

# 2020 ANNUAL REPORT

New Mexico Public Employee Labor Relations Board

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Governor



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Executive Director

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## INTRODUCTION

New Mexico's Public Employee Bargaining Act (PEBA), (§§ 10-7E-1 through 10-7E-26 NMSA 1978), vests in the Public Employee Labor Relations Board (PELRB) 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 as discussed below.

The PEBA was significantly amended effective July 1, 2020. In summary, the 2020 amendments to the Act effected minor changes to the "Conflicts" section, § 10-7E-3 substituting the word "rules" in place of "regulations" and striking the legal citation to the Personnel Act, "Sections 10-7-1 through 10-7-19 NMSA 1978" from the listed laws that are not superseded by the Public Employee Bargaining Act.

Additionally, the "Definitions" section, § 10-7E-4 changed masculine pronouns used in the Act to gender neutral language; deleted a citation to "Section 7 of the Public Employee Bargaining Act" from the definition of "appropriate governing body"; deleted the definition of "fair share" as obsolete after the U.S. Supreme Court's decision in *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

The amendments modified the definitions of "management employee" to exclude those "whose fiscal responsibilities are routine, incidental or clerical" and "public employee" to clarify that it includes those whose work is funded in whole or in part by grants or other third-party sources." (Section 10-7E-4(Q)). In October 2020, the PELRB addressed the question whether the 2020 amendment's definition of "public employee, applied only to public school employees, deciding the amended definition did not limit the collective bargaining rights of employees whose work is funded through third-party sources to only those employees who work for the public schools. The amendments also changed § 10-7E-5 concerning the rights of public employees, added "concerted activities" to the rights protected by the PEBA.

As previously mentioned, the 2020 amendments modified the definition of a "local labor board" reflecting changes to §§ 9 and 10 governing the continued operation of local boards, so that they may continue to exist under certain circumstances and clarified that the administrative remedies available to aggrieved parties before the state or local boards include "actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions and excluding punitive damages or attorney fees." Section 10-7E-9 was amended to make clear that, just as the PELRB is required to promulgate rules necessary to accomplish and perform its functions and duties, so are local boards, including procedures for the designation of appropriate bargaining units, the selection, certification and decertification of exclusive representatives and the filing of, hearing on, and determination of, complaints of prohibited practices. This Board is required to review rules promulgated by a local board to ensure that such rules conform with the PEBA, and that any deviation from PELRB administrative rules is warranted by the particular circumstances.

Local boards are required to notify the PELRB of any revisions of its rules or changes in its membership within thirty days of any such revisions. The Board in turn is to maintain current posting of that information. See § 10-7E-10(C).

It is the changes to §§ 9 and 10 that account for much of the Board's activity in the closing two quarters of 2020. Because local boards are required to submit to the PELRB no later than December 31, 2020, copies of a revised local ordinance, resolution or charter amendment authorizing continuation of the local board have been submitted ahead of that deadline. Board staff was active in preparing Model Ordinance and Resolution templates to assist public employers in meeting that deadline. Tracking procedures have also been created to ensure compliance. Those activities will be reported to the Board beginning in January 2021 and regularly thereafter as those changes are expected to generate much activity throughout 2021. For example, public employers operating under local boards are required to submit affirmations to continue and each labor organization representing employees of the public employer subject to the local board has submitted a written notice that it agrees to operate under the local board by the end of 2021. A local board that fails to timely submit the affirmation shall cease to exist as of January 1 of the next even-numbered year. See § 10-7E-10(E).

The Board's activities may be generally categorized as follows:

### **Representation Cases**

Under the PEBA, employees may organize in units represented by labor organizations of their own choosing for the purpose of bargaining collectively with their employers concerning wages, hours and other terms and conditions of employment. One of the Board's major functions is to determine the appropriateness of those 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 through 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.

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. Petitions for amendment or clarification of a unit or its representative are a type of "representation proceeding" on which the Board maintains data. (NMAC 11.21.2.35).

Please refer to the Operations Summary herein for details on all representation issues brought to the Board for resolution during the 2020 reporting period.

### **Approval of Local Board Ordinances, Resolutions or Charters**

Any public employer other than the state that wishes to create a local public employee labor relations board shall file an application for approval of such a local board with the PELRB. *See*, NMSA §10-7E-10. Once created by ordinance, resolution or charter, and once approved by the PELRB, a local board assumes the duties and responsibilities of the PELRB and shall follow all procedures and provisions of the Public Employee Bargaining Act unless otherwise approved by the Board.

The PELRB has prepared and published templates for the creation of resolutions, ordinances or charter amendments (provided at [www.state.nm.us/pelrb](http://www.state.nm.us/pelrb)) designed to ensure compliance with the PEBA's requirements for approval of local boards. A public employer may propose variances from the templates pursuant to section 11.21.5.10 NMAC if the unique facts and circumstances of the relevant local public employer are deemed by the Board to be reasonable and necessary to effectuate the purposes of the Act. (NMAC 11.21.5.9)

Upon receipt of an application for approval seeking variance from the board approved templates, the director holds a status conference with the local public employer or its representative and any identified interested labor organizations, to determine the issues and set a hearing date. Upon setting a rule-making hearing, the director shall issue notice of the hearing and in the event that the board determines that such variance is warranted, and the resolution, ordinance or charter amendment otherwise conforms to the requirements of the Act and these rules, it shall authorize the director to proceed with processing the application. (NMAC 11.21.5.10)

Under the deadlines set by the 2020 amendment, the Board received timely filed applications for approval of local board ordinances, resolutions or charters from 16 public employers. Although the application process began in this reporting period, the approval phase concludes in the next. Please refer to the Operations Summary below for details regarding those cases.

### **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.

Please refer to the Operations Summary herein for details on the prohibited labor practices brought to the Board for resolution during the 2019 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].

### **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. There was significant rulemaking activity during the reporting period. Please refer to the Operations Summary, *infra*, for details.

### **Adjudication and Settlement**

The rate at which cases presented for adjudication are settled reflects the Board's policy of favoring resolution of disputes ahead of litigation. For example, during this reporting year, only one of the 23 Prohibited Practices Complaints initiated during 2020 was summarily dismissed. Of the remaining 22 cases, seven (32%), were resolved by agreement and four (18%) went to a hearing on the merits; 11 remain pending and will be resolved in the next reporting period. This settlement rate compares as follows with prior years:

- 60% of PPCs filed in 2019 were settled prior to hearing;
- 50% of the total PPCs filed in 2018 were settled prior to hearing
- 62% in 2017.

The Board's adjudicatory function serves the critical purpose of resolving those disputes that could not be settled amicably. 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. The data compiled by the Board during this reporting period indicate that most of the issues brought to the Board followed that pattern. However, in 2019, staff opened 13 cases in which Orders to Show Cause why this Board's prior approval of local board authorizing ordinances or resolutions were issued as part of a broader effort to update contact information for those local labor boards. Final resolution of those Orders to Show Cause were determined in this reporting period, so those staff-generated cases represent an anomaly not expected to be repeated.

After the local labor board issues discussed above, Prohibited Practice Charges constituted the most commonly filed actions. Of the 23 PPCs filed in 2020, eight were filed against School Districts, seven were filed against State agencies, five against municipalities, and the remaining three against counties. 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 171 days – well within the 180 days goal. This represents a return to prior reporting periods' numbers from last year anomaly of 562 day caused by cases held over from prior years due to lengthy appeals or by agreement of the parties.

One PPC opened in the reporting *PFUSE v. Peñasco Independent School District*; PELRB 108-20; (D-820-CV-2021-00029, discussed below) was not included in the closing period statistics above. It was completed through hearing and the Board review prior to District Court appeal within 242 days, longer than desired. The merits hearing was delayed in order to accommodate witnesses with COVID-19. Even so, the H.O report was issued within 181 days but because there was no November Board meeting and because of the holidays the deadline to request Board review was delayed until January.

Average number of days for closure of all Representation Petition filed in the reporting period was 71.3 days - well within acceptable measures.

See Table A sets forth the required deadlines for resolution of all cases.

### **Case Sources**

Analysis of cases filed in 2020, including applications for local board ordinance and resolution approval, shows that municipalities and counties comprised the largest source of filings in 2020. This was to be expected as the 2020 Amendments to the Public Employee Bargaining Act called for local boards that wished to continue to operate under local control were obligated to take affirmative action to pass new ordinances or resolutions conforming with the PEBA no later than December 31, 2020. Prior Board action to bring inactive local boards into compliance or to rescind prior approval of those inactive board's authorizing ordinances begun in 2019, continued through 2020. Those cases constituted 20 out 52 cases

opened in the reporting period or 38.5% of all cases. If one sets aside those cases involving local ordinance or resolution approval, public schools, whether the Complainant, Petitioner or Respondent, were the leading source of cases comprising 19% (ten cases) of all cases filed during the reporting period. The State was close behind, constituting 17% (nine cases) of all filings. Counties and municipalities were each involved in 11.5% of the filed cases (six cases each). The remaining case involved an institution of higher education.

As in the prior reporting period labor organizations representing city, county and school district employees were the most frequent petitioners (filing a combined 22 cases or 42% of all 52 cases filed) during this reporting period. State employee labor representatives accounted for the majority of the remaining filings (nine out of 52 new case filings or 17% of the total). Four of those nine cases were filed by AFSCME, Council 18 or its affiliates (44% of the cases filed against state agencies). Of the ten cases involving school districts, AFT affiliates filed 5 (50%), National Education Association or their affiliates filed three of the cases (30%), and the remaining two were filed by a school district and an individual employee, respectively. Of the six cases filed against counties, AFSCME filed five (83%) and the Bernalillo County Court Deputies Association filed the sixth. Similarly, of the six cases filed against municipalities, AFSCME filed five (83%), with the Mesilla Police Officers' Association filing the sixth.

Filing by individual petitioners or complainants constituted on two petitions or complaints approximately 3.5% a return to more traditional levels compared to the prior reporting period. Speculation that more individual filings may result from increased disclaimers of interest by unions did not materialize in this reporting period. See Tables B and C.

Along with the statistical data on cases filed and those concluded within the reporting year summaries of final orders issued by the Board and relevant court decisions are contained in this report. The court case summaries are informational only and should not be relied upon for legal research.

## **2020 OPERATIONS SUMMARY**

52 case files were opened in 2020 compared to 37 cases filed in the prior reporting period. It should be noted that of the 52 case files opened in 2020, 17 are for approval local boards and an additional 3 case were for asserting state board jurisdiction after voluntary dissolution of a local board (Bernalillo County, City of Las Vegas and Alamogordo Schools) (200 series) for review of compliance with Section 10 of the PEBA as required by the 2020 amendment to the Act. Removing those cases from consideration results in a fairly consistent number of filings compared with the preceding reporting period. Including those cases results in a 40% increase in case filings. That increase seems to indicate continuing increase in filed cases beginning in the prior reporting period after a 5-year decline in new case filings. The number of new files is now approaching levels last seen in 2011-2013. Statements analyzing the statistical data by case category are detailed below:

### **Prohibited Labor Practice Cases**

Of the 52 new case filings in 2020, 23 were prohibited practices complaints (PPCs) compared with 12 filed in 2019. This represents an approximate 92% increase in complaints from the preceding reporting period continuing the prior reporting period's reversal of a 5-year downward. A summary of each of the 23 PPCs filed with their outcomes or current status along with the disposition of any prior year filed PPCs resolved in 2020 is as follows:

1. In *AFSCME, Council 18, Local 399 v. City of Santa Fe*, PELRB 101-20 (11-PELRB-20, September 21, 2020). Complainant alleged that the City violated the PEBA by failing to comply with the parties' Collective Bargaining Agreement (CBA) in violation of §§ 17(A)(1) and 19(F) of the PEBA and by failing to bargain in good faith regarding certain pay inequities resulting from the transfer or promotion of a non-bargaining unit employee into a bargaining unit position in violation of § 19(H) of the PEBA. A hearing on the merits was held Monday, August 03, 2020. After denying the City's Motion for a Directed Verdict, the Hearing Officer concluded that under the totality of the circumstances the parties' conduct reflected mutual good faith bargaining over the alleged pay discrepancy and the Union did not meet its burden of proving a failure to bargain in good faith. The union did not request Board review and at the Board's September 8, 2020 meeting it affirmed the Hearing Officer's Decision. The file was closed on September 15, 2020.
2. *In re: Mesilla Police Officers' Association v. Town of Mesilla*, PELRB 102-20. On January 25, 2020 the Complainant filed a PPC alleging that after bargaining to impasse the Town delayed submitting its last best offer so that the parties were delayed in requesting mediation, the first stage of the arbitration procedure. After scheduling a hearing but before convening to take evidence and testimony, the parties settled their dispute and the matter was voluntarily dismissed on May 12, 2020. After review by the Board at its June 5, 2020 meeting, the file was closed on June 15, 2020.
3. *In re: Ruidoso Education Association and Daniel M. Kessler v. Ruidoso Municipal School District and Dr. George Bickert*, PELRB No.'s 103-20 and 105-20 consolidated; (15-PELRB-2020, October 16, 2020). Please refer to PELRB 105-20 for a summary of this case.
4. *In re: AFSCME, Council 18 v. State Corrections Dep't. et al*; PELRB No. 104-20. AFSCME, Council 18, alleged that the State's Corrections Department violated
5. § 19(B) (interfering with the exercise of a right guaranteed by PEBA), § 19(G) (refuse or fail to comply with a provision of the Public Employee Bargaining Act § 19(F) (refusing to bargain in good faith) and § 19(H) (refuse or fail to comply with a collective bargaining agreement). The Board's Hearing Officer denied the State's Alternative Motion for Partial Dismissal or to Strike Remedies, concluding there is no conflict between the PEBA and the State Personnel Act with regard to the employees who appealed their discipline to the State Personnel Board. Neither is it true that the PELRB will be called upon to make a threshold determination of "just cause" before it may order employees' notices of contemplated action removed should the Union prevail on the merits of its PPC. The remedial relief available to the Board under its statutory authority to enforce the Public Employee Bargaining Act through the imposition of appropriate administrative remedies, includes the ability to order retraction of investigations, notices of contemplated action and

discipline from the files of the affected employees for violations of the Act. Thereafter, the parties negotiated a settlement of their dispute calling for the withdrawal of the PPC. As of this writing the Board is awaiting withdrawal of the PPC so that the case may be closed.

6. *In re: Ruidoso Education Association and Daniel M. Kessler v. Ruidoso Municipal School District and Dr. George Bickert*, PELRB No.'s 103-20 and 105-20 consolidated; (15-PELRB-2020, October 16, 2020). After a Hearing on the Merits held over several days and concluding on August 26, 2020, the Board's Hearing Officer decided that by failing or refusing to abide by the procedural steps at each level of the CBA's grievance, Respondents violated § 5 of the PEBA, which constitutes a Prohibited Labor Practice pursuant to § 19(G). By the same conduct Respondents also violated § 19(H), prohibiting an employer's failure or refusal to abide by the negotiated terms of its CBA with the union. Both Respondents, by unilaterally altered the grievance procedure in violation of the duty to bargain in good faith further breached a duty under § 15(A) of the Act and thus, Respondents committed a prohibited labor practice pursuant to § 19(F) of the Act. Therefore, Dr. Bickert and the School District were ordered to 1) Cease and desist its practice of referring matters deemed by site administrators to be non-grievable to a procedure outside the contract grievance procedure and; 2) To process all grievances in accord with the process outlined in the CBA and; 3) Post a notice acknowledging that it violated PEBA Sections 17(F), 19(B), 19(G), and 19(H) by failing to follow the grievance procedure contained in the collective bargaining agreement and by violating its duty to bargain in good faith for a period of no less than 60 days. The Respondents did not seek Board review of the Report and Recommended Decision and after verifying compliance with the posting requirement, the case was closed on December 28, 2020.
7. *In re: AFSCME, Council 18, Local 399 v. City of Santa Fe*, PELRB 106-20 (17-PELRB-2020, December 15, 2020). The union alleged the City violated § 19(H) of the PEBA by refusing or failing to comply with Article 19 of the parties' Collective Bargaining Agreement (CBA) when the City initiated furloughs following a projected budget shortfall after various State declarations of a public health emergency due to COVID-19. Respondent denied any violations and claimed that any deviation from the CBA were justified by the public health emergency. The Board upheld by a 2-0 vote that an emergency such as that faced by the City of Santa Fe does not excuse an obligation to bargain in good faith imposed by § 17(A)(1). The Board reversed the Hearing Officer's decision that the bargaining obligation is subject to limited exceptions where an employer must take such emergency actions necessary to carry out its mission and that the evidence was insufficient to determine monetary damages and the question of damages was remanded to the Hearing Officer for determination of damages if the parties were unable to agree to an amount.
8. *In re: AFSCME, Council 18 v. State of New Mexico, State Personnel Office and State of New Mexico, New Mexico Corrections Department*, PELRB 107-20. This is a Prohibited Practices Complaint in which AFSCME alleged that the New Mexico Department of Corrections, under the authority of the State Personnel Office, implemented state-wide and site-specific COVID-19 response plans without bargaining, thereby

violating §§ 17(A)(l) (requiring Respondent and AFSCME to “bargain in good faith”; 9(F) (making it a prohibited practice to “refuse to bargain collectively in good faith with the exclusive representative”); 19(H) (making it a prohibited practice to “refuse or fail to comply with a collective bargaining agreement”). The parties settled their dispute and the PPC was withdrawn and a Voluntary Dismissal entered August 7, 2020. The file was closed August 26, 2020.

9. *In re: PFUSE Local 4285 and Miguelanjel Burns, et al. v. Peñasco Independent School District*; PELRB 108-20. The Union filed its PPC on May 18, 2020 alleging that the individual Complainants were vocal and open supporters of the Union and worked to assist the Union including speaking at School Board meetings. Superintendent Lisa Hamilton gave four of the individual Complainants notices of termination indicating that the District would not reemploy them for the ‘20-‘21 School Year and removed Brandon Gurule from his coaching position, cutting his Athletic Coordinator stipends in half for the upcoming school year. As a result of the foregoing, Complainants contend that Respondent has violated § 5 of the PEBA (giving public employees the right to “form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and to otherwise engage in concerted activity for mutual aid and protection); § 19(A) (making it a prohibited practice for a “public employer or his representative” 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 or his representative” to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the [PEBA]”); § 19(D) (making it a prohibited practice for a “public employer or his representative” 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”); and § 19(E) (making it a prohibited practice for a “public employer or his representative” to “discharge or otherwise discriminate 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”). On November 16, 2020 the Board’s Hearing Officer decided that Respondent discriminated against Miguelangel Burns and Marissa Sandoval regarding terms and conditions of employment because of their membership in a labor organization in a manner prohibited by §§ 19(A), (D) and (E) when their contracts were not renewed in May of 2020 and that animus against PFUSE, Local 4285 was a substantial motivating factor for the adverse action taken. He further concluded that Complainants Gurule and Anglada did not meet their burden to establish a violation of §§ 19(A), (D) or (E). Non-renewal of Miguelangel Burns’ and Marissa Sandoval’s contracts interfered with, restrained or coerced them in the exercise of protected rights under § 5 of the Act but Complainants Gurule and Anglada did not establish a violation of § 19(B). Finally, Miguelangel Burns and Marissa Sandoval proved that Respondent infringed upon their rights to engage in concerted activities for mutual aid or benefit and that such infringement constituted a prohibited labor practice under § 19(G). Although Complainants Anglada and Gurule proved that they also engaged in protected concerted activity, for the reasons

discussed under the § 19(B) analysis there was insufficient evidence that the adverse employment actions taken against them was because of the concerted activity or that the employer would not have taken the same action but for the concerted activity. Respondents requested Board review on December 3, 2020 and the Hearing Officer's Report and Recommended Decision was reviewed and affirmed by the Board on January 6, 2021, Ordering on January 15, 2021 as follows:

- a. The claims of Complainants Anglada and Gurule were dismissed;
- b. Respondent was ordered to cease and desist from all violations of the PEBA;
- c. Respondent was ordered to post and email to the District's employees notice of its violations of the PEBA and assurances that it will comply with the law in future;
- d. That the Notices of non-renewal of Complainants Burns' and Sandoval's teaching contracts be rescinded;
- e. That actual damages related to union dues deductions, back pay and benefits were awarded.

See 5-PELRB 2021. The Respondent appealed to the District Court the relief afforded Complainant Sandoval only, on February 15, 2021. The completion of this case remains pending on appeal and will be documented in the next reporting period.

10. The Board's Hearing Officer granted a directed verdict at the conclusion of the Union's case dismissing the Union's claims that the School District violated §§ 19(A), (B), (C), (D), (E) and (G) *In re: Mesa Vista Federation of Teachers/AFT v. Mesa Vista Consolidated Schools*, PELRB No. 109-20, (17-PELRB-2020, December 15, 2020). The Board affirmed its Hearing Officer's conclusion there was insufficient causal connection between Complainant's protected activities and transfer imposed. The file was closed in January of 2021 and will be recorded among the cases closed in the next reporting period.
11. *In re: AFSCME, Council 18 v. N.M. Children, Youth and Families Dep't*, PELRB 110-20. After a union executive board officer and steward for AFSCME Local 3320 at the John Paul Taylor Center (part of the CYFD Juvenile Justice Services Division) was disciplined with a verbal counseling, AFSCME filed a Complaint against CYFD on June 3, 2020. The PPC alleged that the CYFD's actions violated § 19(B) (interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act), § 19(C) (dominate or interfere in the formation, existence or administration of a labor organization), § 19(D) (discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization) and § 19(G) (refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule). A Hearing on the Merits was held October 23, 2020 continuing on December 15, 2020. The Hearing Officer issued his Report and Recommended Decision on December 23, 2020 dismissing AFSCME, Council 18's claims under §§ 19(D) and (G) but concluding that CYFD violated §§ 19(B) and (C) of the Act. As a remedy CYFD was required to:
  - (1) Expunge the documented verbal counseling and any reference to it from any employer file whether physical or electronic, particularly the subject employee's personnel file and any "shadow file" that may be maintained.

- (2) Prohibit the employer from relying upon the verbal counselling as progressive discipline or in any way at all in any future discipline.
- (3) Cause Notice of the violation to be posting for 180 days in all places where the Respondent has bargaining unit employees.
- (4) Cease and desist from similar violations of the PEBA.

CYFD did not request Board review of the H.O. decision and the file's closure in March of 2021 will be noted in the next reporting period.

- 12. *In re: AFSCME v. N.M. Human Services Dep't*; PELRB 111-20. On March 3, 2020, Complainant filed a PPC on behalf of one of its employee union representatives alleging the Human Services Department violated § 19(B), § 19(F) and § 19(H) of the PEBA requiring the timely production of information necessary for the Union to perform its role as exclusive representative. Prior to convening a scheduled hearing on the merits, the parties settled their dispute, the PPC was withdrawn and the case voluntarily dismissed. The file was closed on September 15, 2020.
- 13. *In re: AFSCME v. Santa Fe County*; PELRB 112-20. Complainant filed its Complaint alleging failure to bargain COVID 19-related workplace restrictions on June 29, 2020. The parties were able to settle those claims, the PPC was withdrawn and the case Voluntarily Dismissed On October 8, 2020. The file was closed on December 3, 2020.
- 14. *In re: McKinley County Fed'n. of United School Employees v. Gallup-McKinley County Public Schools*; PELRB 113-20. On July 10, 2020, the Union filed its complaint requesting a preliminary injunction requiring Respondent to bargain in good faith with the Union regarding the COVID-19 reentry guidelines. After a hearing on Preliminary Injunction on July 20, 2020 the parties reached a stipulated agreement voluntarily dismissing the Complaint on July 29, 2020. After review by the Board at its August 2020 meeting the case was closed on August 26, 2020.
- 15. *In re: Gallup-McKinley County Schools v. McKinley County Fed'n. of United School Employees*; PELRB 114-20. Ten days after PELRB 113-20 was filed, on July 20, 2020, Gallup-McKinley County Schools filed its own PPC against the Union alleging Conditional bargaining in violation of Sections 17(A); 19(F) and (H) and direct dealing in violation of 15(A) and 19(G). After Summary Judgment was denied and a Merits Hearing held on January 21, 2021. Final disposition of this case will be reported in the next reporting period.
- 16. The Board affirmed the Executive Director's summary dismissal of the Complaint *In re: Jerry Akins v. N.M. Dep't. of Taxation and Revenue*, PELRB 115-20 (10-PELRB-2020, August 19, 2020). The Complaint was found to be untimely as it was filed after the six-month limitation period in NMAC 11.21.3.9 and that it failed to state a claim under the Act. The file was closed on August 19, 2020.
- 17. *In re: AFSCME v. City of Santa Fe*; PPC PELRB 116-20. The Executive Director informed the Board that the complaint in this case had been withdrawn and he

- issued a Voluntary Dismissal. No action was taken by the Board and the file was closed October 13, 2020.
18. *In re: N.M. Park Ranger's Law Enforcement Assoc. v. N.M. Energy, Minerals and Natural Resources Dep't*; PELRB 117-20. Withdrawn voluntarily dismissed August 6, 2020 and file closed August 26, 2020.
  19. *In re: PFUSE Local 4285 v. Peñasco Independent School District*; PELRB 118-20. On August 24, 2020 the local teachers' union filed this PPC alleging interference with, and retaliation for, union activities. After Summary Judgment was denied in October of 2020, the parties reached a settlement. The Union withdrew its PPC on November 12, 2020 and a Voluntary Dismissal was entered on November 16, 2020. Due to intervening holidays and Board meeting agendas, the case was not closed until 2021 and will be accounted for in the next reporting period.
  20. *In re: AFSCME v. Santa Fe*; PELRB 119-20. The union complained on October 13, 2020 that the City contracted out bargaining unit work. This matter remains pending with a hearing on the Merits scheduled to be heard on April 12 and 13, 2021. Disposition of this case is a matter for the next reporting period.
  21. *In re: AFSCME v. Bernalillo County*; PELRB 120-20. AFSCME filed this PPC on October 13, 2020 alleging bad faith bargaining in violation of sections 17(A)(1), 17(A)(2) and 19(F), after the County's Chief Negotiator withdrew a Tentative Agreement prior to ratification. A Merits Hearing begun on January 25, 2021 and continued on February 12, 2021. The Hearing Officer's decision issued March 23, 2021 will be reviewed by the Board at its April 2021 meeting so that dispositions of this case will take place in the next reporting period.
  22. *In re: Bernalillo County Court Deputies Ass'n v. BCSO and Bernalillo County*; PELRB 121-20. The Union alleged multiple acts of retaliation, discrimination and failure to bargain after the Respondents proposed to eliminate the Court Security Specialist job classification through attrition, transferring their duties to Deputy Sheriffs represented by a different bargaining representative. Summary Judgment was denied on January 2021 and the matter heard on the merits on January 25, 2021. The Hearing Officer's Report and Recommended Decision was issued on February 25, 2021 and now awaits Board review so that final disposition will be reported in the next reporting period.
  23. *In re: McKinley County Federation of United School Employees v. Gallup McKinley Schools*; PELRB 122-20. The Union petitioned for Judicial Enforcement of the Temporary Restraining Order issued by Director Griego in *McKinley County Fed'n. of United School Employees v. Gallup-McKinley County Public Schools*; PELRB 113-20. A hearing before the full Board *en banc* was held on January 16, 2021, appealed to the District Court on

January 22, 2021 and settled on March 8, 2021. Disposition and case closure will be accounted for in the next reporting period.

24. *In re: CWA v. Dep't. of Cultural Affairs and Dep't. of Health*; PELRB 123-20. CWA filed a complaint on November 20, 2020 alleging that without notifying the exclusive bargaining agent for CWA-represented employees, the Department of Cultural Affairs and the Department of Health unilaterally changed the terms and conditions of employment of various bargaining unit members. Shortly after scheduling a hearing on the merits, CWA settled with the Department of Health and its claims against DOH were voluntarily dismissed on January 21, 2021. Claims against the Department of Cultural Affairs were dismissed on January 29, 2021. Disposition and case closure will be accounted for in the next reporting period.

Of the 23 PPCs filed in 2020, seven remain to be decided and closed in the next reporting period:

1. *In re: AFSCME, Council 18, Local 399 v. City of Santa Fe*, PELRB 106-20.
2. *In re: PFUSE Local 4285 and Miguelanjel Burns, et al. v. Peñasco Independent School District*; PELRB 108-20.
3. *In re: Gallup-McKinley County Schools v. McKinley County Fed'n. of United School Employees*; PELRB 114-20.
4. *In re: AFSCME v. Santa Fe*; PELRB 119-20.
5. *AFSCME v. Bernalillo County*; PELRB 120-20.
6. *Bernalillo County Court Deputies Ass'n v. BCSO and Bernalillo County*; PELRB 121-20.
7. *McKinley County Federation of United School Employees v. Gallup McKinley Schools*; PELRB 122-20.

In addition to the foregoing PPC cases opened in 2020, the Board continued working on PPCs opened in prior years but not resolved until 2020:

1. In *In re: Rhonda Goodenough v. N.M. Children Youth & Families Department*, PELRB 106-19, (9-PELRB-2020, July 22, 2020.) The Board upheld the Hearing Officer's Dismissal of Complainant's retaliation claim against CYFD for her filing of the PPC PELRB 103-19 (20-PELRB-2019). The Board determined that the Complainant did not meet her burden of proof to show that CYFD engaged in a prohibited practice under NMSA §§ 19(B) (prohibiting interference with, restraint or coercion of a public employee in the exercise of a right guaranteed by the PEBA) or 19(E) (prohibiting the discharge or other discrimination against a public employee because the employee signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the PEBA or because the employee chose to be represented by a labor organization). Complainant also did not establish that disparate treatment occurred, nor did she prove by a preponderance of the evidence that CYFD acted in retaliation or restrained her right to conduct any protected activity in violation of the PEBA. Evidence that a *Weingarten* violation may have occurred is not sufficient to sustain either of the above violations basis because that violation was immaterial to the decision to terminate her employment. Ms. Goodenough appeal the Board's Order to the First Judicial District Court, Case No. D-101-CV-2020-01743 (J. Biedscheid) on August 21, 2020. As of this writing the

case is pending on appeal with the Record on Appeal and supplement thereto filed November 12, 2020, Complainant's Statement of Issues filed November 13, 2020 and the Board's Response on December 15, 2020.

2. *AFSCME, Council 18 v. Bd. of Cnty Comm'rs of Sandoval Cnty*; PELRB 107-19. On October 22, 2019 the Union alleged the Respondent refused to provide information to the Union as part of its obligation to bargain in good faith, which information is necessary to the Union's role as the exclusive bargaining agent for a bargaining unit of employees of the Respondent. The Complaint was settled, withdrawn and the case Voluntarily dismissed in November of 2019 but due to intervening holidays the case was not closed until January 13, 2020.
3. As previously mentioned in this report, staff undertook review of local boards in 2019 and some that work continued into this reporting period:
  - a. *In re: Lincoln County Labor Management Relations Board*; PELRB 202-08 (closed March 6, 2020).
  - b. *In re: Lake Arthur Municipal School District Labor Management Relations Board*; PELRB 202-09 (closed March 6, 2020).
  - c. *In re: Lea County Labor Management Relations Board*; PELRB 202-09 (closed March 6, 2020).
  - d. *In re: Chama Valley Indep. School District Labor Management Relations Board*; PELRB 214-04 (closed March 6, 2020).
  - e. *In re: Curry County Labor Management Relations Board*; PELRB 214-04 (closed March 6, 2020).
  - f. *In re: Zuni Schools Labor Management Relations Board*; PELRB 203-07 (closed May 12, 2020).
  - g. *In re: Taos Labor Management Relations Board*; PELRB 205-05 (closed March 9, 2020).

In each case but two, *In re: Zuni Schools* and *In re: Chama Valley Indep. School District*, the Board revoked its prior approval of the local authorizing ordinance or resolution.

As in prior years a significant percentage of PPCs filed in 2020, settled prior to a hearing on the merits. (See Table E). The percentage of settled cases, 60%, compares favorably with the 67% of the total PPCs settled in the prior reporting period and prior year's averages around the 50% mark.

One PPC was summarily dismissed upon a Motion for Summary Judgment - *In re: Jerry Akins v. N.M. Dep't. of Taxation and Revenue*, PELRB 115-20 (10-PELRB-2020, August 19, 2020). The rate of summary dismissal in this reporting period is consistent with that in prior years.

Five of the PPCs filed in 2020 were resolved by a Board Order following review of the Hearing Officer's Report and Recommended Decision issued after a hearing on the merits. One case, *AFSCME Council 18, Local 3999 v. City of Santa Fe*; PELRB 119-20, filed October 13, 2020, remains to be heard on its merits and is scheduled to be heard on April 12 and 13, 2021.

### **Representation Cases**

As with the increase in prohibited practice filings, the PELRB experienced an increase in representation petitions over the prior reporting period. Seven of the 52 case filings in 2020 were representation petitions (13.5%), comprising five petitions for initial certification of a bargaining unit; one decertification petition, and one petition to accrete a position into an existing bargaining unit.

As noted above, there was one case filed during the reporting period seeking decertification of a bargaining unit comprising Sandoval County Detention Center workers, PELRB 306-20. The petition was summarily dismissed for lack of the requisite information described in NMAC 11.21.2.8 and a lack of jurisdiction as Sandoval County had its own labor relations board at that time.

Also noted above, there was one file opened in 2020 related to clarification of units or accretion of new positions in an existing unit, *AFSCME Local 2851 & The City of Las Vegas*, PELRB 305-20. This case remained open at the end of the reporting period. The Hearing Officer's Report and Recommended Decision was eventually adopted by the Board in Order 4-PELRB-2021 and has been appealed to the District Court. Resolution of that case will be reflected in the next reporting period.

Five new cases were opened during the reporting period seeking recognition of new bargaining representatives and units:

1. *New Mexico Park Ranger's [sic] Law Enforcement Association & NM Energy Minerals and natural Resources Department*; PELRB 301-20;
2. *NEA-Turquoise Trail Charter School & Turquoise Trail Charter School*, PELRB 302-20;
3. *AFSCME Council 18 & Bernalillo County*; PELRB 303-20;
4. *CWA & Office of African American Affairs*; PELRB 304-20;
5. *United Electrical Radio & Machine Workers & UNM*; PELRB 307-20

Seven filings in 2020 represents a 17% increase in the number of representation petitions filed compared to six filed in the preceding reporting period.

There were no representation cases filed in prior reporting years but not resolved until 2020.

### **Approval of Local Board Ordinances, Resolutions or Charters**

The 2020 Amendment to the PEBA requires that no later than December 31, 2020, each local board desiring to continue had to submit to the PELRB copies of a revised local ordinance, resolution or charter amendment authorizing continuation of the local board and that provides the same or greater rights to public employees and labor organizations as the Public Employee Bargaining Act, allows for the determination of, and remedies for, an action that would constitute a prohibited practice under the Public Employee Bargaining Act and contains impasse resolution procedures equivalent to those set forth in § 10-7E-18 NMSA 1978. A local board that fails to meet the submission deadline set forth in this subsection shall cease to exist on January 1, 2021. See, NMSA 1978 § 10-7E-10(A) and (B).

To aid local boards' compliance with the revised § 10 requirements, this Board approved model templates and directed staff to post the templates on its website. See, Minutes of Board Meeting held Tuesday, September 8, 2020 and Minutes of Board Meeting held Tuesday, October 6, 2020. The Board's rules further provide in NMAC 11.21.5.9(B) that all resolutions, ordinances or charter amendments submitted for approval shall follow the board-approved templates provided at [www.state.nm.us/pelrb](http://www.state.nm.us/pelrb); provided, however, that the public employer may propose variances to the templates where appropriate, pursuant to NMAC 11.21.5.10. (providing for variances from the board-approved templates required *by the unique facts and circumstances of the relevant local public employer*, to effectuate the purposes of the Act.)

This Board has until February 15, 2021, to determine whether the local ordinance, resolution or charter amendment satisfies the requirements of § 10 and if not, any defects may be cured by June 30, 2021 or the local board will cease to exist. The board shall certify by written order whether the requirements of this subsection have been met. NMSA 1978 § 10-7E-10(A).

Under the deadlines set by the 2020 amendment, the application process begins in this reporting period but the approval phase concludes in the next. The Board received timely filed applications for approval of local board ordinances, resolutions or charters from 16 public employers:

1. City of Deming; PELRB 204-20
2. San Juan College; PELRB 205-20
3. Central New Mexico Community College; PELRB 206-20
4. Doña Ana County; PELRB 207-20
5. Alamogordo Public Schools; PELRB 208-20
6. Silver City; PELRB 209-20
7. Sandoval County; PELRB 210-20
8. City of Roswell; PELRB 211-20
9. City of Hobbs; PELRB 212-20
10. Los Alamos County; PELRB 213-20
11. Albuquerque Public Schools; PELRB 214-20
12. Aztec Schools; PELRB 215-20
13. New Mexico State University; PELRB 216-20
14. City of Raton; PELRB 217-20
15. City of Las Cruces; PELRB 218-20
16. Zuni Schools; PELRB 219-20

The Board action approving, conditionally approving or disapproving each application took place at the Board's January 6, 2021 meeting and will be summarized in the next reporting period.

### **Rulemaking Activity**

Amendment of the Board's rules begun in 2019 to reduce delays, to discourage wasteful litigation, to reflect new communication technologies and to discourage inefficient case-

processing, continued in this reporting period. At a public hearing on March 3, 2020, duly noticed in accordance with NMSA 1978 §10-7E-12(D), the Board received comment on the proposed rule amendments and adopted changes to its rules summarized as follows:

1. **NMAC 11.21.1.11 REPRESENTATION OF A PARTY:** A change to this rule eliminated an apparent exception to the requirement that a representative of a party file a notice of appearance for employees of a party, to reflect the reality that all representatives of a party to file a notice of appearance, typically upon the filing of an initial pleading. This will enable PELRB staff to ensure all appropriate individuals receive notice of Board action:

“A party may represent his, her, or itself, or be represented by counsel or other representative. Any representative of a party ~~who is not an employee of the party~~ shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.”

The Board adopted the proposed rule change as written without objection.

2. **NMAC 11.21.1.12 EX PARTE COMMUNICATIONS:** This change removes the specific enumeration of types of proceedings (specifically, the outdated reference to “fact finding” which is a term of art related to impasse resolution proceedings) to which the prohibition of *ex parte* communications applies and makes it applicable to any proceeding before the Board:

“Except as otherwise provided in this rule, no party to a proceeding pending before this Board ~~representation, prohibited practices, or fact finding proceeding~~ shall communicate, or attempt to communicate, with a hearing examiner assigned to the case, with the director, or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with the director during the investigatory phase of a ~~representation, prohibited practices, or impasse resolution~~ proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with the director, a mediator, or board member at the director’s, mediator’s, or board member’s request.”

There was one public comment concerning that the phrase “a proceeding pending before this Board” should not be interpreted to mean only proceeding before the Board *en banc* and asked the Board to consider whether that phrase should be left out entirely, that the Board should delete the sentence stating that it is not a prohibited *ex parte* communication to “communicate with the director, a mediator, or board member at the director’s, mediator’s, or board member’s request.” After the Executive Director responded to those comments

And a discussion among the Board members, the Board voted to adopt the proposed changes after inserting “or any of its agents” after “Board”.

**3. 11.21.1.15 RECORDS OF PROCEEDINGS:** This change removes references to the now obsolete practice of “tape recording” to encompass modern audio recording technologies:

“All meetings of the board (whether general, special or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the board or a hearing examiner of the board shall be audio-recorded, or, upon order of the board may be transcribed, except that board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the board. Following the board’s approval of the minutes of a meeting of the board, the minutes shall become the sole official record of the meeting, and the audio ~~tape recording~~ of the meeting may be erased. The director shall keep audio ~~tapes recordings~~ of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials recording or transcript shall be the only official record of a hearing.”

The Board adopted the proposed rule change as written without objection.

**3. NMAC 11.21.1.16 NOTICE OF HEARING:** This change clarified the duties of PELRB staff in notifying parties of proceedings and expands the scope to include conferences in addition to hearings:

A. After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the director shall hold a status and scheduling conference with the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

B. Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules. Notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least 30 days prior to commencement of the hearing.

C. Upon setting a hearing or conference before the director or designee or before the board in any proceeding, the director or the board shall cause notice of hearing to be issued to all parties of record setting forth the time and place of the hearing or conference. A party to a representation, prohibited practices

or impasse resolution case in which a hearing [or conference](#) is scheduled may request postponement of the hearing [or conference](#) by filing a written request with the director, and serving the request upon all other parties, at least five days before commencement of the hearing [or conference](#). The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than 20 days after the previously set date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than 20 days after the previously set date, [or a postponement with less than five days' notice.](#)”

The Board adopted the proposed rule change as written without objection.

4. **NMAC 11.21.1.18 MISCONDUCT:** To clarify the duty and power of the Board to control its proceedings Staff proposed adding abusive behavior to the list of prohibited misconduct, includes examples of the possible remedies for misconduct, including prohibiting a representative from appearing before the Board or one of its Hearing Examiners for a period of time designated by the Board, and provides for Board review of the exercise of this power by one of its agents:

“[As part of the Board’s statutory duty under Section 2 of the Act to ensure the orderly functioning of the state and its political subdivisions and as part of its power to hold hearings and enforce the act by the imposition of appropriate administrative remedies pursuant to Section 9 of the Act, T](#)the hearing examiner or body conducting a hearing or official [performing duties under the act](#) ~~conducting any other proceeding~~, may exclude or expel from ~~the~~ [any](#) hearing or proceeding, any person, whether or not a party, who engages in violent, threatening, disruptive, [abusive](#) or unduly disrespectful behavior. [An exercise of the Board’s power to control its proceedings under this rule may include prohibiting a representative from appearing before the Board or one of its Hearing Examiners for a period of time designated by the Board, reprimanding, suspending, or recommending referral for other disciplinary action.](#) In the event of such exclusion or expulsion ~~of a person for misconduct~~, the hearing examiner, body or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate. [An exercise of this power by an agent of the Board is subject to review by the Board.](#)”

After some discussion about the propriety of vesting the Board’s agents with the power to remove participants from proceedings at the discretion of the agent, the Board was satisfied that the provision in the proposed rule change that requires Board review of the exercise of this power by one of its agents was a sufficient safeguard against abuse of discretion. The Board unanimously approved this rule amendment.

6. **NMAC 11.21.1.22 BURDEN OF PROOF:** This change removes outdated language related to impasse resolution proceedings applicable under PEBA I but inapplicable since the passage of PEBA II:

“A. Except in unit clarification proceedings, no party shall have the burden of proof in a representation ~~or fact finding~~ proceeding. Rather, the director in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

B. In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.”

The Board adopted the proposed rule change as written without objection.

**7. NMAC 11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS:** This amendment adds a deadline for responses to motions not addressed in a scheduling order or filed in the absence of a scheduling order:

“All motions and responses to motions, except those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order or, if no deadline is set forth in the scheduling order or such has yet to be issued, within ten (10) days.”

The Board adopted the proposed rule change as written without objection.

**8. NMAC 11.21.1.33 CHAIRPERSON SUCCESSION:** This new rule was intended to ensure that the chairperson has at least one year of experience in PELRB rules and procedures as well as parliamentary procedure and that a chairperson with such experience is always in place regardless of the expiration of terms:

“A. From among the three members appointed to the public employee labor relations board pursuant to Section 10-7E-8 NMSA, 1978, the board shall appoint a Chair to serve as the primary point of contact for the board’s staff, to conduct the regular and special meetings of the board in a manner consistent with parliamentary procedure. In like manner the board shall appoint a Vice-Chair to serve in the capacity of Chair in its absence or inability to serve and to provide for automatic succession when the term of the chair is up.

B. The Chair and the Vice-Chair shall serve in those capacities for a period of one year. Upon completion of the Chair’s one-year term, the Vice-Chair shall automatically become the Chair and assume the duties of that office. The past Chair shall resume regular duties as a member of the board and the third board member, who has not served as Vice-Chair within the preceding year, shall assume that role.

C. Initial appointments under this rule shall be by seniority based on the board members’ appointment letters. In the event of a tie, the Chair shall be determined

from between the two most senior members either by acclamation or by a coin toss supervised by the board's director.”

The proposed change was approved 2 to 1.

**9. NMAC 11.21.2.23(B) OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST:** This change corrects an error in punctuation to provide more clarity:

“B. In the event that the director, hearing examiner or board determines that a unit other than the unit petitioned for is appropriate and it appears to the board or director that the showing of interest filed by the petitioner or an intervenor is insufficient in the unit found appropriate the director shall notify the petitioner or intervenor and give such party a reasonable amount of time in which to file an additional showing. If the party fails to file a sufficient showing within that time, the director shall dismiss the petition or deny intervenor status.”

The Board adopted the proposed rule change as written without objection.

**10. NMAC 11.21.2.25 PRE-ELECTION CONFERENCE:** These changes have two major components: 1) adding language that allows for conducting an election using electronic ballots, and 2) allowing the waiver of the requirement for a pre-election conference if the parties can stipulate to a satisfactory consent election agreement that is approved by the director at or soon after a Status and Scheduling Conference:

“At a reasonable time at least fifteen (15) days before the election, the director shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual, **electronic**, or mail ballots **or both**, the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The director shall notify all parties by mail (**and email if available**) of the time and place of the pre-election conference, at least five (5) days in advance of the conference. The conference may proceed in the absence of any party. ~~The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) and the use of manual or mail participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.~~

A. The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) and the use of manual, electronic, or mail participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.

B. The parties may stipulate to a Consent Election Agreement without the necessity of a Pre-Election Conference subject to approval of its terms by the director, in which case the requirement for a Pre-Election Conference shall be waived.”

After discussion about the propriety of amending the rule to allow for electronic balloting without additional provisions about procedures to ensure the security and integrity of electronic balloting, the Board approved the changes after removing the language referring to electronic balloting.

**11. NMAC 11.21.2.27(B) BALLOTS AND VOTING:** This rule adds language referring to electronically conducted elections in light of the changes to 11.21.2.25 allowing electronic balloting. It also allows the director to delegate the responsibility of conducting elections to an election supervisor pursuant to the authority granted by 11.21.1.28:

“B. All elections shall be conducted by the director, whether electronically, by mail in ballots or on-site elections, subject to the provisions of 11.21.1.28 NMAC regarding the director’s authority to delegate duties.”

The Board adopted the proposed rule change as written without objection.

**12. NMAC 11.21.2.30(A) CHALLENGED BALLOTS:** In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor:

“A. Any party to an election, through its observer, or the ~~director~~ election supervisor, may challenge the eligibility to vote of any person who presents himself or herself at the polls, and shall state the reason for the challenge. The director shall challenge any voter whose name does not appear on the list of employees eligible to vote.”

The Board adopted the proposed rule change as written without objection.

**13. NMAC 11.21.2.31 TALLY OF BALLOTS:** In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor:

“Immediately following the counting of ballots, the ~~director~~ election supervisor shall serve a tally of ballots upon one representative of each party. The tally shall show the number of votes cast for each labor organization listed on the ballot, the number of votes cast for no representation, the number challenged ballots, and the percentage of employees in the unit who cast ballots. The tally shall also state whether the results are conclusive, and, if so, what the conclusive vote is. If the tally shows that fewer than forty percent (40%) of the employees in the unit voted, or that the choice of “no representation” received fifty percent (50%) or more of the valid votes cast, then the tally shall reflect that no collective bargaining representation was selected.”

The Board adopted the proposed rule change as written without objection.

**14. NMAC 11.21.2.33 CERTIFICATION:** This change clarifies the action required of the director after an election and adds language that codifies the Board’s longstanding practice of

reviewing the results of representation elections before issuing a certification, a practice that might not take place within ten (10) days:

~~“If no objections are filed pursuant to Section 34, below, then within ten (10) days following service of the final tally, the director shall issue as may be appropriate either a certificate showing the name of the labor organization selected as the exclusive representative and setting forth the bargaining unit it represents ~~certification of representative~~, or a certification of results, showing that no labor organization was selected as bargaining representative. The results of each election shall be reviewed by the Board at the next regularly scheduled meeting of the Board following the election. ~~showing the name of the labor organization selected and setting forth the bargaining unit, or a certification of results, showing that no labor organization was selected as bargaining representative.~~”~~

The Executive Director informed the Board that in addition to the proposed changes, PELRB staff recommended that the phrase “and appropriate action taken thereafter” be inserted between “reviewed by the Board” and “at the next regularly scheduled meeting” as well as inserting the phrase “after the objection period” after “at the next regularly scheduled meeting” to ensure that the Board takes action to certify the election results after the period in which to object to those results has passed. Chair Westbrook moved to approve the proposed changes as published with the additional language recommended by PELRB staff, but deleting the word “thereafter” from the phrase “and appropriate action taken thereafter”. Member Bledsoe seconded the motion and the proposed change including the additional language recommended by staff was unanimously approved.

**15. NMAC 11.21.2.39(A) VOLUNTARY RECOGNITION:** This change corrects a grammatical or spelling error in subparagraph A:

~~“A. A labor organization representing the majority of employees in an appropriate collective bargaining unit and a public employer, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which the employer recognized recognizes the labor organization as the exclusive representative of all of the employees in the unit. Such petition shall be accompanied by a showing of majority support, which shall be verified in accordance with the procedures of Section 11, above.”~~

The Board adopted the proposed rule change as written without objection.

**16. NMAC 11.21.2.42 DISCLAIMER OF INTEREST:** This new rule codifies the right of a labor organization to disclaim its interest in a bargaining unit without the necessity of undergoing decertification, so long as its conduct is not inconsistent with such disclaimer:

~~“11.21.2.42 DISCLAIMER OF INTEREST: Any labor organization holding exclusive recognition for a unit of employees may disclaim its representational interest in those employees at any time by submitting a letter to the PELRB disclaiming any representational interest in a unit for which it is the exclusive representative.”~~

A. Upon receipt of a letter disclaiming and interest under this rule, the Board shall cause to be posted in a place or places frequented by employees in the affected bargaining unit, a Notice that the Union has chosen to relinquish representation of the employees and that affected employees may file objections in writing to such relinquishment. Such objections must be sent to the Public Employee Labor Relations Board within a time established by the Director.

B. If no objections are timely received by the PELRB, the Union's letter of withdrawal of representation will be recognized by the Board. Any objections received will be evaluated on the basis of whether the disclaimer is made in good faith and/or whether Union's conduct, judged in its entirety, is consistent with its alleged disclaimer."

The Board approved the proposed changes after adding "and the employer" after "submitting a letter to the PELRB", replacing "and" with "an" in the first line of subparagraph A, and striking all language after "relinquish representation of the employees."

**17. NMAC 11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:** The changes to subsection (A) and (B) and (D) clarify the types of enactments that can be submitted for Board approval to better reflect the reality that the Board does not approve "boards," which might not be constituted at the time of approval, but rather the ordinances, charter amendments, or resolutions authorizing their creation. The changes to subsection (C) clarify the Board's jurisdiction over public employee labor relations matters in the absence of a "fully functional" local labor board complying with section 10 of the Act and ensure that public employees have a mechanism for exercising the rights established by the PEBA regardless of the functional status of a local labor board:

"A. Upon receiving an application for approval of a local board ordinance, charter amendment or resolution the board shall conduct an administrative review of the application and, at a properly noticed public meeting or hearing, shall formally approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law.

B. In considering an application for approval of a local board ordinance, charter amendment or resolution, the board shall review all applications for approval of such ordinance, charter amendment or resolution, ~~local boards~~ in light of the requirements of Section 10 of the act (NMSA 10-7E-10) and Section 11.21.5 NMAC of these rules. The board shall require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 of the act (NMSA 10-7E-10) and Section 11.21.5 NMAC of these rules, and to be approved.

C. Upon a finding that the application for the local board ordinance, charter amendment or resolution, meets statutory and regulatory requirements, the board shall

approve such application and remand to the local board once it is duly appointed, any proceedings held in abeyance. The PELRB retains jurisdiction over all matters abated pursuant to NMAC 11.21.5.11 until such time as a local board created pursuant to an approved ordinance, resolution or charter amendment is duly appointed and functioning. If within 60 days following approval of an application under this rule the local board is not duly constituted or, if after being duly constituted fails to meet regarding any remanded issues or to promulgate rules necessary to accomplish and perform its functions as established in NMSA 1978, 10-7E-11 NMSA (2003), or if it fails to act on or respond to a filing by an employee organization or public employer or public employee within a reasonable time, or otherwise acts in a manner inconsistent with the precedent of the Public Employee Labor Relations Board, the Board's approval shall be revoked in accordance with NMAC 11.21.5.14 below and this board shall exercise its jurisdiction over any matters that, but for the application, would be subject to the Act. The Decisions and Findings of the Board in any such matter shall be binding on the local board, the public employer, the employee organization or public employee consistent with the provisions of Section 10 (A) of the Act (NMSA 1978, 10-7E-10(A) (2003).

D. In the event ~~that~~ an application demonstrates that the local board ordinance, charter amendment or resolution does not meet the standards of Section 10 of the act (NMSA 10-7E-10) and Section 11.21.5 NMAC of these rules, the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have a period of the balance of the forty-five (45) calendar days, or an additional ten (10) days from receipt of notice of rejection, whichever is later, in which to make such changes as are necessary to qualify for approval and resubmit its application. After the expiration of time in which an application may be resubmitted any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures."

The Board approved the changes over the objection that the PELRB has no continuing jurisdiction over local boards created under § 10 of the PEBA after approval of the ordinance, resolution or charter amendment establishing a local board.

**18. NMAC 11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS:** The first change corrects a typographical error (changing "and" to "any"). The second change adds language clarifying the duty of local boards to comply with Section 9 of the PEBA. A third change conforms the citation to NMSC citation guidelines:

"Following board approval of a local board, the local board or the public employer that created it shall file with the board ~~and~~ any amendments to the ordinance, resolution, or charter amendment, creating the local board and timely respond to any inquiries by this board or its staff made pursuant to Section 9 of the act (NMSA 1978 § 10-7E-9). Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the act (NMSA 1978 § 10-7E-10), the local board shall be so notified and be given a period of thirty (30) days to come into compliance or prior approval shall be revoked."

The Board adopted the proposed rule change as written without objection.

### **Impasse Resolution**

As stated in the overview above, the Board's role in the impasse procedure is limited to monitoring the parties' progress through mediation and arbitration to the extent the parties self-report that progress. During this reporting period staff have been monitoring impasse in negotiations in the Española School District. (*In re: NEA-NM & Española Schools*; PELRB 502-20.) PELRB staff contacted the Federal Mediation and Conciliation Service to schedule mediation in November of 2020. Resolution of this impasse will be reported in the next reporting period.

## **SUMMARY OF BOARD ORDERS**

1-PELRB-2020

OPEN MEETINGS ACT RESOLUTION (March 3, 2020).

The Board renewed its annual Open Meetings Act Resolution to comply with the Open Meetings Act, (NMSA 1978) § 10-15-1 *et seq.*

2-PELRB-2020

In re: CHAMA VALLEY INDEPENDENT SCHOOL DISTRICT (PELRB No. 214-04) (March 6, 2020).

The PELRB revoked its 2004 approval of Chama Valley School District's local board resolution. The Board found the School District did not provide evidence to support its assertion that the three members appointed to its local board in 2006 still exist and currently constitute the CVISD local labor board. The Board received no evidence that the CVISD local board has met or taken any action required by the Public Employee Bargaining Act, §§ 9 and 10 except notice of a meeting in January of 2006 to adopt procedural rules and an unsigned copy of those rules. The evidence does not support a finding that the CVISD's board has met to hold hearings or make inquiries necessary to carry out its functions and duties, e.g. passage of an Open Meetings Act Resolution required by NMSA 1978 §10-15-1 and was therefore not an operational board in compliance with its previously approved local board ordinance or §§ 9 and 10(A).

3-PELRB-2020

In re: TOWN OF TAOS (PELRB 205-05) (March 6, 2020).

The PELRB revoked its 2005 approval of the Town's local labor board ordinance finding that the Town had appointed 'only one member to its local labor; that appointment being made in or around January of 2020. The local board had not promulgated rules necessary to perform its functions and duties as established in the Public Employee Bargaining Act, §§ 9 and 10(A), and had not met to hold hearings or make inquiries necessary to carry out its functions and duties, e.g. passage of an Open Meetings Act Resolution required by NMSA

1978 § 10-15-1(B), and was therefore not an operational board in compliance with its previously approved local board ordinance or NMSA 1978 §§ 10-7E-9 and 10-7E-10(A).

#### 4-PELRB-2020

In re: RUIDOSO MUNICIPAL SCHOOLS (PELRB 202-13) (March 6, 2020).

The PELRB revoked its 2013 approval of the Ruidoso Municipal Schools local labor board resolution finding that RMS made the second of the required three appointments to the local board only as recently as February 2020 and had not yet agreed upon a third member. Consequently, the local board had not been constituted since approval of its ordinance in 2013. As the RMS local board had never been constituted, it never promulgated procedural rules, had never convened to conduct business therefore was not an operational board in compliance with its previously approved local board ordinance or NMSA 1978 §§ 10-7E-9 and 10-7E-10(A).

#### 5-PELRB-2020

In re: LEA COUNTY, (PELRB 207-05) (March 6, 2020).

The PELRB revoked its 2005 approval of the Lea County local labor board ordinance finding that the County currently had appointed only two of the required three members to the local board. Previously the local board met in approximately 2009 and promulgated rules as required by Public Employee Bargaining Act. The County's board has not met since and is therefore not an operational board in compliance with its previously approved local board ordinance or NMSA 1978 §§ 10-7E-9 and 10-7E-10(A).

#### 6-PELRB-2020

In re: LINCOLN COUNTY (PELRB 202-08) (March 6, 2020).

The PELRB revoked its 2005 approval of the Lincoln County local labor board ordinance finding that although the County appears to have made all three appointments to its local board as of December 2019, the local board has not promulgated rules necessary to perform its functions and duties, including procedures for the designation of appropriate bargaining units; the selection, certification and decertification of exclusive representatives; and the filing of, hearing on and determination of complaints of prohibited practices. The County's board has not met to hold hearings or make inquiries necessary to carry out its functions and is therefore not an operational board in compliance with its previously approved local board ordinance or NMSA 1978 §§ 10-7E-9 and 10-7E-10(A).

#### 7-PELRB-2020

In re: ZUNI SCHOOL DISTRICT (PELRB 203-07) (March 9, 2020).

The PELRB dismissed its Order to Show Cause why its 2007 approval of the Zuni School District's labor board resolution should not be revoked, finding that since the hearing on Order to Show Cause, the Zuni Schools local board had been fully constituted, had procedural rules in place and recently met to conduct business, i.e. to pass an Open Meetings Act Resolution.

## **SUMMARY OF COURT DECISIONS**

There were no court decisions on appeals during the reporting period.

### **PENDING APPEALS**

At the end of the reporting period there is one case currently pending resolution on appeal.

1. *Rhonda Goodenough v. CYFD*; PELRB 106-19, D-101-CV-2020-01743; as of this writing, all briefing and hearings have concluded and the parties await the decision of the District Court.

#### **Conclusions:**

While the 52 cases filed in 2020 represents an 86% increase over the number of cases filed in 2019 (28 cases), the increase is attributable in part to the unique circumstances obtaining in 2020 arising from the amendments to the PEBA effective that year. The amendments, discussed elsewhere in this report, required a series of new case filings to bring those local boards wishing to continue opting out of PEBA coverage. 2020 also saw the onset of a public health emergency caused by the COVID-19 virus. The 23 PPCs filed in 2020 represent an almost 230% increase in the number of PPCs filed over the previous year, but 13 of those involved failure-to-bargain allegations related to actions of public employers taken in response to the public health emergency. In this respect, the total numbers of cases is an outlier as completion of the amendment's mandates will occur in the next reporting period and will not be repeated. Comparing the number of non-COVID related PPCs and representation petitions filed in 2020 (19 cases) to the number of PPCs and representation cases filed in 2019 (13 cases) reveals a much less striking increase of 46%.

Staff anticipate that the more modest 46% increase rate may reasonably be expected to be seen in the next reporting period. While PPCs relating to COVID-19 remediation measures and to local boards compliance will not be filed in 2021, the dissolution of scores of local labor boards with the PELRB assuming jurisdiction over labor relations matters for those employers (including significant employers as the University of New Mexico, Bernalillo County, the City of Rio Rancho and the Albuquerque/Bernalillo County Water Utility Authority) means that cases that would have been brought before those local boards will now be brought here. Each of these employers has several hundreds if not thousands of employees in recognized bargaining units so that anticipating another 40% to 45% increase in case filings is reasonable.

In spite of unforeseen restrictions related to COVID 19 and budget cuts imposed as a consequence of the loss of tax revenues, the PELRB nevertheless achieved its primary goal of meeting the continuing need for promptly scheduling hearings and providing involved parties with timely notice of hearings and related deadlines. This may be attributed in no

small part to the prior year's procedural rules revisions, particularly those concerning electronic filing.

The Board's secondary goal of improving 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, was not as successful because staff time was consumed with the increasing caseload. Staff looks forward to being able to work more on website improvements by improving efficiencies in the handling of the increased caseload. The Board's Practice Manual, key word index, phrase digest, in depth and current case statistics, local board information now required to be posted on our website, are long overdue and deserve greater attention in the next reporting period.

Due to lack of funds the Board's goal of conducting interagency training and training its own staff and the Board itself have not taken place. As remote conferencing and conducting hearings via internet were made necessary by COVID 19 The PELRB has invested in scarce resources to acquiring additional bandwidth and video equipment to improve its remote meeting/hearings capabilities. The Agency's goal is to continue training for Board staff through FY20.

## APPENDIX 1

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD STRATEGIC PLAN FY20

- 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 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 is to train its own staff and Board to develop expertise in the substantive law of public employee bargaining generally and PEBA specifically. 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, including newly acquired teleconferencing equipment that will allow the Agency to improve its remote meeting/hearings capabilities. The Agency's goal is to continue training for Board staff through FY20.

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 FY20 and the Operations Manager's performance review measures comply with these procedures.
  - d. The Board's Executive Director, assisted by the Operations Manager, 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 Operations Manager, 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.
  - f. The Board's Executive Director, assisted by the Operations Manager, will hold a series of hearings to elicit public comment on comprehensive revision of the Board's procedural rules. After the statutory comment period they will present the changes to the Board for approval and once approved comply with the statutory requirements for archiving and publishing the changes.
- **Applicable FY20 Performance Measures**
  - a. Percent of decisions overturned on appeal;
  - b. Percent of determinations of approval of local labor relations boards, bargaining unit recognition petitions and prohibited practice complaints processed and completed within the applicable regulatory 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 FY20.
  - 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 act, 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 FY20 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:
      - c. 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 FY20 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 FY20, 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 FY20 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 FY20 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.

**ALL CASES FILED WITH THE PELRB IN 2020  
BY TYPE OF EMPLOYER OR RESPONDENT**

**Table B**

Type of Employer or Respondent	Types of Cases					TOTAL
	PPCs	Representation Petitions	Decertification Petitions	Related to Approval of Local Board	Impasse	
State*	7	2				9
County	3	2			1	6
Municipality	5	1				6
Public School	8	1			1	10
Higher Education		1				1
Medical Facility						
Other						
Court						
Union						
Individual						
Local Labor Board				20		20
<b>TOTAL</b>	<b>23</b>	<b>7</b>		<b>20</b>	<b>2</b>	<b>52</b>

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

**ALL CASES FILED WITH THE PELRB IN 2020  
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				1		1
Court						
Union	21	9		1		31
Individual	2					2
Local Labor Board				18		18
<b>TOTAL</b>	<b>23</b>	<b>9</b>		<b>20</b>		<b>52</b>

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

**ALL CASES FILED WITH THE PELRB IN 2020  
BY PETITIONER AND TYPE**

**Table D**

Petitioner	Types of Cases				Impasse	TOTAL
	PPCs	Representation Petitions	Petitions for Decertification	Related to Approval of Local Board		
AFSCME Council 18	5	1	1	1		8
AFSCME 2499	1					1
AFSCME 2851		1				1
AFSCME 3908					1	1
AFSCME 3999	4					4
Alamogordo Schools				1		1
Albuquerque Public Schools				1		1
Aztec Schools				1		1
Bernalillo County Court Deputies Association	1					1
Central NM Community College (CNM)				1		1
City of Albuquerque				1		1
CWA	1	1				2
David Kessler	1					1
Deming				1		1
Doña Ana County				1		1
Gallup-McKinley County Schools	1					1
Hobbs				1		1
Jerry Akins	1					1
Las Cruces				1		1
Los Alamos County				1		1
MCFUSE	2					2
Mesa Vista Fed. of Teachers-AFT	1					1
Mesilla POA	1					1
NEA-NM					1	1
NEA-Turquoise Trail Charter School		1				1
NMPRLEA	1	1				1
NMSU				1		1
PFUSE	2					2

<b>Raton</b>				<b>1</b>		<b>1</b>
<b>Roswell</b>				<b>1</b>		<b>1</b>
<b>Ruidoso Ed. Assoc.</b>	<b>1</b>					<b>1</b>
<b>San Juan College</b>				<b>1</b>		<b>1</b>
<b>Sandoval County</b>				<b>1</b>		<b>1</b>
<b>Silver City</b>				<b>1</b>		<b>1</b>
<b>UE</b>		<b>1</b>				<b>1</b>
<b>Zuni Schools</b>				<b>1</b>		<b>1</b>
<b>No petitioner</b>				<b>2</b>		<b>2</b>
<b>Total</b>	<b>23</b>	<b>6</b>	<b>1</b>	<b>20</b>	<b>2</b>	<b>52</b>

## PPC OUTCOME 2020

### Table E

<b>Total PPCs Resolved</b>		<b>15</b>
<b>Sustained (In whole or in part)</b>		<b>3</b>
By Hearing Examiner (w/o Board review)	2	
After Board Review		
After Review by Court	1	
<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)	1	
Dismissed after Motion		
Deferred to Agency		
Deferred to Arbitration		
Dismissed on collateral estoppel grounds		
Deferred to local board		
<b>Withdrawn and/or Settled</b>		<b>9</b>
Withdrawn upon receipt of notice of facial inadequacy		
Withdrawn in favor of alternate venue		
Withdrawn as moot		
Settled prior to hearing	<b>9</b>	
<b>Resolved after a Merits Hearing</b>	<b>5</b>	