lacked authority to remand the matter back to the local board. *City of Albuquerque v. AFSCME Local 1888, et al.*, 2015-NMCA-023 (Dec. 2, 2014).

Impasse procedures are not required to be final and binding to be afforded continuing grandfathered status under § 26(A) (Repealed 2020). Section 26(A) does not impose on grandfathered collective bargaining ordinances or resolutions any minimal requirements with respect to their quality or effectiveness. Construing § 26(A) to apply only to ordinances that adopt the same system of provisions and procedures currently stated in PEBA would render § 26(A) meaningless. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069.

The very existence of the grandfather provisions for public employers that enacted and implemented collective bargaining policies before October 1, 1991, *a priori* means they are accorded a different status from those public employers coming before the Board under § 26(B), (Repealed 2020) and to attach all of the PEBA’s proscriptions in § 26(B) and elsewhere to an elderly entity would render meaningless § 26(A)’s (Repealed 2020) permission for a public employer to continue to operate under those provisions and procedures enacted prior to October 1, 1991. *NEA v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996).

- **Selection of board members**

A grandfathered ordinance is compliant where the city council president makes interim or *ad hoc* appointments during a local board member’s absence. The city council president was characterized by the union as “managerial personnel” and it raised concerns about the neutral composition of the local board due to the appointment of a third member. The

Supreme Court disagreed with that characterization and held that they did not serve in either a “management” or “labor” capacity. Consequently, the provision allowing the city council president to appoint a third member to the local board did not violate PEBA’s grandfather clause. Arguably, the decision also clarified that administrative appointments during temporary absences do not contravene PEBA’s core principles. *City of Albuquerque v. Monto a, et al.*, 2012-NMSC-007 (Mar. 6, 2012).

Following the *Montoya* analysis, the PELRB concluded that where a local ordinance uses its personnel board together with the city council as the functional equivalent of the PELRB, that ordinance does not meet the requirements of § 10(B) and does not meet the fundamental requirement of PEBA for ensuring balance and neutrality, because representatives of labor have no recommendation for appointment to the board in any real sense and there exists the real possibility that management controls at least four of the five positions. *Raton Fire Fighters Ass’n, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (Jun. 20, 2013).

A local board’s member selection process must comply with the selection procedures stated in § 10(B). A local ordinance does not comply with §10(B) where it provides that bargaining units and the city manager shall submit a list of up to three recommended individuals, but further provides that “nothing contained herein shall mandate the mayor and city council to select from the nominations submitted by the bargaining units and the city manager.” *IAFF Local 2362 v. City of Las Cruces*, 7-PELRB-2009 (Jul. 6, 2009).

- **System of provisions and procedures for collective bargaining**

Final and binding arbitration is not a fundamental requirement of an effective collective bargaining system. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069.

To be grandfathered under § 26(A) (Repealed 2020), a local ordinance or resolution must constitute a system of provisions and procedures permitting public employees to form, join or assist any labor organization and it must have been enacted before October 1, 1991. *UNM v. N.M. Fed’n of Teachers and American Ass’n of Univ. Professors*, 1998-NMSC-20.

An ordinance that merely authorizes the city administrator to represent the city in collective bargaining negotiations does not “establish a system of provisions and procedures for labor relations” under § 26 (Repealed 2020), *Firefighters and City of Carlsbad*, 1 PELRB No. 9 (May 2, 1995).

PELRB RULES RELATED TO LOCAL BOARDS

Note: Part 5 of PELRB rules, governing local boards, was amended after the 2020 amendments and the following cases were decided before the 2020 amendments.

11.21.5.10 NMAC [Local board approval; application for variance from templates] (Amended 2020)

There is good cause to grant institutions of higher education a variance from the PELRB template resolution creating a local board, to add language regarding the “allocation” or “reallocation” of funds following the template’s references to “appropriation” or “re-appropriation” of funds. The former terminology is more appropriate to these institutions’ situation, since they “allocate” funds appropriated to them by the Legislature, rather than “appropriating” their own funds. The variance, therefore, promotes statutory clarity, avoids disharmony with § 17(H), is consistent with legislative intent, and places institutions of higher education on an equal footing with other governmental entities under PEBA. *In re: Application of the UNM for Approval of Local Board*, 4-PELRB-2006 (May 31, 2006).

11.21.5.13 NMAC [Local board approval; post approval reporting requirements] Amended 2020)

The PELRB has jurisdiction to review and remedy rule-making actions by a local board that amend the local ordinance, raise serious and significant issues affecting public sector collective bargaining statewide, and threaten the consistent and uniform administration of PEBA. Accordingly, the PELRB also has jurisdiction to review and remedy a rule promulgated by a local board that violates § 14(A), § 14(D), and the PELRB’s decision in *NEA-Alamogordo and Alamogordo Public Schools*, 5-PELRB-2006, by permitting an employer to determine whether an incumbent union could demonstrate majority support by election or card count and, in the event of election, by requiring that at least 50% of the total members of the bargaining unit vote for continuing representation. *MCFUSE Local 3313 v. Gallup-McKinley County School Dist. and Gallup-McKinley County School Dist.* LMRB, 3-PELRB-2007 (undated).

KEYWORDS AND PHRASES RELATED TO LOCAL BOARDS

ELECTION OF REMEDIES

A local ordinance does not violate PEBA by requiring a party to elect between proceeding with a grievance and bringing a PPC regarding the same or substantially the same set of facts and circumstances or subject matter. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

JURISDICTION

A local ordinance's provision allowing employees to take their grievances to their supervisor or other county officials rather than to the local labor board violates PEBA by depriving the local board of its power to resolve the matter, and by permitting interested parties to resolve PPC against itself or against a union that may be its adversary. *AFSCME and Los Alamos County Firefighters v. Los Alamos County*, 1 PELRB No. 3 (Dec. 20, 1994).

PELRB PRECEDENT

In several early cases, the Board imposed on both PELRB approved and grandfathered local boards the requirement to follow PELRB interpretations of PEBA and PELRB rules. **See** *IAFF Local 2362 v. City of Las Cruces*, 07- PELRB-2009 (July 6, 2009) (a grandfathered board); and *McKinley County Federation of United School Employees, AFT Local 3313 v. Gallup-McKinley County School District and Gallup-McKinley County School District Labor Management Relations Board*, 03-PELRB-2007 (requiring the local board to follow PELRB rules)