SUMMARY OF JUDICIAL AND PELRB DECISIONS

Rev'd 8/20/15

COURT DECISIONS

1. *American Federation of State, County and Municipal Employees, Council 18 v. New Mexico Corrections Department*, D-202-CV-2013-01920 (2nd Judicial Dist. Feb. 22, 2013).
   - Corrections Department appealed from the Board's Decision in PELRB 311-11 that Lieutenants are not "supervisors" as that term is defined in PEBA §4(U) and their inclusion in an existing bargaining unit of Corrections Officers did not render the unit "inappropriate". The Second Judicial District upheld the PELRB on 5/15/14. The Hearing Officer therefore was correct in his approach of determining, based on the testimony presented, how many hours of each shift lieutenants are performing supervisory duties as opposed to nonsupervisory duties.
   - Regarding which duties constitute "supervisory duties," the Court concluded that it was not arbitrary or capricious for the Hearing Officer to determine: (1) the use of independent judgment is required before an activity qualifies as a "supervisory duty" under PEBA; and (2) the duties of lieutenants largely do not require the use of independent judgment.
   - The Court also concludes the Hearing Officer did not abuse his discretion by relying on federal authority to determine that the use of independent judgment is an important indicator of supervisor status and that even though lieutenants may sometimes exercise independent judgment and perform supervisory duties, lieutenants are not supervisors for purposes of PEBA because they are not performing supervisory duties a majority of the time.
   - Additionally, given the multi-level review involved in the disciplinary process, it was not arbitrary or capricious for the Hearing Officer to conclude that lieutenants do not effectively recommend discipline. The lieutenants do not effectively recommend discipline not only because they lack authority to select a particular sanction, but also because lieutenants lack discretion with respect to their recommendations; indeed, the very purpose of the multiple levels of review is to remove discretion from the disciplinary process. As a result, the third element of the definition of a "supervisor" had not been met. That the third element was not satisfied was therefore an independent basis upon which to affirm the Board's decision.

2. *APOA, et al., v. City of Albuquerque, Albuquerque Police Department and Richard Berry*, (Ct. App. No. 31,606 consolidated with 31,632, Aug. 29, 2013.)
   - The requirements and obligations of the parties regarding the funding of a public employee collective bargaining agreement are statutorily controlled by the PEBA, the Labor Management Relations Ordinance and the specific terms of the CBA.
   - The City's expenditures of funds to comply with the CBA was subject to both "the specific appropriation of funds" and the "availability of funds" under PEBA §10-7E-17(E) and LMRO §3-2-18.
   - LMRO §3-2-18, referenced in Section 2.1.1.5 of the parties' CBA, required the City Council to "adopt a resolution" appropriating funds to cover the economic components of the contract when the CBA was approved by the City in 2008. As such, the City adopted the appropriate resolution in 2008 to cover the economic obligation for the new three-year CBA. Multi-year collective bargaining agreements are beneficial to both sides and provide stability and continuity for both management and public employees.
   - LMRO §3-2-18 does not prohibit the City from adopting a contract that has fiscal implications over several years. Its re-opening requirement 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 agreements.

3. *AFSCME, Council 18 v. New Mexico Human Services Dep't,* (1st Judicial Dist. CV-2012-02176, J. Ortiz, June 14, 2013.)
   - The presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining and the Court upheld the PELRB's determination that the employer impermissibly made a unilateral change in terms and conditions of employment without bargaining.
   - HSD relied upon the management rights and scheduling clauses in its CBA as constituting a waiver by the union of its right to bargain removal of security guards 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.

4. *AFSCME Council 18, AFSCME Local 1888, AFSCME Local 3022, AFSCME Local 624, and AFSCME Local 2962 v. The City Of Albuquerque,* (Ct. App. No. 31,631, April 17, 2013.)

- Because of the City's Labor-Management Relations Ordinance grandfather the absence of an evergreen provision does not fundamentally violate the PEBA. The LMRO does not permit the City to unilaterally impose conditions of employment once a CBA has expired. Instead, the LMRO includes provisions for impasse resolution through mediation and *voluntary* binding arbitration. These provisions ensure that the Unions are participants in the determination of employment conditions even after a CBA has expired.
- 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." It says nothing about the relative effectiveness of the procedures adopted. See City of Deming, 2007-NMCA-069, ¶¶ 22-24 (stating that application of the grandfather clause is not dependent on an evaluation of the quality or effectiveness of the collective bargaining procedures).

5. *Northern New Mexico College, et al., v. PELRB and NFEE, AFT Local 4935*, (1st Judicial Dist. CV-2012-02100, J. Singleton, April 18, 2013.)
   - PELRB acted correctly when it dismissed PPC's having concluded the College's labor management relations board is "duly constituted and fully functional."
   - PELRB does have "subject matter jurisdiction" of PPC's and it acted consistently with the minimum requirements of PEBA. Its decision and order is consistent with the Court's understanding of jurisdiction and is consistent with PEBA. The College's appeal is therefore denied and the PELRB's Order and Decision is therefore upheld.
   - Even if one accepts that the undisputed evidence shows that the management and labor representatives were appointed anew in 2011 and that they did not agree on a third "neutral" member, the previously agreed-upon "neutral" continues to serve in that position pursuant to Article XX, Section 2 of the New Mexico Constitution.
   - Article XX, Section 2 of the New Mexico Constitution applies to Northern New Mexico College as a State institution.
   - The PELRB, having decided that Northern New Mexico College's labor management relations board was duly constituted and fully functional, properly dismissed the Union's PPC's and because those PPC's were reviewed by the Board as an original tribunal, not as an appellate body, a remand of those matters to the local board would not have been procedurally appropriate.

6. *City of Albuquerque v. AFSCME, Local 1888, (2*nd Judicial Dist. CV-2012-02239 (consolidated), J. Baca, May 1, 2013.)
   - Relying on the principle set forth in *Deming Firefighters* and re-affirmed in *City of Albuquerque v. Montoya,* 2012-NMSC-007, _N.M. _, 247 P.3d 108, where the grandfather clause applies, PEBA does not apply and the PELRB does not have jurisdiction, concurrent or otherwise, that would allow it to remand PPC's not pending before a grandfathered local labor board back to the City Labor Board.
   - The PPC's were properly dismissed but the PELRB was without jurisdiction remand to the local board for further proceedings – they did not originate at the local board and make their way via appeal or removal to the State Board.

7. *Luginbuhl v. City of Gallup, Gallup Police Department,* (Ct. App. 2013-NMCA-053, March 11, 2013.)
   - Petitioner as a public employee working for a public employer as those terms are defined in the PEBA is therefore subject to the PEBA and the grievance arbitration process in the applicable CBA, not the grievance process in the City's personnel rules for non-union employees.
   - An arbitration clause in a validly negotiated CBA does not fail for lack of consideration and the CBA at issue was supported by adequate consideration.
   - The CBA's arbitration clause is not vague or uncertain in its application.
   - Petitioner's contention that as a non-union member of the bargaining unit he is not bound by the agreement to arbitrate disputes is refuted by the plain language of the PEBA §§10-7E-15(A) and (B) and 20 (D) is rejected. The Petitioner is bound by the requirement of the CBA as well as the PEBA that a grievance challenging termination is subject to binding arbitration.

8. *AFSCME, Council 18, AFSCME, Local 1888, AFSCME, Local 3022, AFSCME, Local 624 and AFSCME, Local 2962 v. City of Albuquerque,* (Ct. App. No. 2013-NMCA-012, Jan. 16, 2013).
   - The PEBA does not impose a requirement that the Courts review the City's LMRO for effectiveness, *citing City of Albuquerque v. Montoya*, 2012-NMSC-007, 274 P.3d 108.
   - Although the Legislature included requirements for compliance with PEBA in both PEBA I and PEBA II, that requirement is applicable only if a public employer other than the state adopts a system of provisions and procedures permitting collective bargaining after October 1, 1991. In such instances the

grandfather clause does require for grandfather status that the newly adopted system include impasse resolution procedures equivalent to those set forth in the PEBA. But the Legislature specifically did not include any such requirement for public employers adopting ordinances prior to October 1, 1991.

- PEBA §17(E) requirement that agreement provisions that require the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds applies to economic components of the extension of expired collective bargaining agreements under the PEBA evergreen provision. It is not an issue whether the City appropriated funds for or during the life of the agreement; no appropriation occurred to extend the agreements and the City contends it does not have funds sufficient to fund the extension. The PEBA leaves that determination to the legislative functions of the public employer.
- The PEBA does not require the extension of existing collective bargaining agreements in conflict with Section 10-7E-17(E).
- The complaint was moot with regard to two unions that entered into successor agreements with the City while the appeal was pending.

9. *State of New Mexico v. AFSCME Council 18 and CWA*, (Ct. App. No. 30,847; Aug. 8, 2012.)
   - The State appealed two separate arbitrators' decisions determining that the State's pay package for FY 2009 violated the terms of the parties' CBA's. The arbitrators did not exceed their powers in finding that the legislature appropriated sufficient funds to cover the salary increases. The State previously had agreed to submit the issues of its interpretation of the legislative bills in question and how it interpreted the language "average salary increase" in those bills to arbitration. The State was bound by the arbitrators' legal and factual findings on the issues submitted.
   - Even if the arbitrators committed legal or factual error, as the State claimed on appeal, the Court of Appeals found "no permissible basis for reviewing the merits of the issues that were arbitrated." "[l]egal and factual mistakes, such as applying the wrong standard of proof, do not comprise an abuse of power" under Section 44-7A-24(a)(4), *citing In re Town of Silver City*, 115 N.M. at 632, 857 P.2d at 32.
   - The arbitrators did not exceed their powers by issuing awards that allegedly require retroactive salary increases for the Unions' employees in violation of Article IV, Section 27 of the New Mexico Constitution. The remedies mandated by the arbitrators were not "extra compensation" as used in Article IV, Section 27 for services performed in FY2009, but compensation that the Unions' employees were entitled to and would have received were it not for the State's violation of the Agreements.
   - The arbitrators did not exceed their powers by mandating monetary relief that will require the Legislature to appropriate funds. The arbitration awards did not require further appropriation or a re-appropriation of funds by the Legislature because arbitrators determined that the Legislature already appropriated sufficient funds in FY2009 for the State to meet its contractual obligations under the Agreements and that the State failed to meet its contractual obligation to distribute the funds according to the terms of the Agreements. The State's representation that it has already used the funds appropriated by the FY2009 legislative appropriations should not affect the arbitrators' decisions and awards in favor of the Unions.
   - 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.

10. *City of Albuquerque v. Montoya*, 2012-NMSC-007, _N.M. _, 247 P.3d 108.
    - As a result of a deadlock, Albuquerque's local Labor Board could not adjudicate a PPC filed by AFSCME on behalf of one of its members, a City employee. The union then filed the same PPC with the PELRB and the City moved to dismiss for lack of jurisdiction. The PELRB Director determined that the PELRB had jurisdiction because the local ordinance was not grandfathered. The Director's decision was upheld by the Court of Appeals but reversed by the Supreme Court.
    - The City Council President does not serve in either a "management" or a "labor" capacity, and therefore the City Ordinance provision that provides a procedure by which the City Council President appoints a member to the Local Board during the absence of a member does not violate the Act's grandfather clause requirement that a local ordinance create a system of collective bargaining.

11. *AFSCME v. Martinez,* No. CV-2011-10200 (2nd Judicial Dist. Feb. 9, 2012, J. Nash) *cert. denied* Mar. 29, 2012.
    - Upon expiration of the labor-recommended appointee to the Board in July of 2011 six public employee labor organizations recommended his reappointment. The Clovis Police Officers' Association recommended appointment of someone else. Governor Martinez appointed the CPOA recommendation. Six unions then petitioned the Second Judicial District Court for a writ of mandamus to order the Governor to rescind her appointment of Bartosiewicz, rescind all PELRB decisions made

during his time on the board, and to retroactively reappoint the former labor-recommended appointee. The Unions' petition was denied because the Court did not agree with the Unions' position that CPOA was without authority to make a recommendation. While the Governor solicited a PELRB recommendation to her liking no evidence was presented that by doing so she improperly interfered with the recommendation process.
- PEBA does not prohibit local labor organizations from making recommendations
- The Governor is not compelled to appoint the labor member recommended by a majority of organized labor representatives.
- Because CPOA's recommendation was valid the Governor had two labor recommendations from which to choose and her appointment was not an unconstitutional official action.
Compare, AFSCME v. Martinez, 150 N.M. 132, 257 P.3d 952 (2011).

12. *AFSCME v. Martinez,* 2011-NMSC-018 150 N.M. 132, 257 P.3d 952 (2011).
    - The Governor may not use the broad removal authority under Article V, Section 5 of the New Mexico Constitution to remove members of the Public Employee Labor Relations Board who have the responsibility of adjudicating the merits of disputes involving the Governor.
    - None of the PELRB members serve at the pleasure of the Governor because the Public Employee Bargaining Act obligates the Governor to appoint one member recommended by organized labor, one member recommended by public employers, and one neutral member jointly recommended by these two appointees.
    - The Governor's responsibility under the Act and Article V, Section 4 of the New Mexico Constitution to "take care that the laws be faithfully executed" requires that the Governor respect the Act'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. Due process considerations are also implicated because when the Governor reserves the power to remove board members at any time and for any reason, the Governor exerts subtle coercive influence over the PELRB, further compromising its balanced and fair character. "A fair trial in a fair tribunal is a basic requirement of due process." *Citing In re Murchison*, 349 U.S. 133, 136 (1955); *Reid v. N.M. Bd. of Exam'rs in Optometry*, 92 N.M. 414, 416, 589 P.2d 198, 200 (1979).

13. *County of Los Alamos v. John Paul Martinez, et al.*, 150 N.M. 326, 258 P.3d 1118 (Ct. App. Feb. 7, 2011).
    - Any direct communication with a union represented employee made for the purpose of altering terms and conditions of employment constitutes a violation of the PEBA.
    - There is no definition of the phrase "wages, hours and other terms and conditions of employment" in either the PEBA or the local ordinance so as to delineate exactly what constitutes a mandatory subject of bargaining.
    - A union can contractually waive its right to mandatory bargaining if the waiver is expressed clearly and unmistakably. However, courts will not infer a waiver unless it is clear that the parties were aware of their rights and made the conscious choice, for whatever reason, to waive them.
    - A "zipper clause", standing alone, did not constitute a waiver as to a specific bargaining item. Such clauses are to be given such effect as the negotiating history and other surrounding circumstances seem to make appropriate.

14. *IAFF Local 1687 v. City of Carlsbad*, Court of Appeals, Case No. 28,189 (June 23, 2009).
    - Court of Appeals Reversed the district court's grant of summary judgment to Union, granting summary judgment to the City.
    - Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over the provisions of PEBA stating arbitration awards shall be final and binding.

15. *Akins v. United Steelworkers of America, Local 187*, 2009 NMCA 051, 208 P.3d 457 (May 13, 2009).
    - Retroactive application of the six month statute of limitations adopted by the PEBA was not appropriate in a suit brought by a union member for breach of a duty of fair representation. DFR actions are not within PEBA's administrative framework because the PEBA does not specify breach of the DFR as a prohibited practice.
    - Punitive damages are available under New Mexico law against a union for breach of a DFR.

16. *City of Las Cruces v. Juan B. Montoya and PELRB*, Supreme Court of New Mexico, Case No.31,629 (March 24, 2009).

- Order dismissing petition for writ of prohibition against the PELRB from hearing a PPC that alleged the City's local labor ordinance, grandfathered under §26(B) of PEBA, fails to meet the requirements of that section.
- The Court provided no reasoning or analysis for dismissal. However, the underlying briefing to the PELRB and the Court demonstrates that both New Mexico Courts and the PELRB have routinely upheld the PELRB's authority to review local ordinances' compliance with PEBA, even where grandfathered; and that local boards grandfathered under §26(B) are subject to many more substantive requirements than §26(A) boards, and thus permit greater grounds for the PELRB's exercise of jurisdiction to review such ordinances.

17. *City of Albuquerque v. Juan B. Montoya and PELRB,* 2nd Judicial Dist., Case No. CV-2008-02007 (June 26, 2008, J. Lang).
    - Summarily granting a petition for writ of prohibition and superintending control before the PELRB could file its Answer, on grounds that the PELRB lacked jurisdiction to hear a PPC because the City of Albuquerque had its own, grandfathered, local board). Decision appealed as Court App. 28,846, Opinion Number: 2010-NMCA-100, *cert. granted* No. 32,570.

18. *Health Care Local 2166, National Union of Hospital and Health Care Employees District 1199 v. University of New Mexico Health Science Center*, 2nd Judicial Dist. Case No. CV 2007-8161 (Feb. 20, 2008, J. Nash).
    - A labor relations board has jurisdiction under §19(D) of PEBA, and the equivalent section of a local resolution or ordinance modeled on PEBA, to hear PPCs alleging the retaliatory discharge of probationary employees, for their participation in Union activities and in order to discourage Union membership.

19. *City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069 (April 19, 2007).
    - Upholding the PELRB's denial of grandfathered status to a provision of the City's local labor ordinance that defined certain classes of public employees (fire fighter lieutenants and captains) as "supervisors" and therefore automatically excluded from the coverage of the local ordinance.
    - Reversing the PELRB's and the District Court's denial of grandfathered status to the arbitration provision that was not final and binding.

20. *Gallup-McKinley County Schools v. PELRB and McKinley County Federation of United School Employees Local 3313*. Court of Appeal Case No. 26,376 (June 8, 2006).
    - Mandamus is inappropriate where the petitioner fails to exhaust its administrative remedies. "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." *Citing State ex rel. Hyde Park co., LLC v. Planning Comm'n of the city of Santa Fe*, 1998-NMCA-146, ¶¶ 11 and 13, 125 NM 832.
    - In the case below, 2nd Judicial District Case No. CIV-2005-07443 (Nov. 23, 2005) Judge Clay Campbell denied the Schools' Petition for Writ of Mandamus and Stay of Proceedings against the PELRB, finding that the PELRB did not infringe on a clear legal right of the School and did not exceed its authority under PEBA by exercising concurrent jurisdiction when a local board had been approved.

21. *Laura Chamas-Ortega v. 2d Judicial District Court, 7th Judicial Dist*., Case No. CV-04-7883 (Mar. 10, 2006, J. Kase).
    - Upholding the PELRB's determination in 1 PELRB 2004 that the PPC was not moot, even though the Complainant quit working for the courts, because the question involved an issue of substantial public interest and the issue was capable of repetition.
    - Reversing as arbitrary and an abuse of discretion the PELRB's determination that PEBA applied to court employees, "on the basis of grounds asserted[,] … and … the arguments and authority contained in" the Second Judicial District Court's statement of appellate issues and reply.

22. *Callahan v. NM Federation of Teachers-TVI*, 2006-NMSC-010 (Feb. 22, 2006).
    - A compensatory 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. Additionally, the PELRB and local boards lack authority 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 such claims cannot be brought before a Labor Relations Board and must instead be filed in District Court.

23. *United Steel Workers of America, Local 9424 v. City of Las Cruces*, 3d Judicial Dist., Case No. CV-2003-1599 (April 1, 2005, J. Robles).
    - Ruling that the City of Las Cruces' refusal to provide the Union with bargaining unit members' home addresses constitutes a refusal to bargain in good faith, in violation of the local ordinance and PEBA, and ruling that City Resolution 00-136 is void as inconsistent with PEBA to the extent it forbids disclosure of the home addresses of bargaining unit employees to the Union.

24. *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors*, 1998 NMSC 20,125 NM 401.
    - To be grandfathered under § 26(A), 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. Thus, to remain grandfathered, provisions of a grandfathered labor ordinance or resolution may not deny the right to bargain collectively to any public employees who have been afforded this right under PEBA. Where a provision of a grandfathered ordinance or resolution does not meet the requirements under § 26(A) for grandfathered status, the particular provision shall be denied grandfathered status, not the ordinance or resolution as a whole.

25. *Las Cruces Professional Fire Fighters v. City of Las Cruces* ("*Fire Fighters* II"), 1997 NMCA 31, 123 NM 239.
    - Holding that the Las Cruces Fire Department's no-solicitation rule that encompassed rest breaks, lunch time, and residential hours presumptively violated § 19(B), and the city made no 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; thus, the record supported a finding that enforcement of the rule constituted a prohibited employer practice.

26. *Las Cruces Professional Fire Fighters v. City of Las Cruces* ("*Fire Fighters* II"), 1997 NMCA 44, 123 NM 329 (1996).
    - Local boards approved by the PELRB under § 10 are required to follow all procedures and provisions of the Act, and therefore must follow PEBA's definition of "supervisor" where the local ordinance's definition of supervisor differs.

27. *City of Las Cruces v. PELRB*, 1996 NMSC 24, 121 NM 688.
    - The PELRB rule providing for the confidentiality of a showing of interest in support of a petition for representation, *See,* NMAC 11.21.1.21, is an authorized exception "as otherwise provided by law" to the Inspection of Public Records Act (IPRA), under § 14-2-1(F) of IPRA.

BOARD DECISIONS

1. *In re: Luis Lopez v. Belen Police Dep't, Robert Miller and Dan Robb,* PELRB No. 101-14. Case opened 1/14/2014 alleging improper IA investigation and denial of disability accommodations in retaliation for union activities. Voluntary Dismissal entered after PPC was withdrawn.

2. *In re: Sarah Yarbrough v. Valencia Regional Communications Center, Christine Nardi, Kristina Benavidez and Shirley Valdez,* PELRB No. 102-14. Case opened 1/14/2014 alleging retaliation and denial of disability accommodation for union activities. PPC was found to be inadequate after initial review the Executive Director summarily dismissed the complaint after Complainant failed to withdraw or supplement the PPC.

    - The dismissal was not appealed to the Board and the case was closed on 4/11/2014.

3. *In re: AFSCME, Council 18 v. City of Belen*, PELRB No. 103-14. Case opened 1/28/2014 alleging failure to maintain *status quo*, making significant alterations to employment policies after petition for recognition but prior to union election.

    - PPC withdrawn and Director issued a voluntary dismissal 5/2/2014.

4. *In re: NEA-SF v. Santa Fe Public Schools,* PELRB No. 104-14. Case opened 2/7/2014 alleging failure to bargain payment of stipends. A mutual agreement to dismiss was filed 2/21/2014 and the Director issued a Voluntary Dismissal the same day. File closed on 4/10/2014.

5. *In re: Chavez v. Captive Group*, PELRB No. 105-14. Case filed 2/21/2014 alleging harassment and wrongful termination against a private sector employer. After initial review the Director issued a summary dismissal for failure to state a claim. Case closed on 2/25/2014.

6. *In re: AFSCME v. NM Children Youth and Families Dep't.,* PELRB No. 106-14. Case opened 3/5/2014 alleging violation of the CBA and PEBA by removing a position from the bargaining unit through reclassification.

    - PPC withdrawn and a voluntary dismissal entered by the Director on 5/28/2014.

7. *In re: ZFUSE (AFT) v. Zuni Public School District*, PELRB No. 107-14. Case opened 5/28/2014 alleging refusal to bargain changes unilateral changes to the curriculum. PPC was withdrawn and the Director issued a voluntary dismissal 4/29/14.

    - Case closed on 5/28/2014 after Board review.

8. *In re: CWA, LOCAL 7076 v. State of New Mexico*; PELRB No. 108-14. Case opened 3/25/2014 alleging unilateral changes to the information previously provided to the Union for contract negotiations.

    - Voluntary dismissal was entered 10/24/2014 and the case closed 12/9/2014 after Board review.

9. *In re: Los Alamos Federation of School Employees v. Los Alamos Public Schools*, PELRB No. 109-10. Case opened 2/18/2010 alleging failure to bargain changes made to teacher's duties. The case was held in abeyance pending lengthy settlement negotiations.

    - After a merits hearing in 10/28 and 10/29/2013. Hearing Officer's Decision in favor of the School District, dismissing the PPC was issued 12/7/2013. No appeal to the Board was taken and the case was closed 1/6/2014.

10. *In re: CWA v. Doña Ana County*, PELRB 109-14. Case opened 4/25/2014 alleging unilateral implementation of changes to personnel policies and procedures. Jurisdiction invoked on basis that local board is not functioning. The PPC was withdrawn on 5/4/2014.

    - The Director issued a Voluntary Dismissal on 5/6/14 and the case was closed 6/3/2014 after review by the Board.

11. *In re: AFSCME Council 18 v. Hidalgo County*, PELRB No. 110-13. Case opened 9/9/2013 alleging unilateral implementation of terms and conditions of employment. Jurisdiction invoked on the basis that the local board is not functioning. After a hearing on the merits 3/31/2014, the Hearing Officer issued his recommended decision on 4/8/2014.

    - The Hearing Officer granted a directed verdict in favor of the County in part, holding that changes to the Personnel Policies identified in this case were not substantial, material and significant because they made no change in the actual practices followed by the parties. Therefore, the changes were *de minimus* and insufficient to sustain the PPC.

    - The parties settled the claims remaining after the directed verdict, i.e. its past practice of shift bidding by seniority, which settlement was read into the record. The case was closed 7/15/2014.

12. *In re: Jessica Morgenstein v. E. David Atencio, Laura Mijares and the Jemez Valley School Board,* PELRB No. 112-13. Case opened 11/12/2013 alleging violations of 19(G) and (H) and multiple CBA articles arising out of an alleged failure to follow employment termination procedures.

    - The Director granted the District's Motion to Dismiss for timeliness and for failure to exhaust the CBA's grievance procedure on 1/27/2014. No appeal was taken to the Board and the case was closed on 4/9/2014.

13. *In re: AFSCME, Council 18 v. State of New Mexico*, PELRB No. 110-14. Case opened 4/25/2014 alleging withholding of data in violation of past practices.

    - A scheduled Hearing on the Merits was vacated and the parties settled with the union withdrawing the PPC on 12/92014. The Director issued a Voluntary Dismissal and closed the file on 1/16/2015.

14. *In re: AFSCME, Local 3999 v. City of Santa Fe,* PELRB No. 111-14. Case opened on 5/1/2014 alleging failure to provide information necessary for the grievance procedure.

    - The Director entered a Voluntary Dismissal after Complainant withdrew the PPC as part of a settlement agreement reviewed and approved on 7/14/2014.

15. *In re: NMCPSOA and APSOA v. City of Alamogordo,* PELRB No. 112-14. Case opened 5/5/2014 local ordinance's arbitration procedures and scope of negotiating provisions violate the PEBA.

    - Complaint was withdrawn and voluntary dismissal issued 6/19/2014. Closed file 7/15/2014.

16. *In re: Fleming v. N.M. Public Defender Dep't,* PELRB No. 113-13**.** Case opened 11/14/2013 alleging violations of CBA by failure to pay increases found to be due by an arbitrator's decision.

    - The case settled at the Status and Scheduling conference, a voluntary dismissal was entered by the Director and the case 4/17/2014.

17. *In re: AFSCME, Local 3999 v. City of Santa Fe*, PELRB 113-14**.** Case opened 5/9/2014 alleging interference in administration of the union by refusing to meet in Labor-Management Team meeting required under the CBA.

    - The parties settled their dispute and the PPC was withdrawn and Voluntary Dismissal entered by the Director on 6/4/2014. Case closed 8/12/2014.

18. *In re: Hilda Adame, Aurora Mims and AFSCME Council 18, v. Public Defender Dep't,* PELRB No. 114-13. Case opened on 12/27/2013 alleging intimidation, retaliation and discrimination based on union membership.

    - A hearing on the merits was held in Las Cruces, New Mexico on 11/14/2014. Prior to the Merits Hearing the parties resolved their claims pertaining to the individual complainant Aurora Mims; her claims were withdrawn.

    - Near the end of the Complainant's case-in-chief the parties' settled all remaining claims. After an *in camera* review of the settlement agreement on 12/4/14 it was approved by the Director. His approval was reviewed by the Board at its 1/13/15 meeting. File closed on 1/20/2015.

19. *In re: AFSCME v. Town of Edgewood,* PELRB 114-14**.** Case opened 5/12/2014 alleging bad faith bargaining and refusal to provide information necessary to bargain a successor contract.

    - The parties settled the claims, Complainant withdrew the PPC and the Director issued a Voluntary Dismissal on 8/12/2014.

20. *In re: AFSCME v. NM Children Youth and Families Dep't,* PELRB No. 115-14. Case opened 5/21/2014 alleging bad faith bargaining and failure to abide by the CBA impasse provisions particularly with regard to selection of an arbitrator.

    - The case was withdrawn and a voluntary dismissal issued 6/19/2014 after settlement before the scheduled hearing.

21. *In re: AFSCME, Local 3999 v. City of Santa Fe*, PELRB No. 116-14. Case opened 6/10/2014 alleging direct dealing. Director issued a Voluntary Dismissal 8/12/2014 after parties successfully negotiated a settlement agreement and PPC was withdrawn. Case closed 8/12/2014.

22. *In re: Los Lunas Firefighters v. Village of Los Lunas*, PELRB No. 117-14. Case opened 6/17/2014 alleging unilateral changes made to employee benefits without bargaining.

    - *The Executive* Director requested the Complainant either amend the complaint pursuant to NMAC 11.21.3.12 or 1.3.12(B), to present any additional evidence in support of the complaint that would cure the deficiency. No response was received. Therefore, in accordance with NMAC 11.21.3.12(C) the PPC was summarily dismissed and the file was closed on 9/29/2014.

23. *In re: Los Lunas Firefighters v. Village of Los Lunas,* PELRB No. 118-14. Case opened 7/8/2014, essentially restating the allegations of PELRB No. 117-14, that the employer made unilateral changes to employee benefits without bargaining.

    - On 9/29/14 after submitting legal briefs and affidavits the Hearing Officer determined that the PELRB did not have jurisdiction and therefore dismissed the PPC. No appeal was taken to the Board and the case was closed 10/14/2014.

24. *In re: AFSCME, Council 18 v. Grant County Dispatch Authority,* PELRB No. 119-14. Case opened 8/11/2014 alleging breach of the parties' CBA by failing to implement a negotiated COLA.

    - The parties settled the dispute and both withdrawal of the claim and a voluntary dismissal were filed 10/20/14. After the Board verified compliance with remedial measures required by the settlement agreement the case was closed 12/9/2014.

25. *In re: Marguerite Tanuz v. Santa Fe Public Schools*, PELRB No. 120-14. Case opened 8/12/2014 alleging harassment, intimidation and discrimination the Executive Director requested the Complainant either amend the complaint pursuant to NMAC 11.21.3.12 or to present any additional evidence in support of the complaint that would cure the deficiency. No response was received. Therefore, in accordance with NMAC 11.21.3.12(C), the PPC was summarily dismissed and the file was closed on 10/15/2014.

26. *In re: Robert Gallegos v. N.M. Children, Youth and Families Dep't,* PELRB No. 121-14. Case opened 9/9/2014 alleging violation of CBA's provisions setting a deadline in which discipline must be imposed.

    - After initial review, the Executive Director found the PPC to be facially inadequate for lack of verification. Although counsel did submit a necessary verification on 9/17/2014 an amended PPC was not received within the time permitted. Accordingly, the PPC was dismissed without prejudice. The case was subsequently re-filed as PELRB No. 124-14 and this case was closed on 10/15/2014.

27. *In re: CWA v. State of New Mexico*, PELRB No. 122-14. Case opened 9/8/2014 and is now pending. Union alleges unilateral changes to terms and conditions of employment and breach of the CBA pertaining to state employees' being on paid time for the filing and investigation of grievances.

    - The Hearing Officer issued a decision in favor of the Union on 1/26/2015. On appeal to the Board the Hearing Officer's Decision was upheld on 4/20/2015 except as to his finding of bad faith bargaining.

    - The Board's Order was appealed by the Union to the 2nd Judicial District Court 5/7/2015 as case D-202-CV-2015-03814. The Record on Appeal was submitted 6/7/15. CWA requested for oral argument and submitted its Statement of Appellate Issues on 6/29/15. Further scheduling is pending.

28. *In re: Luis Lopez v. City of Belen*, PELRB No. 123-14. Case opened 9/12/2014 alleging that the Employer took harsher discipline against the Complainant in retaliation for using a union representative in a disciplinary proceeding.

- The parties resolved the case requiring withdrawal of the PPC upon execution of the agreement. Withdrawal was received 11/21/14, Voluntary Dismissal entered and the case closed 12/9/14 after Board review.

29. *In re: Robert Gallegos v. N.M. Children, Youth and Families Dep't*, PELRB No. 124-14. Case opened 9/18/2014 as a re-filing of PELRB No. 121-14 alleging violation of a CBA's 45-day deadline for investigating allegations of employee misconduct and taking disciplinary action. The PPC also alleged union retaliation by failing to take discipline or dismiss charges within that deadline, which resulted in the worker losing a transfer.

    - A Hearing on the Merits was held in Santa Fe on 12/23/2014. After submission of closing briefs the Hearing Officer's Report and Recommended Decision was issued on 1/29/2015. The Hearing Officer determined several preliminary jurisdictional challenges raised by the Employer:

        - The PELRB had jurisdiction over the case; not the State Personnel Board (SPB).

        - Gallegos' withdrawal of his appeal to the SPB did not constitute a failure to exhaust administrative remedies, nor did his election to appeal the denial of his grievance to the SPB in lieu of arbitration constitute a waiver of his right to bring a PPC on the same facts.

        - Withdrawal of Gallegos' SPB appeal did not render this PPC moot nor did the PELRB's exercise of jurisdiction conflict with the State Personnel Act.

        - CYFD's challenge to the right of an individual employee to bring a PPC, as contrasted with his bargaining representative, is without merit. The coverage and protections of the Act extend to "public employees" NMSA (1978) § 10-7E-2. The Board clearly defines the term "Complainant" in a PPC as "…an individual, organization, or public employer, that has filed a prohibited practices complaint." NMAC 11.21.1.7 (5). In any PPC a party may represent his, her, or itself, or be represented by counsel or other representative. See NMAC 11.21.1.11.

    - On the merits of the claim the Hearing Officer, relying on Board precedent, held that the 45-day period in Article 24, Section 3 of the CBA operates as a "ceiling" within which an investigation must be completed and discipline initiated unless special circumstances warrant a greater period of time. The 45 days begin to run from the time a complaint is first levelled against an employee. The Employer is deemed to have acquired "knowledge of the employee's misconduct for which the disciplinary action is imposed" from that event. Furthermore, the exception to the 45-day timeframe based on an outside agency or division is involved in the investigation does not apply here because the investigation was conducted by CYFD's Employee Relations Bureau, which is not "an outside agency or division" within the meaning of Article 24, Section 3. CYFD established facts and circumstances requiring more than the 45-days in Article 24, Section 3 to impose discipline in this case and therefore, the Hearing Officer recommended that the PPC be dismissed on the ground that there was no violation of the contract.

    - Both parties requested review of the decision by the Board at its April 2015 meeting – Gallegos on the ground that the Hearing Officer erred in finding extraordinary circumstances justifying additional time beyond the 45-day deadline and the Employer for the jurisdictional issues. The Board upheld the Hearing Officer and dismissed the PPC on the ground that there was no violation of the contract. The Employer requested an Order *Nunc Pro Tunc* on 5/1/2015 requested that the Board Order be changed to reflect the fact that Gallegos did not appeal denial of a grievance to the SPB as stated in the Board's Order because under the parties' CBA grievances are heard only by arbitrators. Rather, what had been pending before the SPB was appeal of discipline. Simultaneously, the Employer filed an appeal to the First Judicial District Court as case No. 101-CV-2015-1157. The Motion for an Order *Nunc Pro Tunc* was initially denied but then granted after reconsideration at a special meeting called for that purpose on 6/19/2015. Upon granting the Order *Nunc Pro Tunc* the Employer withdrew its appeal on 6/26/15 and the file was closed on 7/27/2015.

30. *In re: NEA-Santa Fe v. Santa Fe Public Schools,* PELRB No. 125-14. Case opened 9/22/2014 alleging unilateral implementation of a stipend without bargaining and direct dealing. The parties settled the dispute.

The PPC was withdrawn and the Director issued a voluntary dismissal on 10/7/2014. The case was closed on 12/9/2014.

31. *In re: Central Consolidated Education Association v. Central Consolidated Schools,* PELRB No. 126-14. Case opened 10/10/2014 when union alleged violation of §§10-7E-19 (B), (C), (F) and (G) after an anticipated LMT meeting did not take place and the Employer refused to allow to allow the Union time on the "District Back-to-School" meeting agenda to address employees. The Union was allowed to speak at the new employee orientation but claims there is a past practice of being given time on both agendas.

- After a merits hearing March 30, 2015 the Hearing Officer dismissed the Union's claimed violation of §10-7E-19(G) because it alleged no violation of PEBA except other subparts of §19. The Union did not establish either a contract right or a binding past practice that was violated so that its claim of unlawful restraint or interference was also dismissed.

- The Hearing Officer's Report and Recommended Decision was upheld by the PELRB and no further appeal was taken. The case was closed 5/8/2015.

32. *In re: Central Consolidated Education Association, v. Central Consolidated School District,* PELRB No. 127-14. Case opened 10/16/2014 alleging violation of the CBA and interference with union business surrounding Union Representative access to school property.

    - After scheduling a Merits Hearing the case settled on 12/14/2014. Voluntary dismissal was entered after review of settlement by the Board at its 1/13/2015 meeting. File closed on 3/19/2015.

33. *In re: AFSCME, Council 18 v. Mesilla Valley Regional Dispatch Center,* PELRB No. 128-14**.** On 10/20/2014 the Union filed its PPC alleging interference, restraint and coercion arising out of disciplinary action taken against an employee who was also a Union officer. Union alleged that a required waiver of appeal rights in a prior discipline violates §15(B)'s right to present grievances and constitutes interference restraint or coercion prohibited by §19(B).Pursuant to a scheduling order the Employer moved for Summary Judgment on 1/9/2015.

    - The Hearing Officer granted Summary Judgment on 1/13/2015 concluding that the Union did not demonstrate sufficient facts requiring an evidentiary hearing on the question whether any of Ms. Diaz' union activities created anti-union animus, whether taken alone or in the aggregate nor that union animus was a motivating factor in the decision not to renew her employment contract nor that she was treated differently than any other employee because of her union activities.

    - After review by the Board at its March 2015 meeting, the Dismissal was upheld and the case closed 3/19/2015.

34. *In re: AFT v. Cuba Independent School District,* PELRB No. 129-14. This case was opened on 11/3/2014 alleging that termination of an employee union representative was retaliation, interference with the union and coercion in violation of PEBA §19(A); §19(B); §19 (C); and a violation of contract or PEBA rights in violation of §19 (G) and §19 (H).

    - Pursuant to a Scheduling Order the Employer moved for Summary Judgment on 1/9/2015; the Union responded on 1/16/2015. The Hearing Officer granted Summary Judgment in favor of the Employer on 2/6/2015 holding that:

        - The Union did not demonstrate the existence of a factual dispute requiring an evidentiary hearing on the question whether any of its employee's union activities, taken alone or in the aggregate, created anti-union animus, nor that any anti-union animus was a motivating factor in the decision not to renew her employment contract.

- The Union did not demonstrate the existence of a factual dispute requiring an evidentiary hearing on the question whether the employee was treated differently than any other employee based on her union activities.

- The Union did not demonstrate a material issue of fact that would require an evidentiary concerning whether the District interfered with, restrained or coerced the employee in the exercise of a right guaranteed pursuant to the PEBA

- The undisputed evidence reflects significant departures by the employee from the District's policies coupled with marginal performance followed by forewarning and progressive discipline. That evidence has not been refuted and Complainant may not rest on the mere allegations of its complaint in response to a Summary Judgment motion.

- Because alleged violation of PEBA § 5 (Interference and Coercion) were not supported, the union's §19(G) claims were without a basis in any section of PEBA other than §19. Accordingly, to avoid repetitive and duplicative liability that claim was dismissed.

- The undisputed evidence demonstrated legitimate, non-discriminatory reasons for the employee's termination that satisfy the contractual requirements at issue. Complainant may not rest on the mere allegations of its complaint in response to a Summary Judgment motion and so, the Union's claim for violation of §19 (H) was dismissed.

- The Union requested Board review of the Summary Judgment on 2/9/2015 and after a hearing held for that purpose at the Board's March 2015 meeting, the Board upheld the Hearing Officer's grant of Summary Judgment in favor of the School District without modification. No further appeal was taken and the case was closed 3/6/2015.

35. *In re: AFSCME, Council 18 v. Hidalgo County*, PELRB No. 130-14. On 11/3/2014 the Union filed a PPC alleging bad faith bargaining by direct dealing with bargaining unit employees regarding work schedules and that the Employer did not follow the impasse procedures in §10-7E-18 (B).

- The Employer filed a Motion to Dismiss and the Union filed a Motion for Summary Judgment on 2/13/2015. The Employer's Motion was premised on the grounds that the PPC referred to incorrect, inapplicable sections of the PEBA and that the PELRB lacks authority to grant the injunctive relief requested. The Hearing Officer denied the Motion on 3/2/2015 for the following reasons:

    - The PELRB follows New Mexico's courts in utilizing the liberal "notice pleading" standard and despite the erroneous references in the PPC the Employer was properly apprised of the charge against it.

    - The PELRB has the authority to enforce PEBA through the imposition of appropriate administrative remedies, (See, §10-7E-9(F)) including cease-and-desist orders, which are injunctive in nature. § 10-7E-23(A). Under the facts of this case, the Complainant has pled a violation of the PEBA and has requested relief appropriate to its claim.

    - Whether an impasse exists is a question of fact to be determined at an evidentiary hearing.

- The Union withdrew its PPC on 4/10/2015 and a Voluntary Dismissal was entered 4/13/2015. After review by the Board at its May 2015 meeting the case was closed on 6/29/2015.

36. *In re: NMCPSO v. Santa Fe County*, PELRB No. 131-14. Case opened on 11/17/2014 alleging failure to bargain changes in working conditions and breach of the CBA after the County issued "Special Order" concerning Court Security Officer assignments.

- The County moved for Summary Judgment on 5/10/2015. The Motion was denied on 5/27/15 because there were unresolved issues of material fact as to whether the posted notices at issue represent "changing posts" as distinguished from "changing shifts"; and, if so, whether "changing posts" is a retained management right

within the meaning of the parties' CBA. Further factual development was needed to establish whether there were ambiguities in the CBA on this point. An evidentiary hearing was also necessary to establish the parties' past practice with regard to the Court Security Division generally and Magistrate Court Security specifically.

- A Hearing on the Merits was scheduled for 6/22/2015. Prior to the Hearing the parties settled their dispute on 6/12/ 2015 and a Voluntary Dismissal was entered on 6/15/2015. After review at the Board's July 2015 meeting the file was closed on 7/17/2015.

37. *In re: AFSCME, Council 18 v. Hidalgo County*; PELRB No. 132-14. Case was opened on 11/24/2014 with the filing of a PPC alleging that in September of 2014 the Employer began direct dealing with bargaining unit employees regarding work schedules in violation of §§ 19(F) ("refuse to bargain in good faith with the exclusive representative") and 19(G) ("refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule").

- The County moved to Dismiss the PPC on 2/10/2015 on the grounds that a Settlement Agreement with Respondent in PELRB No. 110-13 included provisions for shifts, shift bidding, and shift assignments that ceased shift bidding October 1, 2014, after which time shift assignments are made in the sole discretion of the Sheriff. It is undisputed that a collective bargaining agreement has not been reached and without a collective bargaining agreement, the terms of the Settlement Agreement control, providing the Sheriff with complete discretion with regard to shifts. The County also asserted as it had in prior cases that the PELRB is without jurisdiction to grant injunctive relief.

- The Hearing Officer determined that the Settlement Agreement in PELRB 110-13 does not require dismissal because the PPC is premised on the Employer's direct dealing with bargaining unit employees regarding work schedules, as contrasted with unilateral action regarding work schedules. The question of whether the Employer engaged in direct dealing is not foreclosed by the fact that Hidalgo County's Sheriff has sole discretion to set work schedules. It awaits further factual development by means of an evidentiary hearing on the merits as to whether any direct dealing improperly affecting the bargaining relationship took place. The Union's typographical error did not require dismissal in light of the "notice pleading" standard. Finally, the nature of the injunctive relief in this case involved enforcing compliance with the PEBA, which this Board has the authority to do under §9(F). Also, §23(A) implies jurisdiction to issue injunctive relief. Cease-and-desist orders, which are injunctive in nature, are a common remedy under both the PEBA and the National Labor Relations Act.

    - A Hearing on the Merits was scheduled for 3/25/2015; however the parties settled their dispute on 3/18/2015. As part of the settlement the PPC was withdrawn on 3/20/2015 and a Voluntary Dismissal entered on April 13, 2015 after review of the case by the Board at its April 7, 2015 meeting. The file was closed on 4/13/2015.

38. *In re: AFSCME, Council 18 v. Santa Fe County,* PELRB 133-14. AFSCME filed this PPC on 12/23/2014 alleging that the County withheld information necessary to administer the CBA in violation of §§19(A), (B), (C), (F) and (H). After a Status and Scheduling Conference held 1/20/2015 the parties settled their dispute and the Union withdrew its PPC on 2/2/2015. A Voluntary Dismissal was entered on 2/11/2015 and after review by the Board at its February meeting the case closed on 3/6/15.

39. *In re: CWA Local 7076 v. New Mexico Public Education Dep't,* PELRB No. 134-11. Case opened 6/16/2011 alleging failure to bargain a furlough and reduction in force in violation of Sec 19 A,B,C,D,E,F, G and H.

    - On 9/27/2013 the Hearing Officer decided in favor of the Employer finding that the duty to bargain the effects of the layoffs identified in this case had been discharged prior to implementation of the RIF, but that the union waived bargaining the effects of the layoff at issue by failing to make a timely demand for bargaining. The Employer's Counterclaims were found to be without merit and were dismissed. The Union appealed the Decision first to the Board which upheld the Hearing Officer on 11/26/12.

- The Employer appealed to District Court who reversed on the issue of waiver and remanded to the Board for further findings and conclusions consistent with the reversal. Supplemental findings were issued 9/30/2013 from which no appeal was taken. On 12/12/2013 the Board found that the PED committed a prohibited labor practice by intentionally withholding from the union information relevant to enforcing or monitoring compliance with the CBA or otherwise impairing the Union and its President in fulfilling her statutory duty to represent all employees in the bargaining unit. Because it appeared that that the effects of the RIF identified by the union in this case were covered by the parties' contract a return to *status quo ante* requested by the union was not an appropriate remedy. Instead, the PED was ordered to cease and desist from failing and refusing to provide relevant information upon request and to refrain from such similar conduct in the future, and to post Notice of its violation.

- Based on representations by both parties at the 3/26/2014 Board meeting, the PELRB determined that PED complied with its Order following supplemental findings after remand and the case was closed 4/11/2014.