

# 2022 ANNUAL REPORT

New Mexico Public Employee Labor Relations Board



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## INTRODUCTION

New Mexico's Public Employee Bargaining Act (PEBA), (NMSA 1978 §§ 10-7E-1 through 10-7E-26, 2020)), vests the Public Employee Labor Relations Board (PELRB) with authority over all general collective bargaining matters between employee organizations or individual public employees and either state agencies or units of local government that have not established a local labor board. The PELRB also has jurisdiction to ensure that those local labor ordinances and resolutions comport with the PEBA.

The Board's activities to enforce the PEBA fall within one of the following categories:

1. Representation proceedings.
2. Review of Local Board Ordinances, Resolutions or Charters and their compliance with NMSA 1978 § 10-7E-10(D), (E), (F) and (G) (2020).<sup>1</sup>
3. Prohibited Labor Practice proceedings
4. Impasse Resolution
5. Rulemaking Activity

As reported in the prior reporting period, after the PEBA was amended effective July 1, 2020, 37 local boards ceased to exist. Subsequently, six more local boards<sup>2</sup> ceased to exist after January 1, 2022 either because they did not submit the necessary affirmation required by subsections 10-7E-1 (D) and (E), or because the local board experienced a vacancy for a period exceeding sixty days in length. See NMSA 1978 § 10-7E-10(F) (2020). Accordingly, not only did cases pending before those boards at that time come under this Board's jurisdiction, but any filings since that time come under our jurisdiction as well. This resulted in a small but noteworthy increase in the number of cases filed with this Board.

In terms of the number of new cases in this reporting period, an amendment to University Research Park and Economic Development Act (URPEDA), resulted in higher number of cases filed with this Board than did the oft-discussed 2020 amendment to the PEBA. In

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<sup>1</sup> (NMSA 1978 §§ 10-7E-(D) through (H) provide: " 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."

<sup>2</sup> The six local boards that ceased to exist after January 1, 2022 were Central New Mexico Community College (CNM), Doña Ana County, Las Cruces, NMSU, San Juan College and Sandoval County.

August of 2021, the United Health Professionals of New Mexico, AFT, AFL-CIO filed a Petition seeking to represent nurses and other employees at UNM Sandoval Regional Medical Center (SRMC) as the exclusive representative for collective bargaining. See (PELRB 309-21). SRMC filed a Motion to Dismiss that Petition for lack of jurisdiction because SRMC is a jointly public and private corporation created under New Mexico's University Research Park and Economic Development Act, NMSA 1978, § 21-28-1 to -25 (2007) ("URPEDA"), which specifically provides that research park corporations like SRMC "shall not be deemed an agency, public body or other political subdivision of New Mexico." The PELRB Director found and concluded (1) that the URPEDA's application to SRMC's status as a "public employer" was superseded by the subsequently enacted Public Employee Bargaining Act so that SRMC is a public employer for purposes of the PEBA; (2) that SRMC's regular, non-probationary employees were public employees within the definition of PEBA; (3) that the PELRB has both subject matter and personal jurisdiction over SRMC and the Petition for Certification.

SRMC sought and received an Alternative Writ of Mandamus from the Second Judicial District Court directing the PELRB to cease all proceedings related to the Petition and to dismiss the Petition for Certification for lack of jurisdiction. The Union appealed from the Writ on February 4, 2022 (see A-1-CA-40178) and that case remains on appeal as of this report.

While the appeal was pending, the legislature amended the URPEDA to specifically state that research parks created pursuant to that Act is "a public employer for the purposes of the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978] if it owns, operates or manages a health care facility or employs individuals who work at a health care facility." (NMSA 1978 21-28-7(B)(2) (2022)). After the URPEDA was amended staff received three new petitions for representation of SRMC employees and seven prohibited practices complaints against SRMC. Those Petitions and Complaints represent a notable increase in case filings and are discussed in detail in the Operations Summary, below.

### **Representation Cases**

Under the PEBA, one of the Board's major functions is to determine the appropriateness of collective bargaining units based on guidelines established in PEBA and relevant case law. The Board also determines whether the employees in an appropriate bargaining unit wish to be represented by a particular labor organization. This is principally done by card check or a secret ballot elections supervised by the Board. Employee representatives seeking to represent a bargaining unit file a petition with the Board that must be supported by at least 30 percent of the employees in the unit.

Units may be certified without conducting elections if an employer does not question either the appropriateness of the unit or the majority status of a petitioning labor organization and agrees with the petition to certify the proposed unit or if the petitioning union submits authorization cards from a majority of the employees in an appropriate bargaining unit. Upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, this Board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The

employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

Once certified, a labor organization is the exclusive bargaining agent for the employees in the bargaining unit. As exclusive representative, the union owes a duty to represent all employees in the recognized bargaining unit without discrimination or regard to membership in the labor organization. PEBA § 15(A).

Just as employees may petition the Board for recognition of a collective bargaining representative, they may also seek decertification of a previously recognized representative. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if 30 percent of the public employees in the bargaining unit file a petition for a decertification election. See PEBA § 16. Decertification elections are held in a manner substantially the same as that for certification.

The Board's rules provide a procedure for parties to petition the Board for amendment of certification to reflect changes such as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. (NMAC 11.21.2.35). The Board has also established procedures to clarify the composition of an existing bargaining unit where the 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, (NMAC 11.21.2.37) and for the accretion of unit employees who do not belong to an existing bargaining unit, but who share a community of interest with the employees in the existing unit. (NMAC 11.21.2.38). The accretion procedure is frequently used to allocate newly created positions to appropriate bargaining units or to merge two or more existing units.

All petitions for recognition, decertification, amendment or clarification of a unit or its representative, such as described above, are generally referred to as a "representation proceeding" on which the Board maintains data. (NMAC 11.21.2.35).

Staff notes a general increase in the number of Representation Petitions filed during the reporting period, with 28 petitions filed in 2022 compared with 17 filed in 2021. The increase is an anomaly resulting from 14 joint petitions filed by the State and the Communications Workers of America seeking clarification of their bargaining units due to changes in job titles and classifications that are largely undisputed. Please refer to the Operations Summary herein for details on all representation issues brought to the Board for resolution during the 2022 reporting period.

### **Monitoring Local Board Ordinances, Resolutions or Charters**

At the Board's January 4, 2022 meeting it acknowledged those local boards that had timely submitted the required affirmations and directed staff to assume jurisdiction over matters pending before those local boards that did not meet the December 31, 2021 deadline set by NMSA 1978 §§ 10-7E-10(E) (2020). The next period during which local boards must take

action to continue in existence does not occur until the next reporting period, November 1 and December 31 of 2023. However staff continues to monitor local board operations to ensure that there are no vacancies exceeding sixty days in length prohibited by subsection 10(F) or that those entities operating under local boards have not repealed their local ordinances, resolutions or charter amendments authorizing continuation of the local board; or that the local boards themselves have not voted to cease operations. See NMSA 1978 § 10-7E-10(G).

### **Prohibited Labor Practice Cases**

The Board enforces and protects the rights guaranteed both public employers and employees under PEBA through the investigation and adjudication of charges of prohibited labor practice charges (PPC). The Board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies. (NMSA § 10-7E-9).

After initial screening and investigation of a PPC but before conducting a hearing on the merits of any claim the Board's Director will facilitate settlement discussions in order to further the Board's preference for peaceful resolution of disputes thereby promoting its statutory objective of "promoting harmonious and cooperative relationships between public employers and public employees".

If the complaint cannot be settled by the parties prior to the hearing, the matter shall proceed to hearing. The hearing examiner has discretion to examine witnesses, call witnesses, or call for the introduction of documents (NMAC 11.21.3.16) after which the hearing examiner issues his or her report and recommended decision.

A party may obtain Board review of the report and recommended decision by filing a notice of appeal within ten days following service of the hearing officer's report, whereupon the Board will either determine an appeal on the papers filed or, in its discretion, may also hear oral argument. The Board's Decision may adopt, modify, or reverse the hearing examiner's recommendations or take other action it may deem appropriate such as remanding the matter to the hearing examiner for further findings or conclusions. Even when no appeal to the Board is taken the hearing examiner's decision is transmitted to the board which may pro forma adopt the hearing examiner's report and recommended decision as its own. In that event, the report and decision so adopted shall be final and binding upon the parties but shall not constitute binding board precedent. See NMAC 11.21.3.19. The Board is empowered to remedy PPCs through the imposition of appropriate administrative remedies (PEBA § 9). The Board has authority to petition the courts for enforcement of such orders. See, PEBA § 23.

Staff notes a slight decline in the number of Prohibited Practices Complaints filed during the reporting period compared with the prior reporting period. Only one of those cases was transferred to this Board that was pending before a local board that ceased to exist pursuant to § 10-10-7E; i.e. *Las Cruces Police Officers' Ass'n v. City of Las Cruces, et al.*; PELRB 105-22. In the prior reporting period, 2021, we experienced an approximately 48% increase in the number of complaints compared with the 2020 reporting period. However, that increase

proved not to be a trend, as the number of Complaints returned to prior norms, declining from 33 filings in 2021, to 25 in 2022. That number approximates the 23 PPCs filed in 2020. Please refer to the Operations Summary herein for details on the Prohibited Practices Complaints brought to the Board for resolution during the 2022 reporting period and further analysis of the apparent anomaly that is the number of cases filed in the prior reporting period.

### **Impasse Resolution**

The Board has limited powers related to bargaining impasses between employers and employees under the Act, acting primarily as a monitor and facilitator of mediation and arbitration performed by other entities. Similar but distinct procedures apply to the State and its employees and employees of other political subdivisions of the state or special districts under the PEBA. Although both procedures call for mediation of bargaining impasses under the auspices of the Federal Mediation and Conciliation Service impasse procedures followed by the state and exclusive representatives for state employees are employed within a specific time frame pursuant to Section 17 of the PEBA and the Uniform Arbitration Act [44-7A-1 NMSA 1978].

The impasse procedure followed by all other public employers and exclusive representatives is similar in that, if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations and unless the parties agree on a mediator one from the FMCS is assigned. The specific time frame for requesting bargaining, declaring impasse and proceeding to arbitration applicable to the state as an employer are not applicable to public employers other than the state. If impasse continues after a thirty-day mediation period, either party may request arbitration from the FMCS. As under the process followed by the State as an employer the arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offers and is "final and binding" as that term is understood under Section 17 of the PEBA and the Uniform Arbitration Act [44-7A-1 NMSA 1978].

Please refer to the Operations Summary herein for details on the single impasse proceeding filed during the 2022 reporting period.

### **Rulemaking Activity**

The PELRB is empowered by NMSA § 10-7E-9(A) to promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for the designation of appropriate bargaining units, the selection, certification and decertification of exclusive representatives and for the filing of, hearing on and determination of complaints of prohibited practices. The Board has enacted such rules and over time the need to amend those rules may arise either to correct apparent errors or simply to adjust procedures to better serve the Board's mission or to comport with changes in the substantive law.

Amendments to the PEBA in 2020 allowed for a determination of majority support and subsequent certification of representation to be predicated on a card count instead of an

election if a sufficient showing of interest is presented to the Board. After processing several petitions using a card check, it became clear to staff that the existing rules for conducting elections could not be easily adapted to a card count and changes to the Board's rules were recommended. Drawing from these experiences conducting card checks, the PELRB engaged in rulemaking in 2022 to clarify the procedures to follow when conducting a card check. The rules were also amended to reflect the fact that no new local boards could be created. Below is a summary of the rule changes which took effect on August 9, 2022.

“Act” has been capitalized throughout the rules where it refers to the Public Employee Bargaining Act.

**11.21.1.7 DEFINITIONS:** Changes to this section add a definition for “challenged card”.

**11.21.2.8 COMMENCEMENT OF CASE:** Changes to this section adjust for the availability of a card check in lieu of election after the 2020 amendments to the PEBA.

**11.21.2.11 SHOWING OF INTEREST:** The Board amended this rule to clarify the requirements for electronic signatures; codify the Board's existing practice on the timeliness of interest cards; and specify the requirements for rebutting the presumption of validity of a showing of interest.

**11.21.2.12 INFORMATION REQUESTED OF PARTIES:** This change requires an employer to provide a new list of employees in a proposed unit if the description of the unit changes after the filing of the petition and removes a reference to voting to accommodate the 2020 amendments to the PEBA.

**11.21.2.13 INITIAL INVESTIGATION OF PETITION:** These changes re-order the subsections and add a reference to 11.21.2.11.

**11.21.2.33 CERTIFICATION:** These changes add language to accommodate the card check allowed by the 2020 amendments to the PEBA and separate the section into subsections.

**11.21.2.34 OBJECTIONS:** The Board changed this rule by allowing for objections to a card count as well as an election.

**11.21.2.42 DISCLAIMER OF INTEREST:** Language had been added calling for the dismissal of a petition for decertification if the exclusive representative disclaims their representative interest in a bargaining unit.

**11.21.5** The title of this part was changed from “**APPROVAL OF LOCAL BOARDS**” to “**LOCAL BOARDS**”, to reflect the fact that no new labor boards can be created after the 2020 amendments to the PEBA.

**11.21.5.6 OBJECTIVE:** These changes align the rule with the fact that no new labor boards can be created.

**11.21.5.8 APPLICATION FOR APPROVAL OF A LOCAL BOARD ORDINANCE, RESOLUTION OR CHARTER:** These changes align the rule with the fact that no new labor boards can be created, but existing boards must submit biennial affirmations pursuant to the 2020 amendments to the PEBA.

**11.21.5.9 CONTENTS OF APPLICATION:** This section was deleted entirely because no new Boards may be created and subsequent sections renumbered.

**11.21.5.10 CONTENTS OF APPLICATION FOR VARIANCE FROM BOARD APPROVED TEMPLATES:** Similarly, these changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

**11.21.5.11 SUBMISSION OF RULES:** These changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

**11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:** These changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

**11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS:** These changes separate the rule into subsections and add language reflecting the reporting requirements contained in the PEBA.

### **Adjudication and Settlement**

The Board's adjudicatory function serves the critical purpose of resolving those PPCs that could not be settled amicably among the parties themselves. Historically, the claims most often requiring adjudication are those involving alleged discrimination or retaliation for union activities or claims that either labor or management have refused or failed to comply with the Public Employee Bargaining Act or board rule or have refused or failed to comply with a collective bargaining agreement. Adjudication of disputes most commonly arises in the context of PPCs but the Board is also often called upon to adjudicate questions concerning positions' inclusion in or exclusion from a particular bargaining unit, appropriateness of a proposed unit or majority status, commonly referred to as "QCRs".

Over the past several reporting periods, at least 30% of those cases brought to the Board requiring adjudication of some issue, settled without the necessity of a hearing on the merits of their respective issues. In the current reporting period, 32% of cases settled prior to hearing. The number of cases settled in this reporting period, therefore, is consistent with those over the years, indicating that the ongoing prompts to encourage and facilitate settlement of disputes built into the hearing scheduling procedure, are effective and should continue.

As in prior reporting periods, PPCs constituted the most commonly filed actions requiring adjudication. Of the 25 PPCs filed in 2022, three were filed against School Districts, five were filed against State agencies (excluding UNM-related medical centers), three against municipalities, three against counties, eight against UNM related medical centers, with the remaining three cases filed against a “Special District”, i.e. the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA). Further information about these cases can be found in the Operations Summary, *infra*.

### **Case Resolution Time Frame**

One of the PELRB’s primary performance measures is the number of filed PPCs resolved within 180 days. The combined average number of days for resolution of all filed PPCs during this reporting period was 121 days, well within the stated goal. This compares as follows to prior years:

- 2021 average: 130 days
- 2020 average: 171 days

The average number of days for closure of all Representation Petition filed in the reporting period was 92 days, again, well within the stated goal. This compares as follows to prior years:

- 2021 average 96 days
- 2020 average: 73 days

### **Case Sources**

Analysis of cases filed in 2022 shows that the state and state agencies generated the most case filings accounting for 19 of the 53 cases filed in 2022 (36.5%). It should be noted however, that 14 of those 19 cases are unit clarification proceedings in which Communications Workers of America (CWA) and the State Personnel Office jointly seek to clarify the composition of the state agency units by updating represented classifications through what is largely an uncontested re-naming of the represented positions. The entities next most frequently filing concern the state’s universities and their related medical institutions such as University of New Mexico Hospitals (UNMH) and the UNM Sandoval Regional Medical Center (SRMC). Those entities account for 11 of the 53 cases filed (20.75%). As with the cases filed by CWA this statistic is an anomaly in that 11 of the 13 cases concern SRMC after its hotly contested recognition as a public employer subject to the Public Employee bargaining Act in 2021 and multiple PPCs filed by against SRMC for its resistance to organizing efforts by International Association of Machinists and Aerospace Workers and United Health Professionals of New Mexico, AFI.

The combined 56.8% of all cases filed in the current reporting year involving either the State or State-affiliated hospitals, represents a departure from recent reporting years in which municipalities and counties accounted for the majority of cases filed. By comparison, in the prior reporting year, public universities and their related hospitals were involved in only 9% of the filed cases (five cases). State agencies accounted for a total of 12% (seven cases) in 2021.

But for the unusual State and State-affiliated hospital case filings in 2022 as summarized above, municipalities and counties would comprise the largest source of filings in 2022 as in the past several reporting periods, with a combined 13 cases filed (eight cases involving counties; five concerning municipalities or 30.6% of the total). This represents a decline from the 21 of the 58 cases opened in the 2021 reporting period or 36.2% of all cases filed that year.

Public schools were the next leading source of cases comprising 11.3% (six cases) of all cases filed during the reporting period. The remainder of the case filings involved ABCWU, comprising 6% (3 cases).

Communications Workers of America (CWA) filed the majority of cases during the reporting period. (16 cases or 35% of the total cases filed – See Table D appended to this report). As noted 13 of those 16 cases are a “one out” in that they are unit clarification proceedings seeking to clarify the composition of the state agency units CWA represents.

AFSCME and its affiliates, Local 3022 and Local 3227, representing employees of a “Special District” (ABCWUA), accounted for next largest number of filings - 7 out of 58 new case filings or 12% of the total. Fraternal Order of Police affiliated unions filed two cases (3% of the total cases) and one case was brought by the IAFF.

## **2022 OPERATIONS SUMMARY**

A total of 53 case files in all categories were opened in 2022, compared to 58 cases filed in the prior reporting period. Although the number of case filings declined slightly in this reporting period, (-9%) from 2021, the overall trend is an increasing number of cases filed. Prior to 2021, the largest number of total cases filed was 46 in 2014 and the average number of cases filed over the preceding 9-year period is 38. It remains to be seen in future reporting periods whether the apparent trend of increasing case filings over the past few years, continues. It is reasonable to assume that the trend will continue because of the 37 local boards that ceased to exist in 2020-2021.

More detailed analysis the statistical data by case category are detailed below:

### **Local Boards**

Staff continued to monitor those remaining local boards operating in 2022 to ensure that they remained fully functional without vacancies on their boards for more than sixty days and that they have not been voted out of existence by the public employer or by the local board itself. See NMSA 1978 § 10-7E-10(F) and (G) (2020). Although there were no local boards that ceased to exist in this reporting period in addition to those that ceased to exist in 2021, there was one case transferred to this Board previously under the jurisdiction of a local board in the City of Las Cruces, i.e. *LCPOA v. Las Cruces*; PELRB 105-22. See NMSA 1978 § 10-7E-10(I), providing that whenever a local board ceases to exist, all matters pending before such local board shall be transferred to the board for resolution. Resolution of that case is reported in the Prohibited Labor Practice Cases section below.

## **Prohibited Labor Practice Cases**

Of the 53 new case filings in 2022, 25 were prohibited practices complaints (PPCs), compared with 33 PPCs filed in 2021. This represents an approximate 25% decrease in complaints from the preceding reporting period. However, it is a slight increase over the 9-year average number of PPCs filed (23 cases). Neither the increase over the average nor the decrease from the prior reporting year are considered by staff to be statistically significant but is consistent with the long-term trend toward an increasing number of cases filed overall. That staff experienced a small increase in the average number of PPCs filed over time while simultaneously experiencing a decrease in the number of such cases filed compared to the prior year, may mean that the increase in PPC case filings has “plateaued” and will remain fairly constant in the coming years. It remains for future Annual Reports to analyze whether the predicted trend has held and whether the PELRB is fully staffed.

The PPCs filed in 2022 and their status is summarized below:

1. *TECS-NEA v. Tierra Encantada Charter School*; PELRB 101-22 (February 5, 2022). Complainant alleged violations of Section 19(B), and Section 19(C) of the PEBA when the school Director changed a leave policy affecting bargaining unit employees after the certification of TECS-NEA as the exclusive representative of the bargaining unit. Before a scheduled hearing on the Merits the parties settled their dispute and the Union withdrew its complaint. The case was voluntarily dismissed and the file closed on April 7, 2022.
2. *AFSCME v. Rio Rancho*; PELRB 102-22 (February 28, 2022). Complainant alleged violations of Section 19(F), and Section 19(H) of the PEBA when the city unilaterally changed the uniform policy for some bargaining unit employees without bargaining. Before a scheduled hearing on the Merits the parties settled their dispute and the Union withdrew its complaint. The case was voluntarily dismissed and the file closed on April 7, 2022. The file was closed on April 7, 2022.
3. *DFUSE v. Dulce Independent Schools*; PELRB 103-22 (March 14, 2022). Complainant alleged violations of Section 19(A), Section 19(B), Section 19(E) and Section 19(G) of the PEBA when the School District subjected bargaining unit members to discipline after they brought some safety concerns to the School Board, bypassing the usual chain of command. Before a scheduled hearing on the Merits the parties settled their dispute and the Union withdrew its complaint. The case was voluntarily dismissed and the file closed on April 7, 2022. The file was closed on July 22, 2022.
4. *MCFUSE v. Gallup-McKinley Schools*; PELRB 104-22; 27-PELRB-2022 (November 28, 2022). The Union alleged violations of Section 17(A), and Section 19(F) of the PEBA when the School District unilaterally changed the work requirements of teachers without bargaining. On September 30, 2022, the Board’s Hearing Officer determined that that the District unilaterally eliminated the Instructional Coach position and reassigned its duties outside of the bargaining unit, a per se prohibited labor practice by refusing to bargain collectively in good faith with the exclusive representative in violation of NMSA 1978, § 10-7E-19(F) (2020). The Hearing

Officer recommended rescission of the change, restoration of the status quo, and bargaining to agreement or impasse on elimination of the position and re-assignment of its duties. The School District sought Board review of the Hearing Officer's Recommended Decision and at a special meeting for that purpose, the Board adopted the Hearing Officer's Report and Recommended Decision and Ordered to rescind its action, cease and desist from all violations of the PEBA as found and post notice of its violation and assurances that it will comply with the law in the future in a form acceptable.

On December 20, 2022 Gallup-McKinley Schools filed its Notice of Appeal the Board's Decision to the 2<sup>nd</sup> Judicial District Court in Case No. D-202-CV-2022-07617. The Record on Appeal is due January 20, 2023. Consequently, disposition of this case will be reported in the next reporting period.

5. *Las Cruces Police Officers' Association v. City of Las Cruces*; PELRB 105-22 (May 9, 2022). This case was transferred to the PELRB upon the dissolution of the Las Cruces local board. The union alleged violations of the City's Labor Management Relations Ordinance when the city failed to credit an employee's years of service when he transferred from the Police Department to Codes Enforcement. Before a scheduled hearing on the Merits the parties settled their dispute and the Union withdrew its complaint. The case was voluntarily dismissed and the file closed on July 18, 2022.
6. *AFSCME, Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*; PELRB 106-22; 18-PELRB-2022 (August 10, 2022). The Union alleged various violations of the Public Employee Bargaining Act after the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) refused to negotiate with the Union over a successor contract, after the Union failed to request bargaining within a 30-day window called for in Article 61 of the parties' CBA. The ABCWUA denied any violation of the PEBA because Complainant's request to negotiate was untimely under Article 61 of the applicable collective bargaining agreement. Both parties timely filed competing Motions for Summary Judgement. The Hearing Officer determined that the Employer was entitled to judgment as a matter of law with regard to Complainant's claims brought under NMSA 1978 §§ 10-7E-15; 10-7E-22; 10-7E-24; 10-7E-25 and 10-7E-26. However, the Union was granted judgment in its favor on its claims that ABCWUA committed a prohibited labor practice in violation of § 10-7E-19(F) by its refusal to engage in negotiations. ABCWUA was ordered to (1) Cease and desist from all violations of the PEBA as set forth in the Decision and immediately begin good faith negotiations with AFSCME, Local 3022 with the objective of reaching a successor collective bargaining agreement before the current contract's expiration on June 30, 2022; (2) Post notice of the foregoing violations of the PEBA together with its assurances that it will comply with the law in a form acceptable to the Union in all places where notice to employees is commonly posted. ABCWUA sought Board review of that Recommended Decision and the Board affirmed the Hearing Officer. The case was closed on September 27, 2022.
7. *NMCP SO v. Santa Fe County*; PELRB 107-22 (May 19, 2022). Complainant alleged violations of Section 5(B), Section 19(B), Section 19(E) and Section 19(G) of the PEBA when it refused to allow a bargaining unit member to have a representative

with him during the disciplinary process. A Hearing on the merits was scheduled to take place on August 23, 2022 but was vacated and the PPC withdrawn as part of a settlement agreement entered into by the parties. The file was closed on September 23, 2022.

8. *LAMAW v. UNM-SRMC*; PELRB 108-22; 30-PELRB-2022 (December 9, 2022). Complainant alleged violations of Section 19(B), Section 19(D) and Section 19(E) of the PEBA for interfering with an organizing campaign. After a Merits Hearing August 11, 2022 when this case was heard together with PELRB 109-22 because many of the witnesses and some of the exhibits in this case would be the same in both cases, the Board's Hearing Officer decided that SRMC violated the clause of § 19(B) prohibiting SRMC's use public funds to influence the decision of its employees regarding support of a labor organization seeking to represent them. The Hearing Officer further concluded that the Union did not meet its burden of proof that by a preponderance of the evidence that SRMC violated NMSA 1978 § 10-7E-19(D) (2020) prohibiting discrimination in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization, nor did it meet that burden with regard to its claim that SRMC violated NMSA 1978 § 10-7E-19(E) (2020) prohibiting discharge or other discrimination against a public employee because he has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the PEBA or because a public employee is forming, joining or choosing to be represented by a labor organization. SRMC was Ordered to: (1) cease and desist from all violations of the PEBA as found, (2) post notice of its violation of PEBA as found herein in a form acceptable to the parties and this Board for a period of 30 days and assurances that it will comply with the law in the future.

SRMC sought Board review and a Special Meeting for that purpose was conducted on November 19, 2022. The Board reversed the Hearing Officer's findings concerning a violation of § 19(B) of the PEBA and dismissed the Complaint. The deadline for IAMAW to appeal the dismissal is the same date as this report, December 30, 2022. In any event, resolution of this case will be reported in the next reporting period.

9. *AFT & LAMAW v. UNM-SRMC*; PELRB 109-22 (May 31, 2022) Complainants alleged violations of Section 5(A), Section 5(B), Section 19(B), Section 19(D) and Section 19(E) of the PEBA for interfering with an organizing campaign. Because many of the witnesses and some of the exhibits in this case would be the same as those in *AFT & LAMAW v. UNM Sandoval Regional Medical Center*; PELRB 108-22, a previously scheduled hearing was postponed to August 11, 2022 when it could be heard together with PELRB 108-22. The Board's Hearing Officer determined that that the Union did not meet its burden of proof that by a preponderance of the evidence that SRMC violated NMSA 1978 § 10-7E-19(D) (2020) prohibiting discrimination in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization, nor did it meet that burden with regard to its claim that SRMC violated NMSA 1978 § 10-7E-19(E) (2020) prohibiting discharge or other discrimination against a public

employee because he has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the public employee bargaining act or because a public employee is forming, joining or choosing to be represented by a labor organization. The PPC was Dismissed on September 23, 2022. No request for Board review was filed and the case was closed on November 10, 2022.

10. *AFSCME, Council 18 v. CYFD*; PELRB 110-22 (June 2, 2022). Complainant alleged violations of Section 19(B), Section 19(F) and Section 19(H) of the PEBA when the employer withheld certain documents during the termination of a bargaining unit member. After a Merits Hearing on August 26, 2022, the Hearing Officer decided on August 30, 2022 that CYFD did not commit a PPC by providing documents at issue directly to the involved employee rather than to its representative. The PPC was Dismissed and the requested relief Denied. Staff closed the file on September 23, 2022.
11. *UHPNM v. UNM-SRMC*; PELRB 111-22; 28-PELRB-2022 (December 1, 2022). Complainant alleged violations of Section 5(A), Section 5(B), Section 19(B), Section 19(D) and Section 19(E) of the PEBA for interfering with an organizing campaign. A Hearing on the Merits took place on September 1, 2022 and on September 28, 2022 the Hearing Officer issued his Decision finding that SRMC violated the prohibitions of NMSA 1978 § 10-7E-19(B) (2020), making it a prohibited practice for a “public employer or his representative” to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the [PEBA]”; 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 violation occurred on May 31, 2022 when SRMC’s Medical Surgical Nursing Director conveyed to employees during a mandatory meeting misleading and negative comments about the Union and further, allowed one employee at the meeting to speak negatively about unions, while telling the participants that they could not speak about unions during work hours. The Hearing Officer further concluded that SRMC discriminated against putative bargaining unit employees generally and Adrienne Enghouse particularly, in regard to tenure or a terms or conditions of employment in order to encourage or discourage membership in a labor organization through its application of its policies to restrict discussion of the union in the workplace as it has done and by putting Adrienne Enghouse on notice on May 26, 2022. Those acts by the Employer constitute a prohibited labor practice under § 19(D) of the Act. The Union also met its burden of proving by a preponderance of the evidence that SRMC otherwise discriminated against a public employee, Adrienne Enghouse, because she is forming, joining or choosing to be represented by a labor organization, in violation of Section 19(E) of the Act. With regard to its claim that SRMC violated NMSA 1978 § 10-7E-19(G) (2020) prohibiting a public employer’s refusal or failure to comply with a provision of the Public Employee Bargaining Act or board rule.

The Hearing Officer concluded that SRMC’s Social Media Policy chilled or inhibited employee rights protected under §§ 5(A) and (B) guaranteeing those employees the right to engage in other concerted activities for mutual aid or benefit.

SRMC requested Board review and the matter was heard at a Special Meeting on November 19, 2022 convened for that purpose.

The PELRB rejected in part, the Hearing Officer's Decision as to its conclusion that SRMC violated § 19(B) but adopted his findings and conclusion that SRMC violated §§ 19(D), (E) and (G). Respondent was therefore ordered to cease and desist from all violations of the PEBA as found, including enforcing its social media policy and post notice of its violation and assurances that it will comply with the law in the future in a form acceptable to the parties and this Board for a period of not less than 30 days. Staff anticipate that SRMC will file an appeal to the District Court but the deadline for appeal is January 02, 2023, after this report is completed. As of this report, notice of appeal has not been filed. In any event, resolution of this case will be reported in the next reporting period.

12. *AFT & LAMAW v. UNM-SRMC*; PELRB 112-22; 29-PELRB-2022 (November 28, 2022). Complainant alleged violations of Section 5(A), Section 5(B), Section 7(A), Section 19(B), Section 19(D) and Section 19(E) of the PEBA for refusing to provide an employee list after the filing of the petitions in 303-22 and 304-22. A scheduled Merits Hearing was vacated because the parties preferred to submit legal briefs in lieu of the Hearing. The Hearing Officer decided on September 28, 2022 that the SRMC violated § 5(A) and (B), as well as §§ 14(A) and (19)(G) by declining 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.

SRMC requested Board review and the matter was heard at a Special Meeting on Nov. 19, 2022 convened for that purpose. The Board affirmed and adopted the Hearing Officer's Report and Recommended Decision and Ordered SRMC to cease and desist from violating the PEBA as found therein, acknowledge the violations found therein by posting notice to its employees of the violations. Because on the eve of the Hearing SRMC complied with the required information, no further remedy was necessary.

13. *Luis Lopez v. City of Belen*; PELRB 113-22 (June 2, 2021). This case came before the PELRB upon remand from the Court of Appeals. The case was decided under the City of Belen's local labor relations ordinance, which was in effect in 2017, when the underlying Prohibited Practice occurred. The Belen local board found that the City had improperly questioned employees about internal union matters and fired the union president in retaliation for protected activities in violation of the local ordinance and issued a final order on June 28, 2019. However, Luis Lopez had died on January 10, 2019. On appeal, the District Court found that the Belen board did not have authority to issue its decision due to the lack of personal jurisdiction after the death of Mr. Lopez because the local board had no procedures for the substitution of a party after that party's death. The NMCA reversed the District Court and remanded it to the Belen board for substitution of a party with authority to act on Mr. Lopez's behalf by an order dated March 15, 2022. However, the Belen board had ceased to exist on January 1, 2021 pursuant to Section 10(B) of the PEBA because the City had not passed a revised labor management relations ordinance after the 2020 amendments to the PEBA. Thus, pursuant to PEBA

Section 10(I) the matter was remanded to the PELRB for resolution. An order granting a motion for substitution of a representative of Mr. Lopez's estate as the real party in interest was issued June 22, 2022. The parties reached a settlement on November 10, 2022 but the cases remains pending awaiting a completed 1099 form from the representative of Mr. Lopez's estate. As of this report, the necessary document has not been received and the case remains pending. In any event, resolution of this case will be reported in the next reporting period.

14. *AFSCME, Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*; PELRB 114-22; 25-PELRB-2022 (December 9, 2022). Complainant alleged employer had improperly assigned bargaining unit work to positions outside the bargaining unit in violation of several sections of the PEBA. A Merits Hearing originally scheduled for September 14, 2022 recessed in order to accommodate settlement negotiations. When the parties' negotiations were not successful, the Hearing reconvened on October 10, 2022. On November 3, 2022 the Hearing Officer determined that the ABCWUA unilaterally imposed changes to the original O/M Supervisor-Drinking Plant job description, refusing to negotiate and enter a written agreement with the Union regarding such changes to employees' hours, and terms and conditions of employment, thereby committing a prohibited practice under NMSA § 10-7E-19(F). Other alleged violations of the PEBA were rejected.

The Water Authority sought Board Review. At its December 6, 2022 meeting the PELRB adopted the Hearing Officer's findings and conclusions. ABCWUA was Ordered to return to the status quo ante, including by reinstating seniority rights, with regard to the O/M Supervisor-Drinking Plant and Groundwater System Operator Positions. The parties were directed to resume bargaining begun in December of 2021 until a written MOU is entered into or an arbitrator's decision is entered after impasse. If upon return to the status quo ante the Union can prove that those previously holding an O/M Supervisor-Drinking Plant position suffered monetary damages in the form of back pay for lost time or overtime and/or standby pay, and the parties do not agree in their negotiations to the amount of damages, if any, to be paid, this Board reserved jurisdiction to determine damages, if any, upon proper application. ABCWUA was further ordered to post notice of its violation and its assurances that it will comply with the law in the future in a form acceptable to the parties and this Board for a period of 30 days. Staff anticipate that ABCWUA will file an appeal to the District Court but the deadline for appeal is January 06, 2023, after this report is completed. As of this report, notice of appeal has not been filed. In any event, resolution of this case will be reported in the next reporting period.

15. *AFSCME, Council 18 v. N.M. Corrections Dep't*; PELRB 115-22 (July 19, 2022). Complainant alleged violations of Section 19(B), Section 19(G), Section 19(F) and Section 19(H) of the PEBA when the employer unilaterally changed the working conditions of bargaining unit members. The complainant failed to meet the deadline to provide supporting evidence and the PPC was withdrawn at the Executive Director's request on August 4, 2022, and a Voluntary Dismissal was issued August 5, 2022. Staff closed the file on September 23, 2022.

16. *AFSCME, Council 18 v. New Mexico Corrections Department*; PELRB 116-22 (August 4, 2022). Following a high-profile escape of some inmates while on transport in 2016, AFSCME, Council 18 and New Mexico Corrections Department bargained changes to the relevant policies governing Inmate Escorts and Transports (Policy CD-130200 et seq.), as well as the corresponding set of Post Orders. As required by the PEBA and the CBA, the Corrections Department notified the Union that it wished to negotiate changes to those policies to remove some of the officer safety provisions negotiated in 2016. The Union timely demanded bargaining regarding the changes and requested information necessary for the evaluation of the proposed changes. The union alleged that the Department did not timely responded to all of the Union's information requests.

On June 24, 2022 the Warden of the Central New Mexico Correctional Facility, unilaterally implemented a portion of the proposed changes to the transport policy. The Union then filed a PPC alleging that the Corrections Department have violated § 19(B) (interfering with the exercise of a right guaranteed by PEBA); § 19(G) (refusing to comply with a provision of the PEBA); § 19(F) (refusing to bargain in good faith) and § 19(H) (refusing to comply with a collective bargaining agreement). At a Status and Scheduling Conference held on October 28, 2022, the parties agreed to hold scheduling in abeyance until December 23, 2022 to facilitate settlement negotiations. As of December 27, 2022, a settlement agreement is circulating, but as of the date of this report, a settlement agreement has not been executed, the Complaint has not been withdrawn nor a Voluntary Dismissal entered. A report on the resolution of this case awaits the next reporting period.

17. *Communications Workers of America, AFL-CIO v. N.M. Environment Department*; PELRB 117-22 (August 24, 2022). The Union alleged that the Environment Department violated Sections 19(B), (F) and (G) of the PEBA after NMED denied the Union's request for documentation of "all Bereavement Leave requests submitted between August 20, 2021 and the present." After a Status and Scheduling Conference on September 15, 2022 the parties settled their dispute. The Complainant withdrew its PPC on November 3, 2022 and the case was voluntarily dismissed the next day. Staff closed the file on December 6, 2022.
18. *New Mexico Coalition of Public Safety Officers v. Board of County Commissioners of the County of Santa Fe*; PELRB 118-22. (December 19, 2022). The Union alleged that the County violated §§ 5(B) (allowing for concerted activities); 19(B), (E) and (G) (making it a prohibited practice to interfere with the exercise of rights under PEBA, discriminate against an employee for providing information in a disciplinary context or violating any provision of PEBA), after a bargaining unit member, engaged in the employer's contemplated disciplinary process was denied access to a union representative. Prior to a hearing on the merits scheduled for December 12, 2022, the parties settled their dispute on December 12, 2022. The Union withdrew its PPC on December 15, 2022 and staff issued a Voluntary Dismissal on December 19, 2022. That Dismissal is scheduled to be reviewed at the Board's January meeting in 2023 and the file will be closed after that meeting.

19. *United Health Professionals of New Mexico, AFT, AFL-CIO, v. University of New Mexico Sandoval Regional Medical Center*; PELRB 119-22 (September 6, 2022). After the employer fired an employee union activist, the union complained that her termination was retaliatory in violation of the PEBA Sections 5(A) (giving public employees the right to “form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion”); 5(B) (giving public employees the right to “engage in other concerted activities for mutual aid or benefit”); 19(A) (making it a prohibited practice for a public employer to “discriminate against a public employee with regard to terms and conditions of employment because of the employee’s membership in a labor organization”); 19(B) (making it a prohibited practice for a public employer to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act 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”); 19(D) (making it a prohibited practice for a public employer to “discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization”); 19(E) (making it a prohibited practice for a public employer to “discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization”); and 19(G) (making it a prohibited practice for a public employer to “refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule”).

SRMC Answered the PPC on September 29, 2022, generally denying the Complaint and affirmatively stating that it fully complied with all of its legal obligations, that the Complaint is barred by the employee’s failure to comply with SRMC policies and procedures, that SRMC had legitimate, non-discriminatory, and non-retaliatory reasons for all actions taken with respect to the employee and that any and all actions taken against her were due to her misconduct and unrelated to conduct prohibited pursuant to PEBA or the New Mexico Healthy Workplaces Act.

A Merits Hearing is scheduled for January 5, 2023. Resolution of this case will be reported in the next reporting period.

20. *AFSCME 3022 v. Albuquerque Bernalillo County Water Utility Authority*; PELRB 120-22 (September 15, 2022). AFSCME, Local 3022 filed this Complaint alleging that a Training Specialist, Aimee Ashton, was illegally denied an “equity pay” adjustment upon her promotion when compared to another Training Specialist. The Employer’s position is that according to a long-standing past practice once an employee is in a position classified above Step 20, such employee is no longer eligible for an “equity pay adjustment”. The Union alleges that the failure to adjust the first employee’s pay upward to match that of the second employee violates NMSA 1978 § 19(F) and (H) (2020) (prohibiting refusal to bargain collectively in good faith with the exclusive

representative and refusal or failure to comply with a collective bargaining agreement, respectively). Both parties filed competing Motions for Summary Judgment on October 28, 2022. After consideration of both parties' Responses on November 17, 2022, the Hearing Officer issued his letter decision on November 18, 2022 denying Complainant's Motion for Summary Judgment and granting Respondent's Motion for Summary Judgment. No request for Board review was filed and the dismissal will be reported to the Board at its January 2023 meeting, so that the file will be closed in 2023.

21. *Bernalillo County Deputy Sheriff's Ass'n. v. Bernalillo County and Bernalillo County Sheriff's Dep't.*; PELRB 121-22 (October 14, 2022). The union filed a Prohibited Practices Complaint alleging that one of its retired members was improperly denied a negotiated one-time payment of \$5,000.00. At a pre-hearing status and scheduling conference held on November 10, 2022 the parties agreed to submit dispositive motions by close of business December 5, 2022. The parties' Responses to any such Motion shall be close of business December 19, 2022. Further scheduling was held in abeyance to facilitate the parties' settlement negotiations. When the case did not settle as hoped a second Status and Scheduling Conference was held setting December 5, 2022 as the deadline for filing dispositive motions by either party. Responses to any such Motions were required to be filed by close of business December 19, 2022. Both parties filed dispositive motions and after the Response deadline the Executive Director issued two Letter Decisions – one denying BCDSA's Motion to Strike the Past Practice Doctrine as it related to the practice of paying the one-time bonus at issue to retired bargaining unit members, and the other denying the County's Motion for Summary Judgment based on the Past Practice Doctrine.

The County filed a Notice of Errata concerning its Motion and requested Reconsideration on December 20, 2022. The deadline for the Union's Response to the County's Motion for Reconsideration is January 3, 2023, and so, a decision will not issue until the next reporting period, 2023. If denied, Staff will hold a Status and Scheduling Conference and set deadlines for a merits hearing during the next reporting period.

22. *United Health Professionals of New Mexico, AFT, AFL-CIO, v. University of New Mexico Sandoval Regional Medical Center*; PELRB 122-22. (October 14, 2022). Bargaining-unit employees in the workplace circulated a Petition advocating for the reinstatement of recently fired Patient Care Tech. (See PELRB 119-22). One employee circulating the Petition was sent an email on October 5, 2022, from HR Director Correen Bales that the Union characterized as a "threat" and putting the employee on notice that she violated the employer's anti-solicitation policies. The Union alleges that the employer's actions "discourage and interfere with the exercise of concerted activity for mutual aid and benefit in the workplace by Union members and supporters" and that its anti-solicitation policies are "overbroad and unlawful" prohibiting activity that is protected by the PEBA. By the foregoing, the Union alleges that SRMC has violated Sections 5(A) (giving public employees the right to "form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion"); 5(B)

(giving public employees the right to “engage in other concerted activities for mutual aid or benefit”); 19(A) (making it a prohibited practice for a public employer to “discriminate against a public employee with regard to terms and conditions of employment because of the employee’s membership in a labor organization”); 19(B) (making it a prohibited practice for a public employer to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act 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”); 19(D) (making it a prohibited practice for a public employer to “discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization”); 19(E) (making it a prohibited practice for a public employer to “discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization”); and 19(G) (making it a prohibited practice for a public employer to “refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule”).

The Employer Answered the PPC on November 4, 2022, generally denying the Union’s allegations and affirmatively stating that SRMC has fully complied with all of its legal obligations, that the PPC is barred by the employee’s failure to comply with SRMC policies and procedures and that the PERLB is without jurisdiction. After a Status and Scheduling Conference held November 9, 2022, a Merits Hearing was scheduled for February 15, 2023. Consequently, final resolution of this case will be reported in the next reporting period.

23. *International Association of Machinists and Aerospace Workers, AFL-CIO, v. University of New Mexico Sandoval Regional Medical Center*; PELRB 123-22. (October 19, 2022). During the Union’s organizing campaign, an employee and open supporter of the Union was placed on administrative leave and accused by the employer of having an “improper conversation” with a co-worker concerning the Union. On September 28, 2022, the employee was fired. The Union alleged that the employer’s actions violated Sections 5(A) (giving public employees the right to “form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion”); 5(B) (giving public employees the right to “engage in other concerted activities for mutual aid or benefit”); 19(A) (making it a prohibited practice for a public employer to “discriminate against a public employee with regard to terms and conditions of employment because of the employee’s membership in a labor organization”); 19(B) (making it a prohibited practice for a public employer to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act 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”); 19(D) (making it a

prohibited practice for a public employer to “discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization”); 19(E) (making it a prohibited practice for a public employer to “discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization”); 19(F) (making it a prohibited practice for a public employer to “refuse to bargain collectively in good faith with the exclusive representative”); 19(G) (making it a prohibited practice for a public employer to “refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule”).

SRMC Answered the PPC on November 9, 2022, generally denying the allegations and affirmatively stating that SRMC has fully complied with all of its legal obligations, that the PPC is barred by the employee’s failure to comply with SRMC policies and procedures and pursuant to the doctrine of unclean hands, that the complaint is barred in whole or in part by state and federal discrimination laws and that the PERLB is without jurisdiction over this matter. SRMC asserts that the union cannot make a prima facie showing that protected conduct was a motivating factor in SRMC’s determination to terminate the employee, that SRMC was aware that the employee participated in protected union activity or that the employer exhibited union animus. SRMC alleges that it had a legitimate business justification to terminate the employee and such reason cannot be termed pretextual - the same action would have taken place even in the absence of the alleged protected conduct.

After considerable motion practice the executive Director denied Summary Judgment on December 5, 2022. A Hearing on the Merits is scheduled to take place on January 18, 2023. Consequently, final resolution of this case will be reported in the next reporting period.

24. *District 1199NM, National Union of Hospital and Health Care Employees v. University of New Mexico Hospitals*; PELRB 124-22 (October 19, 2022). In June of 2022, the Union learned that UNM Hospitals was offering double-time to certain bargaining unit employees for covering shifts without bargaining that payment with the Union. The Union proposed a MOU to Respondent regarding the payments. In response the Employer denied offering double time and took the position that if some such payments had been offered that it was from “rogue” managers and so, refused to bargain with the Union regarding the MOU. The Union alleged that since that time the employer continued to offer the double time payments in violation of the PEBA Sections 17(A) (requiring the Respondent to bargain in good faith with the union regarding wages, hours and all other terms and conditions of employment); and 19(F) (making it a prohibited practice to “refuse to bargain collectively in good faith with the exclusive representative”). The Hospital Answered the Complaint on December 5, 2022 generally denying the allegations and stating that the Hospital has met all of its obligations to the Union under law and contract, the Union fails to state claims for which relief may be granted, some or all of the allegations in the Complaint must be deferred to grievance arbitration pursuant to the parties’ CBA,

the dispute is moot and is barred by operation of NMSA 1978, §§ 10-7E-17(A)(1) (“neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession”).

A Merits Hearing is scheduled for March 24, 2023. Consequently, final resolution of this case will be reported in the next reporting period.

25. *Communications Workers of America v. State Personnel Office*; PELRB 125-22 (December 20, 2022). On November 29, 2022 CWA was notified that the Respondent was unilaterally rescinding a Non-Mandatory Telework policy negotiated in the Spring of 2021, effective January 1, 2023 and that SPO was willing to meet with Complainant to bargain the effects of the policy rescission. CWA demanded to bargain over the Telework policy and demanded that SPO recant its decision to rescind the policy prior to bargaining. SPO rejected those demands. CWA alleged those acts violate §§ 19(B), (F), (G) and (B) of the PEBA. The State’s Answer to the PPC is not due until January 4, 2023 and no scheduling has yet taken place. Consequently, final resolution of this case will be reported in the next reporting period.

The following cases were completed in 2022 although filed in the preceding reporting period:

1. *AFSCME, Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*; PELRB 107-21(68-PELRB-2021, October 13, 2021) (Consolidated with PELRB 109-21). AFSCME, Local 3022 alleged that the Water Authority violated the parties’ CBA as it relates to the continuation of longevity pay when an employee is promoted from the B-Series bargaining unit (represented by AFSCME Local 624) to the M-Series unit (represented by AFSCME Local 3022). The Hearing Officer concluded that the employer failed or refused to abide by the parties’ CBA when it ceased those payment as alleged in the PPC. The Hearing Officer concluded that doctrines of res judicata or collateral estoppel applied to an earlier arbitration award and the District Court Judgment enforcing that award so that the Water Authority was required to continue payment of longevity pay to any employee receiving it as of July 1, 2010 regardless of any subsequent promotion.

The Water Authority appealed the Hearing Officer’s Recommended Decision to the PELRB on September 19, 2021. The Board adopted the Hearing Officer’s Report and Recommended Decision as its own. See 68-PELRB-2021 (October 18, 2021). The Water Authority appealed to the District Court on November 17, 2021 as No. D-202-CV-2021-06572. After obtaining extensions of time to file appellate statements to accommodate settlement negotiations, the Court dismissed the case for lack of prosecution on October 13, 2022. After affirming that the Water Authority complied with the Board’s Order 68-PELRB-2021, Staff closed the file on November 7, 2022.

2. *AFSCME v. NM Corrections Department*; PELRB 122-21. The union filed a Prohibited Practices Complaint on October 4, 2021 alleging breach of the CBA in violation of §§ 19(A), (B), (D) and (E) of the PEBA. A Scheduling Notice was issued on November 18, 2021, but the deadlines were subsequently vacated to facilitate settlement negotiations on December 9, 2021. After negotiations continued for four more months, the case settled

and the PPC was withdrawn and Director Griego issued a Voluntary Dismissal on May 13, 2022. Staff closed the file on July 18, 2022.

3. *CFUSE v. Chama Valley ISD*; PELRB 125-21 (October 4, 2021). The union filed a Prohibited Practices Complaint alleging retaliation and discrimination and breach of the CBA in violation of §§ 19(A), (B), (E) and (G) of the PEBA. On February 2, 2022, The Executive Director denied a Motion to Dismiss filed by Chama Valley Independent Schools. At the same time, the Union's Motion for a Stay and deferral to the District Court for enforcement of an Arbitrator's award was also denied. The parties were directed to proceed as scheduled, to a hearing on the merits on March 23, 2022. Shortly before the scheduled hearing the parties reached a settlement on February 10, 2022. The Union withdrew the PPC on March 22, 2022 and a Voluntary Dismissal issued on March 3, 2022. The file was closed on April 7, 2022.

4. *AFSCME 3999 v. Santa Fe*; PELRB 126-21 (November 9, 2021). The Union filed this PPC alleging a failure to bargain and a breach of the CBA in violation of §§ 17(A) and 19(B), (F) and (H) of the PEBA. A Hearing on the Merits was scheduled for two days – May 16 and 23, 2022. Before the Hearing convened the parties reached a settlement. The PPC was withdrawn and a Voluntary Dismissal entered on February 21, 2022. A closing letter was sent on March 21, 2022 and the file closed on June 15, 2022.

5. *AFSCME, Council 18 v. State Personnel Office and N.M. Corrections Dep't.*; PELRB 128-21 (November 19, 2021). AFSCME alleged violations of Sections 19(B), (F), (G) and (H) when the Corrections Department allegedly reneged on a prior agreement concerning changes to its discipline policy. After a scheduling conference, dispositive motions were not due January 14, 2022 and a Merits Hearing scheduled to take place March 1, 2 and 3, 2022. Motions and the Hearing were delayed, to accommodate settlement negotiations. An Amended PPC was filed on August 24, 2022 and Answered on September 7, 2022. A Merits Hearing re-scheduled for November 3, 2022 was again postponed. The parties eventually settled the issues and AFSCME withdrew the PPC on December 23, 2022. Staff issued a Voluntary Dismissal the same day and the file will be closed after review by the Board at its meeting on January 3, 2023.

6. *AFSCME, Council 18 v. State Personnel Office, Sandy Martinez, Melanie Martinez and N.M. Corrections Dep't.*; PELRB 129-21. The Union alleged illegal use of State funds in violation of Sections 19(B), (D), (G), and (H) when it sent an unsolicited communication to represented employees of their rights under the PEBA to revoke authorized dues deductions. At the request of the Parties, all deadlines were vacated on January 7, 2022. The parties settled their dispute and the PPC was withdrawn on March 18, 2022. Staff issued a Voluntary Dismissal on March 22, 2022 and closed the file on April 7, 2022.

7. *TFUSE, AFT-NM and Francis Hahn v. Taos Municipal Schools*; PELRB No. 130-21 (November 22, 2021). The Union filed this PPC alleging retaliation and discrimination and breach of the CBA in violation of §§ 19(A), (B), (E) and (G) of the PEBA when Taos Schools allegedly retaliated against Ms. Hahn for her union activities. Prior to a Hearing on the Merits, the PPC was withdrawn on January 12, 2022 and a Voluntary Dismissal was issued the same day. This file was closed the same day.

8. *CWA v. State Personnel Office*; PELRB 131-21 (December 1, 2021). The Union filed this PPC alleging interference in violation of Sections 19(B) and (G) of the PEBA. A Motion for Summary Judgement was granted dismissing the claims against the Respondent on January 31, 2022, with leave to amend the pleadings. No amendments were received and the file was closed on February 15, 2022.

9. *NMCP SO v. Santa Fe County*; PELRB 133-21; 13-PELRB-22 (May 16, 2022). The Union's PPC alleged bad faith bargaining in violation of Sections 19(B), (F) and (G) of the PEBA when the County circulated revisions to its Mandatory Vaccination Policy and proposed to make it effective on September 3, 2021 despite the Union's demand to bargain. The County denied any violations and asserted that the Union waived further bargaining over revision of the policy by an earlier negotiation of the original Mandatory Vaccination Policy. A Hearing on the Merits was conducted February 10, 2022 and the Board's Hearing Officer issued his Report and Recommended Decision on March 22, 2022 concluding that the County breached a duty to bargain in good faith by its unilateral imposition of discipline "up to and including termination" because that is an aspect of a new work rule that is grounds for discipline and consequently is a mandatory subject of bargaining not covered by the contract.

Santa Fe County requested Board Review on April 5, 2022 and the Recommended Decision was taken up by the Board at its meeting on May 5, 2022. The PELRB affirmed the Hearing Officer's Report and Recommended Decision. See Order 13-PELRB-22 issued May 16, 2022. The County appealed the Board's Decision to the 1<sup>st</sup> Judicial District Court on May 25, 2022 as case No. D-101-CV-202200913. The Record on Appeal was submitted by staff on June 24, 2022. The District Court extended its deadlines for submitting the appellate statements and oral argument was postponed to March 28, 2023. Therefore, this case will not be resolved until the next reporting period.

### **Representation Cases**

In contrast to the number of prohibited practice filings in this reporting period, the PELRB experienced a slight increase in representation petitions over the prior reporting period. 17 cases (29% of all case filings that year) were filed in 2021 compared to 28 representation cases or 52.8% of all cases filed in 2022. The representation cases filed in 2022 include two Petitions for Decertification (*Gurule and AFSCME*; PELRB 301-22 and *Rodriguez and TECS-NEA*; PELRB 302-22) both of which were summarily dismissed for lack of required support. The increase in the number of total filings is a bit misleading because it includes 14 joint petitions filed by the State and the Communications Workers of America seeking clarification of their bargaining units due to changes in job titles and classifications that are largely undisputed. If those 14 cases were to be removed from consideration the total number of representation cases filed in 2022 would fall to 14 – a 19% decrease in the number of filings, approximating the 25% decrease in Prohibited Practices Complaints in this reporting period from 2021. Details concerning the Representation Petitions filed in 2022 are summarized below:

1. *Victoria Gurule & AFSCME, Council 18*; PELRB 301-22; 10-PELRB-2022 (April 20, 2022). A member of the union filed a petition seeking the decertification of AFSCME, Council 18 as the exclusive representative of a group of behavioral health

workers employed by Bernalillo County initially certified in PELRB 303-20. AFSCME, Council 18 disclaimed its interest in the bargaining unit on February 15, 2022. Consequently, because there was no longer a labor organization to be decertified after the disclaimer, recognition of a new substitute or replacement exclusive representative would require a new Petition for Recognition supported by a sufficient showing of interest pursuant to NMSA 1978 § 10-7E-14, including the one-year time bar between elections in § 14(E). Accordingly, the Executive Director summarily dismissed the decertification petition as moot on February 28, 2022. The case was closed on March 23, 2022.

2. *Alma Linan Rodriguez & Tierra Encantada Charter School – NEA*; PELRB 302-22; 11-PELRB-2022 (April 20, 2022). A Charter School employee filed a petition seeking the decertification of NEA as the exclusive representative of a group of teachers at Tierra Encantada Charter School certified after a card check conducted on February 7, 2022. On February 24, 2022, the Executive Director determined that the Petition was facially inadequate because Ms. Rodriguez was not a member of the labor organization to be decertified as required by NMSA 1978 § 10-7E-16(A). None of the persons signing the Petition in support of decertification were members of TECS-NEA so that substituting another Petitioner for the lead Petitioner would not cure the deficiency. Additionally, NMSA 1978 § 10-7E-14(E) provides that a decertification election shall not be conducted if an election (including the card check conducted on February 7, 2022) has been conducted in the twelve-month period immediately preceding the proposed election. The Executive Director dismissed the Petition on March 4, 2022 pursuant to NMAC 11.21.2.13(B) and the file was closed on March 7, 2022.
3. *International Association of Machinists and Aerospace Workers (LAMAW), AFL-CIO & University of New Mexico Sandoval Regional Medical Center*; PELRB 303-22; 16-PELRB-2022 (July 22, 2022); 21-PELRB-2022 (September 14, 2022); 24-PELRB-2022 (December 9, 2022). The union filed a petition seeking to be certified as the exclusive collective bargaining representative for full-time, regular part-time, and per diem, non-probationary Security Guards, Security Guard Leads, Cooks, Food Service Workers, Food Service Leads, Kitchen Staff Workers, Registration Representatives, Prior Authorization Clerks, Patient Access Representatives, Central Registration Representatives, Charge Entry Specialists, Clerks, Facilities Services Maintenance Technicians, Facilities Services Maintenance Technicians Leads, Maintenance Technicians, Materials Technicians, Materials Coordinators, Housekeepers, Housekeeper Leads, Environmental Services Workers (EVS) employed by the University of New Mexico Sandoval Regional Medical Center.

The Medical Center objected on the basis that per diem positions are not being “regular” employees subject to the Public Employee Bargaining Act as defined in NMSA 1978, § 10-7E-4(Q) (2020) and because some of the employees the Union petitioned to represent are excluded from coverage of the Act as probationary, supervisory, managerial, or confidential employees. Scheduling a hearing on the appropriate unit composition was delayed, first by the limited availability of counsel, but also because of a dispute over whether the Hospital’s employee list submitted on June 13, 2022 complied with the requirements NMSA 1978, § 10-7E-14(A) (2020)

and NMAC 11.21.2.12(B) (concerning its obligation to provide the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of employees in the proposed bargaining unit.) While the parties' dispute over the employee list was pending, a Scheduling Conference was conducted on June 29, 2022 setting a hearing on unit composition for July 13, 2022 contingent upon confirmation the availability of co-counsel for SRMC. SRMC moved to vacate that setting on July 6, 2022 due to unavailability of co-counsel, which motion was granted and the unit composition hearing re-scheduled to take place July 27, 2022. The hearing on unit composition took place as re-scheduled. After a stipulation resolving some of the disputed issues the following issues were presented for review:

- A. Whether Facilities Services Maintenance Technician Leads (Lead Maintenance Mechanic) and Lead Housekeepers are "supervisor[s]" as that term is defined in Section 4(I) of the PEBA.
- B. Whether certain specific Hospital employees were probationary at the time the Petition was filed and whether such employees should be included in the employee list.

On August 11, 2022 the Board's Hearing Officer issued his Report and Recommended Decision finding and concluding that the Lead Maintenance Mechanic and the Lead Housekeeper positions are not supervisors as contemplated by the Act. Therefore, those positions are included as part of the appropriate bargaining unit in this case. The UNM SRMC employees at issue in the probationary status question were employed in a probationary status and therefore not be included in the employee list for purposes of an election or card check. SRMC Requested Board review of that part of the Hearing Officer's Report and Recommended Decision concluding that six employees were employed in a probationary status at the time the above-captioned petition was filed and therefore should not be included in the employee list for the purposes of an election or card check. The Board affirmed the Hearing Officer and entered in Order 21-PELRB-2022. As a result, the composition of the bargaining unit was established so that the matter could proceed to either a card check or an election pursuant to NMSA 1978 § 10-7E-14(C).

The PELRB's Executive Director conducted a card check, verified 58% majority support for the Union and issued certification of the unit on September 15, 2022. SRMC Objected to the card check on September 22, 2022. The PELRB convened a special meeting on November 17, 2022 to consider the Employer's objections after which, the Board affirmed the card check. See 24-PELRB-2022 (December 9, 2022). The deadline for SRMC to appeal the Board decision to the District Court is January 4, 2023. Staff anticipates that the case will be appealed and so, this case remains pending and its resolution will be reported in the next reporting period.

4. *United Health Professionals of New Mexico, AFT & UNM Sandoval Regional Medical Center*; PELRB 304-22; 26-PELRB-2022 (December 1, 2022). United Health Professionals of New Mexico (UHP), an affiliate of the American Federation of Teachers (AFT), filed a Petition seeking to represent the following full-time, regular part-time, and per diem, non-probationary employees of the University of New Mexico Sandoval Regional Medical Center (SRMC or Hospital):

Case Managers, Clinic Techs, CT Techs, Dietitians, EEG Techs, Emergency Medical Techs, Interventional Radiology Techs, Licensed Clinical Social Workers, Medical Assistants, Mammography Techs, MRI Techs, Nuclear Medical Techs, Occupational Therapists, Paramedics, Patient Care Techs, Pharmacists, PSG Techs, Physical Therapists, Physical Therapy Assistants, Radiological Techs, Registered Nurses, Rehabilitation Techs, Respiratory Therapists, Respiratory Therapy Assistants, Sleep Lab Techs, Social Workers, Special Procedures Techs, Speech Language Pathologists, Sterile Processing Techs, Surgical Techs, Techs, Ultrasound Techs, X-Ray Techs.

On June 3, 2022, the Hospital contested the Petition's inclusion of per diem positions as not being "regular" employees subject to the Public Employee Bargaining Act as defined in NMSA 1978, § 10-7E-4(Q) (2020) and contested inclusion of House Supervisors, Charge Nurses and Lead positions, included within the general job titles Petitioner seeks to represent, on the ground that they are excluded from coverage of the Act as supervisory or managerial employees. The Hospital also objected that there is an insufficient community of interest between licensed and unlicensed staff in proposed unit to constitute a single appropriate bargaining unit.

NMSA 1978 §10-7E-13(B) requires that the Board shall hold a hearing on unit composition before designating an appropriate bargaining unit within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of a unit. A hearing on unit composition originally scheduled to be held on July 25, 2022 was postponed to August 03, 2022. In lieu of oral closing arguments, both parties filed simultaneously submitted legal briefs on August 17, 2022.

On August 23, 2022 The Board's Hearing Officer determined that the PELRB has both personal jurisdiction and subject matter jurisdiction to decide the case, that SRMC employees employed on a per diem basis (PRN) are not "regular" employees because of their irregular, occasional employment status, which distinguishes them from others in the putative unit so that their inclusion in the bargaining unit would render it inappropriate. The decision further concluded that House Supervisors are not "Management" employees as defined by Section 4(N) of PEBA and, as such, are not excluded from coverage under the Act and Charge Nurses at UNM SRMC do not devote a majority of their work time performing supervisory duties so that they are not supervisors as defined by § 4(T) of the Act.

SRMC requested Board review on September 7, 2022 and a Special Meeting was convened on November 17, 2022 for that purpose. On December 1, 2022 the PELRB reversed the Hearing Officer's report in part, but only with respect to its conclusion that SRMC employees employed on a per diem or PRN basis are not "regular" employees for the purposes of the PEBA. The Board adopted its remaining conclusions that found that house supervisors and charge nurses are not excluded from coverage under the PEBA and are appropriate for inclusion in the bargaining unit. The Board remanded the matter to the Hearing Officer for the purpose of determining whether the PRNs share a community of interest with others

in the petitioned-for unit. UNM-SRMC's request that this matter be certified for an interlocutory appeal was denied.

Rather than hold another evidentiary hearing, the parties agreed, with the addition of some stipulated facts, that there were sufficient facts on the record to determine community of interest so that the question could be decided on briefs. Upon request of SRMC, the deadline for cross briefing of the community of interest factors originally scheduled for December 28, 2022 was amended to January 6, 2023.

Therefore, this case remains pending and its resolution or progress will be reported in the next reporting period.

5. *PFUSE & Peñasco Independent School District*; PELRB 305-22; 14-PELRB-2022 (July 21, 2022). The parties filed a Joint Petition on May 23, 2022 seeking to clarify an existing bargaining unit comprising Certified Teachers, by accreting Middle School/High School Counselors. Staff prepared an Amended Certification, presented it to Board for approval on July 12, 2022. The case was closed on July 21, 2022.
6. *Santa Fe County Firefighters Association & Santa Fe County*; PELRB 306-22; 15-PELRB-2022 (July 21, 2022). The union filed a petition on seeking to clarify the existing bargaining unit to accrete the Station Captain position into an existing unit comprising Firefighters/EMT Basic, EMT Intermediate, Paramedics, Lieutenants, Shift Training Captains, Fire Protection Specialists I and II, as well as Engineers. The County filed a Response to the Union's Petition on June 17, 2022 in which it supported accretion of the Station Captains. Staff prepared an Amended Certification on July 7, 2022, which was reviewed by the PELRB on July 12, 2022, See the Board's Order 15-PELRB-2022 executed July 21, 2022. The filed was closed the same day.
7. *Town of Bernalillo Professional Firefighters Association - IAFF & Town of Bernalillo*; PELRB 307-22; 22-PELRB-2022 (October 5, 2022). The Union filed a Petition for Recognition seeking to represent Firefighters up to and including the rank of Lieutenant employed by the Town of Bernalillo. The Town of Bernalillo contended that Lieutenants are supervisors as that term is defined by NMSA 1978 § 10-7E- 4(T) (2020) and should therefore be excluded from the proposed unit pursuant to Section 13(C) of PEBA. A Hearing on unit composition was held on August 9, 2022, after which the Board's Hearing Officer determined on September 2, 2022 that the Lieutenants employed by the Town of Bernalillo's Fire Department do not meet the statutory definition of supervisors under PEBA and are therefore, not excluded from collective bargaining. On September 13, 2022, the Director conducted a card check including Lieutenants in the count and determined that IAFF showed majority support such that it was certified as the exclusive representative. The PELRB affirmed that certification on October 5, 2022. See 22-PELRB-22. The case was closed thereafter on October 21, 2022.
8. *District 1199NM, NUHHCE & University of New Mexico Hospitals*; PELRB 308-22; 20-PELRB-2022 (September 14, 2022). The Union's Petition sought clarification of an existing bargaining unit of employees of the UNM Hospitals by accreting Urology Tech Specialists. The accretion was not opposed and the Director used the absence

of a unit description on record to be an opportunity to establish a clear description of the unit before and after the accretion. On August 23, 2022, an Amended Certification of Representation issued reflecting the composition of the bargaining unit agreed upon by the parties. The Board approved the Amended Certification on September 14, 2022 (20-PELRB-22) and the file was closed on September 23, 2022.

9. *Rio Rancho School Employees Union & Rio Rancho Public School District Board of Education*; PELRB 309-22; 17-PELRB-2022 (August 10, 2022). The Union petitioned the Board to accrete Instructional Coordinators and Instructional Coaches into an existing bargaining unit comprising certified employees of the Rio Rancho Public School District. On July 18, 2022, the School District responded that it had no objection to the accretion provided that the Petition was supported by an adequate showing of interest. The Director issued an Amended Certification on July 18, 2022 and the Board affirmed that amendment at its August 2, 2022 meeting. See 17-PELRB-22. The file was closed on August 11, 2022.
10. *New Mexico State University & United Electrical, Radio and Machine Workers of America*; PELRB 310-22; 19-PELRB-2022 (September 14, 2022). The parties filed a Joint Petition seeking to amend the Certification of Representation dated May 19, 2022, to remove reference to a branch campus in Carlsbad, New Mexico. On the same date, the Executive Director prepared an Amended Certification to be reviewed by the Board at its September 6, 2022 meeting. The Board approved that amendment at that meeting. See 10-PELRB-2022. The file was closed on September 23, 2022.
11. *State Personnel Office & CWA, Local 7076*; PELRB 311-22 (September 19, 2022). This case represents the first of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the State Commission for the Blind. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
12. *State Personnel Office & CWA, Local 7076*; PELRB 312-22 (September 19, 2022). This case represents the second of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the New Mexico Department of Cultural Affairs. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
13. *State Personnel Office & CWA, Local 7076*; PELRB 313-22 (September 19, 2022). This case represents the third of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the New Mexico Department of Health. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.

14. *State Personnel Office & CWA, Local 7076*; PELRB 314-22 (September 19, 2022). This case represents the fourth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Department of Health - Sequoyah Adolescent Treatment Center. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
15. *State Personnel Office & CWA, Local 7076*; PELRB 315-22 (September 19, 2022). This case represents the fifth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Department of Information Technology. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
16. *State Personnel Office & CWA, Local 7076*; PELRB 316-22 (September 19, 2022). This case represents the sixth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Early Childhood Education and Care Department. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
17. *State Personnel Office & CWA, Local 7076*; PELRB 317-22 (September 19, 2022). This case represents the seventh of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the General Services Department. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
18. *State Personnel Office & CWA, Local 7076*; PELRB 318-22 (September 19, 2022). This case represents the eighth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Human Services Department – Behavioral Health Services. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
19. *State Personnel Office & CWA, Local 7076*; PELRB 319-22 (September 19, 2022). This case represents the ninth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the New Mexico Environment Department. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.

20. *State Personnel Office & CWA, Local 7076*; PELRB 320-22 (September 19, 2022). This case represents the tenth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Office of African American Affairs. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
21. *State Personnel Office & CWA, Local 7076*; PELRB 321-22 (September 19, 2022). This case represents the eleventh of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Public Education Department. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
22. *State Personnel Office & CWA, Local 7076*; PELRB 322-22 (September 19, 2022). This case represents the twelfth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the State Treasurer’s Department. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
23. *State Personnel Office & CWA, Local 7076*; PELRB 323-22 (September 19, 2022). This case represents the thirteenth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Miners Colfax Medical Center. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
24. *State Personnel Office & CWA, Local 7076*; PELRB 324-22 (September 19, 2022). This case represents the fourteenth of several in which the State and CWA seek to amend the existing unit descriptions in all state agency units represented by CWA Local 7076 to reflect changes in job titles over the years since the units were originally certified. This case concerns represented employees of the Worker’s Compensation Administration. A draft amended cert sent 10-7-22 – approval and issuance of an Amended cert is pending.
25. *Sandoval County Professional Fire Fighters & Sandoval County*; PELRB 325-22 (October 13, 2022). The Union filed a Petition seeking to accrete Fire Fighter Lieutenants into an existing unit of classified non-probationary Fire Fighters and Emergency Medical Technicians/Paramedics employed by Sandoval County. On November 1, 2022, the County responded to the Petition taking the position that because the Petition seeks to accrete a number of employees that is more than 10% of the existing bargaining unit, pursuant to 11.21.2.38(C), the Board must presume the inclusion raises a

question concerning representation “and the petitioner may proceed only by filing a petition for an election under [the Board’s] rules.” Therefore, the Petition should be dismissed...” Following a Status and Scheduling conference held November 17, 2022, the Hearing Officer required the parties, before further scheduling or proceeding with the Petition, to brief by close of business November 28, 2022, two issues:

- 1) How to apply the Board’s rules when one party claims that this Petition seeks to include in the unit employees who do not belong to any existing bargaining unit, which would proceed under NMAC 11.21.2.38, and the other claims that the circumstances surrounding the creation of the existing bargaining unit has changed sufficiently to warrant a change in the description of that unit, which would proceed under NMAC 11.21.2.37;
- 2) If the matter falls under NMAC 11.21.2.38 how best to apply rule NMAC 11.21.2.33 with regard to whether an election is required instead of a card check. See also, Section 14(C) of the Act.

On November 29, 2022 the Executive Director dismissed the Petition for Accretion with leave for the Petitioner to file a Petition for Representation in accord with NMAC 11.21.2.38(C), accompanied by a showing of interest demonstrating that no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit. The dismissal will be reported to the Board at its regularly scheduled meeting on January 6, 2023 and will be closed thereafter.

26. *In re: City of Anthony Police Dep’t*; PELRB 326-22 (October 14, 2022). The Union’s Petition for Recognition was determined to be inadequate on October 17, 2022 for the following reasons:

1. The City of Anthony Police Department is the Employer and cannot be the Petitioner. Pursuant to NMSA 1978 § 10-7E-4(I) (2020), the term “exclusive representative” means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining. Also, § 4(K), a “labor organization” means 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.
2. The Petition does not describe the proposed unit by job position or classification as called for on the PELRB Form #3 submitted, nor does it describe the positions that are not sought, e.g. those positions statutorily exempt pursuant to NMSA 1978 § 10-7E-13 (2020).
3. The authorization cards submitted in support of the Petition do not comport with the Petitioning entity – they authorize “Labor Services” to be the exclusive representative, whereas the Petition is shown to be “City of Anthony Police Department”, which as stated above cannot be.

The Petitioner was given until October 24, 2022 in which to cure the deficiencies or the Petition would be dismissed pursuant to NMAC 11.21.2.13(B). The Union filed an amended Petition on October 21, 2022, however that Amended Petition did not cure the defects described in the Board's October 21, 2022 letter. Accordingly, the Director dismissed the Petition pursuant to NMAC 11.21.2.13(A). The file was closed November 4, 2022 and the dismissal reported to the PELRB at its December 6, 2022 meeting.

27. *Valencia County Prof'l. Firefighters Ass'n. Local 5399 IAFF and Valencia County*; PELRB 327-22 (November 10, 2022). On November 10, 2022 the Executive Director found that the Petition was insufficient in the following respects:

1. There was no connection between the organization filing the Petition and the entity authorized to seek recognition as shown on the authorization cards submitted. The Petition sought recognition of "Valencia County Professional Firefighters Association, Local 5399 IAFF" whereas the authorization cards authorize "the union", which one may infer is the "International Association of Firefighters" given the context of the card, but without reference to the Association or to Local 5399.

2. While not fatal to the Petition, the authorization cards did not contain the same language as does PELRB Form #15 that "I understand that my signature may be used to obtain certification of the above-named labor organization as the exclusive bargaining representative without an election" thereby leaving them open to a challenge for fraud in the event I choose to proceed by card check rather than by an election.

3. The showing of interest submitted with the Petition were not original documents.

The Petitioner was given until November 21, 2022 in which to cure the deficiencies or the Petition would be dismissed pursuant to NMAC 11.21.2.13(B). The Union filed an Amended Petition on November 16, 2022, which the Director found to be adequate on November 19, 2022. On December 2, 2022 the County provided the Union and the Board a list of employees who would be in the bargaining unit as proposed and after a Status and Scheduling Conference all issues of unit composition were resolved. After verifying that there were no intervening interested parties, Staff conducted a card check and certified a bargaining unit of Firefighters, Lieutenants, and Wildfire Captain on December 27, 2022. The Certification will be reviewed by the PELRB at its regularly scheduled meeting on January 3, 2023 and will be closed thereafter.

28. *Anthony Police Officer Association and City of Anthony*; PELRB 328-22 (December 15, 2022). Petitioner, an affiliate of the Fraternal Order of Police, seeks to represent a new bargaining unit of Patrolmen First Class and Sergeants employed by the City's Police Department. The Petition was found to be adequate on December 19, 2022 and the necessary employee list and issues statement is not due until January 4, 2022. Consequently, this matter will be resolved and reported in the next reporting period.

The following cases, begun in the prior reporting period, were resolved in this reporting period, 2022:

1. *Amanda Macias and NMCP SO*; PELRB 315-21 (December 8, 2021). A member of the union filed a petition seeking the decertification of NMCP SO as the exclusive representative of a group of Emergency Communications employees, Specialists and Coordinators employed by Santa Fe County. A decertification election was conducted from January 21 to January 31, 2022 using electronic ballots. Less than 40% of the bargaining unit participated in the election resulting in the election being invalid. The petition was dismissed and following Board review of the results at its March 2022 meeting the file was closed on March 14, 2022.
2. *PFUSE and Peñasco Independent School District*; PELRB 310-21 (August 30, 2021). The union filed a petition seeking to clarify an existing bargaining unit comprising Certified Teachers by accreting security employees, school secretaries, counselors, maintenance employees, and bus drivers. In connection with an agreement as to unit composition, the petition was withdrawn and filed as a petition for recognition of the agreed-upon unit apart from the existing unit. See PELRB 317-21. A voluntary dismissal was issued on January 11, 2022 and the file was closed on February 2, 2022.
3. *CSEC-Las Cruces and Las Cruces Public Schools*; PELRB 311-21 (October 28, 2021). The union filed a petition seeking to accrete into an existing unit comprising non-certified School employees, the positions of Translators/Interpreters, English Learner, Bilingual Programs, Parent Outreach workers, Data Analysts, Family and Community Support Specialists, Student/Parent/Family Facilitators, Nutrition Services Specialists and Nutrition Services Specialist – Produce. Because the number of positions to be accreted was more than 10% of the existing unit, a card check was conducted on December 20, 2021 where the Union established majority support. An amended Certification was issued December 28, 2021. The Board ratified the results of the card check and amended certification by order 5-PELRB-2022 and the file was closed January 28, 2022.
4. *United Electrical Radio and Machine Workers & New Mexico State University*; PELRB 313-21; 12-PELRB-2022 (May 17, 2022). This case was originally filed with the NMSU Labor Management Relations Board and transferred to the PELRB after the dissolution of the local board pursuant to § 10(I) of the PEBA. The original Petition before the NMSU board sought recognition of a unit comprising graduate students holding an assistantship. A letter from legal counsel for United Electrical Radio and Machine Workers filed on November 10, 2021 requested that the PELRB assume jurisdiction over the pending Representation Petition because a vacancy of longer than 60 days at the NMSU board meant that the NMSU ceased to exist and jurisdiction over the matter transferred to this Board by operation of law. The Executive Director conducted a hearing on Order to Show Cause why the Board should not assume jurisdiction on November 22, 2021 and found that the NMSU board ceased to exist pursuant to § 10(F) of the Act and the PELRB assumed jurisdiction over the case.

Because of a prior decision by this Board involving Graduate Assistants employed by the University of New Mexico, *United Electrical, Radio and Machine Workers of America and*

UNM; PELRB 307-20; 66-PELRB-2021(August 17, 2021), the Director set December 30, 2021 as a deadline for Petitioner to file a Motion for Summary Judgment as to issue involving community of interest. On January 25, 2022 Summary Judgment was granted as to graduate assistants being public employees under the PEBA but denied as to whether they all belonged in the same bargaining unit. The parties stipulated to an appropriate unit on February 20, 2022, approved by the PELRB on March 4, 2022 and the Director certified the unit after a card check on March 17, 2022. NMSU's Objections to the card check were reviewed and rejected by the PELRB on May 3, 2022. See Board Order 12-PELRB-22 5-16-22. Certification of the bargaining unit followed on May 19, 2022. Staff closed the file on July 1, 2022 after the deadline for appeal to the District Court passed with an appeal being filed.

5. *Tierra Encantada Charter School-NEA and Tierra Encantada Charter School*; PELRB 314-21. The union filed a Third Amended Petition that was deemed adequate on December 10, 2021. After a unit composition hearing on January 25, 2022 the Director found the petitioned-for unit to be appropriate and certified the unit by card check on January 27, 2022. The District's Objections to the card check were denied by the Board and the Director's certification of the unit affirmed on March 11, 2022. See 9-PELRB-2022. After the deadline for appeal to the District Court passed without an appeal being filed, Staff closed the file on April 22, 2022.

6. *PFUSE and Peñasco Independent School District*; PELRB 317-21. The union filed a petition on December 22, 2021 seeking to represent certain non-certified employees. Following the parties' agreement on unit composition comprising Secretary/Clerk/Technical Assistant, Custodial/Maintenance Worker, Security Officer, Bus Driver/Activity Bus Driver, Custodial/Bus Driver, and Cook, a petition for Voluntary Recognition was filed February 7, 2022 and a certification was issued the same day. The Board reviewed and affirmed the Voluntary Recognition on March 11, 2022. See Board Order 7-PELRB-2022. Staff closed the file on March 14, 2022.

### **Impasse Proceedings**

There were no files opened in 2022 concerning collective bargaining impasse. However, three of the five impasse files opened in 2021 remained pending during this reporting period. Of those, two were resolved in 2022 and one remains pending, hopefully to be completed in the next reporting period:

1. *In re: Las Vegas Police Officers Ass'n/FOP and City of Las Vegas*; PELRB 501-21 (April 27, 2021). After referral to the Federal Mediation and Conciliation Service, in September 2021, the FOP reported that mediation was not successful and the parties' were moving forward to arbitration. On March 7, 2022 the Union's Counsel notified PELRB that prior to the scheduled arbitration, the matter requiring arbitration was resolved. Accordingly, the case was closed on March 28, 2022.
2. *In re: CSEC-Las Cruces and Las Cruces Public Schools*; PELRB 504-21 (November 7, 2021). After the parties declared an impasse and issuance of Last, Best Offers by

both parties, they notified PELRB staff that they had requested mediation assistance from the Federal Mediation and Conciliation Services and attached a copy of the request to their notice. After some delay attributable to the effects of COVID 19, the parties successfully mediated the impasse and executed a CBA. Staff was notified of that result on February 4, 2022 and the file was closed the same day.

3. *In re: New Mexico Coalition of Public Safety Officers and Santa Fe County*; PELRB 505-21 (December 27, 2021). This case is the third impasse case referred to above that was filed in 2021 but remained pending and unresolved throughout this reporting period. The impasse arose in connection with this Board's Denial of Preliminary Injunctive Relief in PELRB Case No. 133-21, in which the Director found that the parties were at impasse in their negotiations over the County's Vaccine Mandate. See this Board's Order 13-PELRB-2022. PELRB staff referred the matter to the Federal Mediation and Conciliation Service and the parties attempted mediation without success. Scheduling arbitration was suspended until resolution of issues on appeal from this Board's Order 13-PELRB-2022 in 1<sup>st</sup> Judicial District Court case No. D-101-CV-2022-00913. A hearing on the District Court appeal is scheduled to be heard on January 19, 2023, and if the impasse is resolved thereafter, it is likely that this case will be closed and reported as such in the next reporting period.

That there were no impasse files opened in 2022 compared with five in the preceding reporting period may be attributed to the contract bargaining cycle. Most CBAs that Staff are aware of, are for a period of either three or four years and a survey of those that were not successfully renegotiated in 2022, and whether of three- or four-years' duration, expire at the end of 2023 or mid-2024. That means that the likelihood of parties' reaching impasse in negotiations was low in 2022 but will be higher in 2023 and 2024. It remains to be seen whether Staff predictions that impasse cases filed in the next and subsequent reporting periods approach the five cases opened in 2021.

## **SUMMARY OF COURT DECISIONS**

There was only one Court Decision rendered during this reporting period of significance to the Board:

1. *Luis Lopez v. City of Belen*, No. A-1-CA-39109 (Appeal From the District Court of Valencia County; March 15, 2022). As noted above in the section reporting on Prohibited Practice Complaints pending during the reporting period, there is pending before this Board the case of *Luis Lopez v. City of Belen*; PELRB 113-22 (June 2, 2021). As reported, this case came before the PELRB upon remand from the Court of Appeals and the case referenced here is that Court of Appeals case. To summarize, the original PPC was decided under the City of Belen's local labor relations ordinance, which found in favor of the Complainant. The City appealed and that decision and the District Court found that the Belen board did not have authority to issue its decision due to the lack of personal jurisdiction after the death of Mr. Lopez. The NMCA reversed the District Court and remanded it to the Belen board for substitution of a party with authority to act on Mr. Lopez's behalf by this Order dated March 15, 2022. However, because the Belen board had ceased to exist on January 1, 2021

pursuant to Section 10(B) of the PEBA, this Board assumed jurisdiction pursuant to Section 10(I) of the PEBA.

In its rationale reversing the District Court, the Court of Appeals addressed the PEBA in the context of construing the local ordinance that was required to comport with the PEBA:

“We agree that Lopez’s death suspended the Board’s personal jurisdiction. See Henry, 2004-NMCA-016, ¶ 13. We disagree, however, that the lack of a formal substitution procedure in the administrative proceeding prevented the Board from reestablishing personal jurisdiction over a substitute party for the purposes of issuing its decision resolving Lopez’s prohibited practices complaint.

{6} The Board has the power to “enforce provisions of the labor-management relations chapter and the board’s labor-management relations rules and regulations through the imposition of appropriate administrative remedies.” Belen, N.M., Rev. Ordinances of Belen, Tit. 2, Ch. 2.32, § 2.32.080(E) (1994) (the Ordinance). To this end, the Ordinance mandates that the Board shall, in pertinent part, “promulgate rules and regulations necessary to accomplish and perform its functions.” See id. § 2.32.080(A). Among the Board’s functions is to determine prohibited practice complaints. Id. § 2.32.080(A)(3). In order to accomplish that function, the Board may hold hearings to adjudicate disputes and enforce the provisions of the Ordinance and any rules or regulation arising therefrom. Id. § 2.32.090(A)(3). The Board may find guidance “for the proper joinder of parties in prohibited practice proceedings . . . in the New Mexico State Court Rules of Civil Procedure.” *CWA Local 7076 v. N.M. Pub. Educ. Dep’t*, PERLB No. 134-11, 2012 WL 12961131 (2012). Thus, to perform its function of deciding prohibited practice complaints, the Board may promulgate rules and regulations and/or consult the rules of civil procedure. Accordingly, we reject the City’s argument that the absence of an established procedure for substitution irrevocably deprived the Board of personal jurisdiction and conclude that the Board had the means and authority to substitute a party to fulfill its function under the Ordinance.”

## **PENDING APPEALS**

There were four matters pending before the District or Appellate Courts during the reporting period:

1. *Albuquerque-Bernalillo County Water Utility Authority v. American Federation of State, County and Municipal Employees, Council 18, AFL-CIO, Local 3022, and New Mexico Public Employee Labor Relations Board*, 2<sup>nd</sup> Judicial District Court No. D-202-CV-2021-06572 (In re: PELRB 109-21 consolidated with PELRB 107-21) (J. O’Connell).

On November 17, 2021, the Employer appealed from an Order of the Board finding that it violated the parties’ CBA concerning the continuation of longevity pay when an employee is promoted from the B-Series to the M-Series and requiring the Water

Authority to pay the longevity premium to qualifying employees. While the case was pending on appeal, the parties continued to negotiate a settlement of the damages ordered by the Board and did agree informally to a settlement. Before executing an agreement and withdrawing the appeal, the Second Judicial District Court dismissed the appeal for lack of prosecution on October 11, 2022. The dismissal did not affect the settlement and the case was closed after Board review on November 7, 2022.

2. *United Health Professionals of New Mexico & Sandoval County Regional Medical Center*; (2<sup>nd</sup> Judicial District Court No. D-202-CV-2021-06067, J. Ramczyk; Court of Appeals No. A-1-CA-40178; in re: PELRB 306-21). The Union filed a petition on August 13, 2021 seeking to represent all full-time, regular part-time, and per diem, non-probationary registered nurses and educators, excepting case managers, employed by the University of New Mexico Sandoval Regional Medical Center at its acute care hospital of the UNM Sandoval Regional Medical Center. A motion to dismiss was filed by the employer claiming the SRMC was not public employer due to certain provisions of the University Research Park and Economic Development Act, NMSA 1978, §§ 21-28-1 to 25 (“URPEDA”). Following the Board’s denial of the Motion to Dismiss (Order 70-PELRB-2021), the employer sought a writ of mandamus from the District Court ordering the dismissal of the petition. On December 9, 2021, the District Court issued a Writ of Mandamus directing the Board to cease all proceedings and dismiss the case. Following the Writ, the Board’s Director dismissed the case on December 10, 2021 (affirmed by the Board in Order 2-PELRB-2022). On January 5, 2022, the union appealed the Writ to the Court of Appeals and the Board filed a Motion for Reconsideration with the District Court. Both the Appeal and the Board’s Motion remain pending at this time and will be reported on in the next reporting period.

3. *United Electrical Radio & Machine Workers & UNM*; PELRB 307-20. On December 9, 2020, the Union filed a petition seeking to represent all Graduate Assistants, Project and Research Assistants, Teaching Assistants and Teaching Associates of the University of New Mexico. After a hearing on unit composition and request for review, the Board reversed its Hearing Officer’s Recommended Decision and found that the graduate students at issue were public employees under the PEBA (66-PELRB-2021). On November 19, 2021, UNM filed a Notice of Appeal with the District Court (D-202-CV-2021-06615). There being no stay of proceedings pending that appeal, the Board conducted a Card Check on December 17, 2021 where the union demonstrated majority support and the results were issued by the Board’s Director on December 27, 2021. Ratification of those results by Board issued in the next reporting period (Order 4-PELRB-2022) as was UNM’s appeal of the Board’s Order to the District Court. On January 27, 2022 the PELRB affirmed the Director’s Card Check and certification of the bargaining unit. UNM’s objections to the results of the December 17, 2021 card check were denied and a Certification of Exclusive Representation issued. See 6-PELRB-2022. UNM withdrew its appeal on March 16, 2022 and the file was closed on March 18, 2022.

4. *County of Santa Fe, New Mexico v. New Mexico Coalition of Public Safety Officers, and Santa Fe County Deputy Sheriff’s Association*, 1<sup>st</sup> Judicial District Court Case No. D-101-CV-2022-00913 (In re: PELRB 133-21). On March 24, 2020, the Board of County Commissioners of Santa Fe County adopted a Resolution declaring Santa Fe County an

emergency area as a result of COVID-19. The New Mexico Coalition of Public Safety Officers, and Santa Fe County Deputy Sheriff's Association, filed a Prohibited Practices Complaint on December 9, 2021 alleging the County bargained in bad faith by unilaterally implementing its own proposal regarding the Revised Mandatory Vaccination Policy and that by refusing to proceed to mediation and binding arbitration the County violated PEBA's impasse resolution procedures.

The Hearing Officer concluded that implementing the vaccination policy was a reserved management right both under the terms of the negotiated collective bargaining agreement as well as the management rights set forth in PEBA. However, the Hearing Officer also concluded that the County could not implement the vaccine policy's consequences of termination for failure to comply following the declared impasse by the parties and, instead, was required to proceed to impasse arbitration over the policy's termination provision, await the outcome of such arbitration, and reinstate employees with backpay who had refused to comply with the vaccination policy pending the outcome of arbitration, concluding that implementing the vaccination policy's termination provision constituted a violation of the duty to bargain in good faith contrary to §§ 10-7E-19(F) and (G) and 10-7E-18(B) and (H).

The County filed a request for PELRB review on April 5, 2022, which upheld the Hearing Officer's Report and Recommended Decision in its entirety. See 13-PELRB-2022, May 16-2022. The County appealed from that Decision on June 8, 2022. Oral argument on that appeal is scheduled to be heard on January 19, 2023. The outcome of that argument will be reported in the next reporting period.

4. *Board of Education for the Gallup- McKinley Schools v. McKinley County Federation of United School Employees Local 3313, AFT-NM and State of New Mexico Public Employee Labor Relations Board*; 2<sup>nd</sup> Judicial District Court Case No. D-202-CV-2022-07617 (December 20, 2022; In re: PELRB 104-22; 27-PELRB-2022). On December 20, 2022 Gallup-McKinley Schools filed its Notice of Appeal the Board's Decision to the 2<sup>nd</sup> Judicial District Court. The Record on Appeal is due January 20, 2023. Consequently, disposition of this case will be reported in the next reporting period

## **Conclusions**

During this reporting period, Staff was somewhat surprised by the decline (however slight) in the number of cases filed despite 44 local labor boards that went out of existence and this Board's assumption of jurisdiction over those labor relations matters formerly were under the former local boards' jurisdiction. Fears that the result of so many local boards ceasing to exist would increase the number of PPCs and impasse filings have not been realized. Counterintuitively, to some extent the decline in the number of cases filed in this reporting may be attributed to those local boards going out of existence because the preceding reporting period was marked by a number of them petitioning for continuation pursuant to § 10-7E-10(E) of the PEBA, each of which required a file to be opened.

Because the Board's workload does not appear to be increasing the PELRB is fully staffed with its two FTE and one contract CFO. There is no need at present to consider requesting

additional funding from the legislature for increasing staff. There has not been a need to exercise the informal agreement with the State of New Mexico Administrative Hearings Office (Brian VanDenzen, Executive Director) for using their cross-trained Administrative Law Judges to fill in for this Board's Hearing Officer. As this report reflects, staff have consistently met all expectations for the timeliness of hearings and have reduced or eliminating errors in notice and scheduling. The collateral effect of improving the speed and number of hearings being held with fewer errors supports the Board's mission of promoting "harmonious and cooperative relationships between public employers and public employees" because it encourages cooperation as an alternative to Board-imposed solutions and, where such cooperation is not possible, a timely Board decision provides the parties with clarity and a sense of direction concerning specific public policies to be pursued.

## APPENDIX 1

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD STRATEGIC PLAN FY22 AGENCY 37900

- I. **Vision Statement** - The Agency will become the leading collective expert on public employee bargaining in New Mexico, the preferred source for the resolution of labor/management disputes, and the recognized clearinghouse for information on pending issues and developing trends in labor law in order to promote “harmonious and cooperative relationships between public employers and public employees.”
  
- II. **Mission Statement** - The New Mexico Public Employee Bargaining Act (PEBA), (§§ 10-7E-1 through 10-7E-26 NMSA 1978), reinstated in 2003 collective bargaining for public employees after the former public employee collective bargaining law expired in 1999. As the agency responsible for executing PEBA the Public Employee Labor Relations Board has authority over all general collective bargaining matters between public employee labor organizations or individual public employees under the Act and either state agencies or units of local government that that have not established a local labor board. The Board’s mission is to guarantee public employees the right to organize and bargain collectively with their employers; promote harmonious and cooperative relationships between public employers and employees; and protect the public interest by assuring the orderly operation and functioning of the state and its political subdivisions as required by the PEBA, § 2. As part of its mission the Board also ensures that local labor ordinances and resolutions and local labor boards comply with PEBA.
  
- III. **Program Purposes** – As one of the State’s smallest agencies, the PELRB has only one budgeted purpose – to fulfill the mission set by statute for the agency as outlined above. That purpose will be achieved by accomplishing the goals set forth in this plan.
  
- IV. **Program Goals** – The primary goal of this strategic plan must be to meet the continuing need for promptly scheduling hearings and providing involved parties with timely notice of hearings and related deadlines. A comprehensive review and revision of the Board’s procedural rules is being undertaken in furtherance of this primary goal. In addition, a comprehensive review of the Board’s procedural rules relating to the ability of newly approved local boards to operate is under way.

Equally as important is the ongoing need for processing the Board’s day-to-day business in a timely manner, such as paying its bills and exercising budget control.

A second goal of the agency’s program is to improve the Board’s website by timely and regular posting case summaries as well as the actual court and Board decisions, posting the Board’s hearings calendar, and making the posted forms interactive. The Board’s website will also be improved by updating it and the Board’s database with this information on an ongoing basis including subject, statute, rule and key word

indexes, phrase digest, in depth and current case statistics, local board information, posting of all PELRB decisions and improved tracking of cases on appeal.

As its third goal, the Board must monitor developing trends as expressed in decisions by local labor boards, the National Labor Relations Board and the Federal Labor Relations Authority. Monitoring local board decisions will also serve the purpose of ensuring local board compliance with PEBA requirements.

A fourth goal is to conduct interagency training on application of the Public Employee Bargaining Act as needed and as time and budget permits given the priority of processing complaints and petitions and to increase public awareness through public speaking teaching and writing.

The Board's fifth goal of training its own staff and Board to develop expertise in the substantive law of public employee bargaining generally and PEBA specifically is on hold due to budgetary constraints. As funds become available in future years staff will be fully trained in the software programs and equipment needed to complete the tasks necessary to accomplish each of the goals referenced herein, including newly acquired teleconferencing equipment that will allow the Agency to improve its remote meeting/hearings capabilities.

#### V. **Objectives Specific to Each Goal**

- **Goal: Scheduling hearings, providing timely notice processing the business of the Board.**
  - Objectives:
    - a. The board shall: (1) hold hearings and make inquiries necessary to carry out its functions and duties; (2) conduct studies on problems pertaining to employee-employer relations; and (3) request from public employers and labor organizations the information and data necessary to carry out the Board's functions and responsibilities. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit. See NMSA 1978 § 10-7E-13(B).
  - Strategies/Tasks for accomplishing the objective:
    - a. The agency has already established a shared, centralized calendaring system and has established routine procedures for maintaining the hearing calendar. Staff compliance with those procedures is ongoing. The agency will work with DoIT personnel to improve the shared calendaring and tickler system by having it interact with the case contact and tracking database.
    - b. Staff will also work with DoIT to update the agency website, posting the calendar on the site, linking to reported cases and making the forms interactive. Ongoing maintenance of electronic files will continue hereby reducing paperwork and file space while simultaneously easing access to working files and speeding production monitoring and performance.

- c. The agency has already established uniform performance expectations, policies and procedures in addition to incorporating those existing by statute or rule along with the State's performance measures. Work will continue on standardizing procedures and evaluation criteria throughout FY22 and the Administrative Assistant's performance review measures comply with these procedures.
- d. The Board's Executive Director, assisted by the Administrative Assistant, will continue to hold hearings as required by the deadlines set in statute and the Board's rules for designating appropriate bargaining units, certifying and decertifying exclusive representatives and determining prohibited practices complaints as well as maintain proper records of all proceedings before the Board.
- e. The Board's Executive Director, assisted by the Administrative Assistant, will continue to hold hearings as needed upon request of the Board for the purposes of information gathering and inquiry, adopting rules pursuant to PEBA § 10-7E-12.
- **Applicable FY22 Performance Measures**
  - a. Percent of decisions overturned on appeal;
  - b. Percent of local labor relations board applications for approval processed and completed within the applicable deadlines.
- **Goal: Improve the Board's website.**
  - Objectives:
    - a. The Board has made substantial improvements to its website during the preceding fiscal year, updating information and making it easier to navigate. Much remains to be done however, primarily updating posted statistics and case summaries, key word digest and practice manual. These updates are ongoing and will be improved during FY22.
  - Strategies/Tasks for accomplishing the objective:
    - a. Court and arbitration decisions as well as Board statistics regarding the number and types of cases heard or other Board action taken are routinely monitored and updated on the Board's website quarterly. On a monthly basis, as the Board meets to take action, updates to the website must be posted. This is done by calendaring a task in proximity to each Board meeting requiring staff to post the outcome of each board decision on a case as it occurs. With regard to the court decisions, once notice of each decision is made known to the Executive Director either through the courts' electronic filing notice system or through the Board's legal advisor, staff standard operating procedures will require posting of a .pdf version of each decision under the appropriate tab on the website.
    - b. Maintaining public access through the website to PELRB decisions with regular posting of those decisions as they occur will be ongoing throughout the fiscal year on a monthly schedule. This plan will ensure the public has electronic access to the most accurate and up to date information on New Mexico Public Employee Bargaining.
  - Applicable FY22 Performance Measures:
    - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.

- **Goal: Monitor developing trends.**
  - Objectives:
    - a. Pursuant to PEBA § 10-7E-9(B)(2) one of the Board’s duties is to conduct studies on problems pertaining to employee-employer relations. The Board is empowered to request from public employers and labor organizations the information and data necessary to carry out that duty. This objective is to anticipate trends and educate the Board about them in order to be prepared to modify the Board’s procedural rules if necessary or to remain informed about cases across New Mexico and the nation in order to make better decisions as issues are brought before the Board.
  - Strategies/Tasks for accomplishing the objective:
    - a. If budget allows, the Executive Director and one or more members of the Board should attend the National Judicial College to increase proficiency as administrative law judges and in the area of alternative dispute resolution.
    - b. If budget allows, staff will maintain the Board’s membership in two professional organizations — Association of Labor Relations Agencies (ALRA) and Labor and Employment Relations Association (LERA). The Agency expects that at least the Executive Director if not one or more members of the Board will have attended one or more training session and/or the LERA or ALRA conferences by the end of fiscal year 2017. The Agency subscribes to *The New Mexico Labor Letter*, as well as ALRA and LERA newsletters online, which analyze cases and trends in Public Employee labor law. Relevant information from those publications will be transmitted to the Board via e-mail. Staff will maintain these subscriptions and regularly send relevant material to the Board members on a regular basis.
    - c. As the Board identifies issues or areas of interest that are relevant to its mission it will direct staff to undertake the kind of studies contemplated by the Act. The staff will issue subpoenas as necessary to fulfill its investigatory function.
    - d. Staff will track existing performance measures on a quarterly basis.
  - Applicable FY22 Performance Measures:
    - a. Percent of decisions overturned on appeal
  
- **Goal: Conduct training.**
  - Objectives:
    - a. Conduct interagency training on application of the Public Employee Bargaining Act as needed and as time permits given the priority of processing complaints and petitions. The agency will conduct at least one interagency training session in FY21 and the Director will solicit opportunities to address labor relations groups on matters of public interest concerning the Board and its role.
  - Strategies/Tasks for accomplishing the objective:

- a. Staff will update the PowerPoint presentation outlining the PEBA and put on a presentation using invited speakers and panel discussion moderated by experienced practitioners before the Board and/or members of the judiciary involved in PEBA related cases.
  - b. Once the presentation is prepared staff will notify interested parties via the Board's website and individual invitation to attend the seminar and will be responsible for scheduling and securing a convenient location.
  - c. The ongoing Board statistical tasks being undertaken in connection with other goals and objectives will provide presentation material for presentation to other interested groups as invitations for public speaking are received.
- Applicable FY22 Performance Measures:
  - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.
- **Goal: Improve Staff and Board training.**
  - Objectives:
    - a. It is important to the Board's mission that its staff and the Board develop expertise in the substantive law of public employee bargaining generally and PEBA specifically.
    - b. The Agency's goal is to continue training for Board staff related to the computer software used by the Board as well as the state SHARE network with an emphasis on budgeting and reporting procedures.
  - Strategies/Tasks for accomplishing the objective:
    - a. Responsible staff should be fully trained in the software programs and equipment needed to complete the tasks necessary to accomplish each of the goals referenced herein. If budget permits, the Executive Director and one or more members of the Board should attend the National Judicial College to increase proficiency as administrative law judges and in the area of alternative dispute resolution.
    - b. Staff has identified training seminars, at a minimal cost. Staff will pursue these training opportunities as the budget and time permits.
  - Applicable FY22 Performance Measures:
    - a. There is no specific performance measure associated with this goal and objective. It will be self-evident whether this goal has been achieved.

## VI. **Conclusion:**

This plan supports the overall mission of the Board to “to guarantee public employees the right to organize and bargain collectively with their employers” by improving the timeliness of hearings and reducing or eliminating errors in notice and scheduling. The collateral effect of improving the speed and number of hearings being held with fewer errors supports the Board's mission of promoting “harmonious and cooperative relationships between public employers and public employees” because it would encourage cooperation as an alternative to Board imposed solutions, and where such cooperation is not possible, a timely Board decision will provide the parties with clarity and a sense of direction with regard to public policies to be pursued. This in turn protects the public interest by ensuring a more orderly operation.

## CASE COMPLETION TIME FRAMES\*

### Table A

Case Series	Description	Number of Cases	Average Days Open
100 Series	PPCs	25	121
200 Series	Local Boards	0	N/A
300 Series	Representation Petitions	28	92
500 Series	Impasse	0	N/A

## ALL CASES FILED WITH THE PELRB IN 2022 BY TYPE OF EMPLOYER OR RESPONDENT

### Table B

Type of Employer or Respondent	Types of Cases					TOTAL
	PPCs	Certification or Accretion Petitions	Decertification Petitions	Related to Approval of Local Board	Impasse	
State**	5	14				19
County	3	3	1			7
Municipality	3	3				6
Public School	3	2	1			6
Higher Education		1				1
Medical Facility	8	3				11
Other	3					3
Court						
Union						
Individual						
Local Labor Board						
<b>TOTAL</b>	<b>25</b>	<b>26</b>	<b>2</b>			<b>53</b>

\*Cases Opened in 2022, as of December 31, 2022

\*\*Cases involving both a State Agency and the State *qua* State are counted here

**ALL CASES FILED WITH THE PELRB IN 2022  
BY PETITIONER OR COMPLAINANT**

**Table C**

Type of Petitioner						TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Related to Approval of Local Board	Impasse	
State*						
County						
Municipality						
Public School						
Higher Education						
Medical Facility						
Other						
Court						
Union	25	26				51
Individual			2			2
Local Labor Board						
<b>TOTAL</b>	<b>25</b>	<b>26</b>	<b>2</b>			<b>53</b>

\*Cases involving both a State Agency and the State *qua* State are counted here

**ALL CASES FILED WITH THE PELRB IN 2022  
BY PETITIONER AND TYPE  
Table D**

Petitioner	Types of Cases				Impasse	TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Local Board matter		
AFSCME Council 18	3					3
AFSCME 3022	3					3
AFSCME 3277	1					1
AFT & IAMAW	3					3
Alma Linan Rodriguez			1			1
Anthony POA		2				2
Bernalillo Co. Ct. Deputies Assoc.	1					1
Bernalillo Professional Firefighters Association - IAFF		1				1
CWA 7076	2	14				16
DFUSE AFT 4519	1					1
IAMAW	1	1				2
Las Cruces POA	1					1
Luis Lopez	1					1
MCFUSE	1					1
NMCPSO	2					2
NUHHCE 1199NM		1				1
PFUSE-AFT		1				1
Rio Rancho School Employee Union		1				1
Santa Fe County Firefighter's Association		1				1
Sandoval County Prof. Firefighters Assoc.		1				1
TECS-NEA	1					1
UE (United Electrical Radio & Machine Workers)		1				1
UHPNM	4	1				5
VCPFFA IAFF Local 5399		1				1
Victoria Gurule			1			
<b>Total</b>	<b>25</b>	<b>26</b>	<b>2</b>			<b>53</b>

## PPC OUTCOME 2022

### Table E

<b>Total PPCs Resolved</b>		<b>17*</b>
<b>Sustained (In whole or in part)</b>		<b>5</b>
By Hearing Examiner (w/o Board review)		
After Board Review	5	
After Review by Court		
<b>Dismissed – no violation found</b>		<b>2</b>
By Hearing Examiner (w/o Board review)	1	
After Board Review	1	
After Review by Court		
<b>Summarily Dismissed</b>		<b>1</b>
Dismissed after preliminary review (NMAC 11.21.3.12)		
Dismissed after Motion	1	
Deferred to Agency		
Deferred to Arbitration		
Dismissed on collateral estoppel grounds		
Deferred to local board		
<b>Withdrawn and/or Settled</b>		<b>8</b>
Withdrawn upon receipt of notice of facial inadequacy		
Withdrawn in favor of alternate venue		
Withdrawn as moot		
Settled prior to hearing	8	
<b>Resolved after a Merits Hearing</b>	<b>1</b>	<b>17*</b>

\*25 PPCs were filed in 2022, but 8 remain pending as of 12/31/2022

## ALL CASES FILED WITH THE PELRB IN 2022 BY OUTCOME

### Table F

Outcome	PPCs	Representation Petitions	Total
<b>Certification</b>		7	7
<b>Upheld After Board Review</b>	5		5
<b>Dismissed After Board Review</b>	1		1
<b>Dismissed for inadequacy</b>		3	3
<b>Dismissed on Motion for Summary Judgment</b>	1	1	2
<b>Dismissed After Hearing</b>	2		2
<b>Withdrawn</b>	8		8
<b>Cases That Remain Pending</b>	8	17	25
<b>Total</b>	<b>25</b>	<b>28</b>	<b>53</b>