

JUDICIAL APPEALS 2004-2009 STATISTICS

TOTAL PELRB DECISIONS APPEALED ¹		11
Appeals pending	4	
Appeals withdrawn	3	
Appeals dismissed for lack of prosecution	1	
Appeals dismissed on jurisdictional or venue grounds	1	
Decisions affirmed	0	
Decisions reversed	1	
Decisions affirmed in part, reversed in part	1	
FINAL BOARD DECISIONS NOT APPEALED FURTHER		19 ²
BOARD DECISIONS FOR WHICH TIME TO APPEAL HAS NOT YET RUN		0

DESCRIPTION OF APPEALS 2004-2009

1. *AFSCME v. Corrections Dept.*, D-101-CV-2009-3458. Department appealed the Board's affirmance of the hearing examiner's determination in PELRB No. 147-08 that it violated the CBA and interfered with a Union Steward's right to hand out political flyers while on break. The District Court (J. Ortiz) affirmed the PELRB and dismissed the appeal on 5/11/11 with the result that the Department rescinded the letter of reprimand issued to the Union Steward and posted Notice of its prohibited practice on all of the Department's bulletin boards at all of its facilities for a 60 days period.

2. *AFSCME v. Corrections Dept.*, D-101-CV-2009-3457. Department appealed the Board's affirmance, in PELRB No. 105-09, of the hearing examiner's determination that it violated PEBA by denying use of Department vehicles by Union stewards to travel to meetings concerning collective bargaining. The District Court (J. Ortiz) issued an Order affirming the PELRB on 5/11/11. The Department filed a Motion for Reconsideration on 5-25-11. No action taken until oral argument was set for 4/27/15. The First Judicial District Court (J. Mathew) denied the agency's motion for reconsideration on 5/7/15. The Department petitioned for a Writ of Certiorari on 6/8/15 and the petition is now **pending**.

¹ These statistics do not include three petitions for writs of prohibition or mandamus filed against the PELRB in District Court: See *City of Las Cruces v. Juan B. Montoya* and PELRB, Supreme Court of New Mexico, Case No. 31,629 (Mar. 24, 2009) (denial of writ of prohibition affirmed); *City of Albuquerque v. Juan B. Montoya and PELRB*, 2nd Judicial Dist., Case No. CV-2008-2007 (June 26, 2008, C.J. Lang) (grant of writ of prohibition being appealed, Ct. App. Case No. 28,847); and *Gallup-McKinley County Schools v. PELRB and McKinley County Federation of United School Employees Local 3313*, Court of Appeal Case No. 26,376 (June 8, 2006) (denial of writ of mandamus affirmed).

² Five Board orders or decisions are not counted here because they were not appealable, either because based on joint motions to withdrawn, or because they were not final orders. See 6-PELRB-06, 1-PELRB-09, 2-PELRB-09, 3-PELRB-09, and 5-PELRB-09.

3. *City of Las Cruces v. IAFF Local 2362 and PELRB*, D-307-CV-2009-01807 (3rd Judicial Dist.) and D-202-CV 2009-10432 (2nd Judicial Dist.) City appealed Board's affirmance of hearing examiner's determination in PELRB No. 103-09 that the City's local ordinance, grandfathered under Section 26(B), violated PEBA in various respects. Dismissed by the 3rd Judicial District because it was filed in the wrong venue; then dismissed by the 2nd District because it was not timely filed.

4. *IAFF Local 4366 & Santa Fe County, CV-2009-08192* (2nd Judicial Dist.) The Union appealed the Board's reversal of a hearing examiner's determination in PELRB No. 321-08, that Fire Department Battalion Chiefs are not "supervisors" under PEBA's definition. Thereafter, the Union filed a Stipulated Voluntary Dismissal.

5. *NMCPSCO-CWA Local 7911 & Rio Rancho Police Dept.*, D-101-CV-2009-01351 (1st Judicial Dist.). Union appealed Board's affirmance of hearing examiner's determination in PELRB No. 319-08 that Police Department Lieutenants are "supervisors" under PEBA's definitions. Appeal dismissed 02-08-2011 pursuant to Rule 1-041(e)(2)

6. *AFSCME v. Dept. of Corrections and PELRB*, D101-CV2008-03607 (1st Judicial Dist.) Union appealed Board's reversal of hearing examiner's determination in PELRB No. 111-08 that the Department violated PEBA by transferring a bargaining unit employee in violation of a settlement agreement and retaliation for a prior grievance. On 03/08/2011 District Court (J. Vigil) entered an Order on remand reversing and remanding for any further proceedings consistent with said decision.

7. *AFSCME v. SPO*, D-101-CV-2007-03130 (1st Judicial Dist.) Union appealed Board's affirmance of hearing examiner's determination in PELRB No. 164-06 that CBAs are not required to provide for grievance-arbitration of all disputes, including suspensions, demotions and terminations. Statements of issues filed and hearing requested but appeal thereafter was administratively dismissed by Court pursuant to Rule 1-041(e)(2).

8. *National Union of Hospital and Health Care Employees v. PELRB and UNM*, CV-2006-04505 (2nd Judicial Dist.). National Union of Hospital and Health Care Employees appealed from the Board's order in PELRB No. 201-06 granting UNM's request for a variance from the template resolution for creation of a local board. The variance concerned the inclusion of language regarding "allocation" rather than "appropriation" of funds. The matter subsequently settled and the appeal was withdrawn and administratively closed on 05/14/2007.

9. *National Union of Hospital and Health Care Employees v. UNMH*, D-202-CV-2005-08946 (2nd Judicial Dist.) Hospital appealed board's affirmance of hearing examiner's determinations in PELRB Nos. 106-04 and 315-04 that UNMH violated PEBA by failing to provide negotiated wage increases, failing to produce information upon request and by unilaterally reclassifying a job position,

and that certain other job positions were appropriately accreted into the bargaining unit. Hospital withdrew appeal (by way of Joint Motion to Remand to PELRB) upon subsequent global settlement of this and a number of other PELRB cases.

10. *Laura Chama-Ortega v. Second Judicial District Court*, CV-2004-7883 (7th Judicial Dist. Court appealed the Board’s affirmance of hearing examiner’s interlocutory determination in PELRB Case No. 103-04 (1-PELRB-2004) that judicial employers are covered under PEBA. On 3-10-2006, the 7th Judicial District Court (J. Kase) reversed the PELRB’s Decision as “arbitrary and an abuse of discretion”. A petition for writ of certiorari by Union to Court of Appeals was denied as untimely filed.

11. *IAFF Local 4251 v. City of Deming*, 2007-NMCA-069 (April 19, 2007). City appealed Board’s affirmance of hearing examiner’s determination in PELRB No. 102-04 that several provisions of the City’s local ordinance, grandfathered under Section 26(A), violated PEBA and were therefore not entitled to grandfathered effect. Court of Appeals affirmed in part and reversed in part. It affirmed that captains and lieutenants may not be categorically excluded from coverage, but reversed the decision as to impasse resolution, concluding that Section 26(A) ordinances are not required to provide for final and binding arbitration.

JUDICIAL APPEALS 2009-2015³

TOTAL PELRB DECISIONS APPEALED*		24*
Appeals pending	2	
Appeals withdrawn	0	
Appeals dismissed for lack of prosecution	0	
Appeals dismissed on jurisdictional or venue grounds	1	
Decisions affirmed	6	
Decisions reversed	2*	
Decisions affirmed in part, reversed in part	1	
FINAL BOARD DECISIONS NOT APPEALED FURTHER		20
BOARD DECISIONS FOR WHICH TIME TO APPEAL HAS NOT YET RUN		0

* Nine consolidated cases appealed by the City of Albuquerque in 2013 are counted as a single appellate decision. Any PELRB cases deferred to another Agency or to arbitration, although included in the “Appeals Analysis” are not included in these statistics.

DESCRIPTION OF APPEALS 2009-2015

1. *American Federation of State, County and Municipal Employees, Local 1888 v. City of Albuquerque*, D-202-CV-2012-02239 (2nd Judicial Dist. 03/02/2012). This case involves nine consolidated appeals from the PELRB that pose the same preliminary question: whether the PELRB has jurisdiction, concurrent or otherwise, that would allow it to remand PPC’s back to the City Labor Board, a Board grandfathered under PEBA. The City appealed the issue of remand

³ Statistics compiled as of 6/10/2015

on the basis that if the PELRB is without jurisdiction to hear the PPC's then it had no power to remand the PPC's back to the City Labor Board. This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 referenced above. The Second Judicial District Court (J. Baca) affirmed in part and reversed in part the administrative decision made by the PELRB determining that the Board properly dismissed AFSCME's prohibited practice complaints against the City because the PELRB did not have jurisdiction to hear those complaints. The district court also ruled that the PELRB had no authority to "remand" the dismissed prohibited practices complaints to the City's Labor Management Relations Board (the LMRB). The Court of Appeals granted certiorari January 7, 2013 as Ct. App. No. 33,924. On December 2, 2014 the Court of Appeals issued its decision disagreeing with AFSCME's argument that the PEBA's language that allows grandfathered public employers to "continue to operate" under their pre-existing systems (§ 10-7E-26(A) implies that the PELRB could hear complaints involving grandfathered public employers if the local boards created under those systems were not in fact "operating" or "functioning" to hear complaints. Although, by implication, the PELRB has the power to determine in the first place whether a public employer's labor relations system meet the conditions for grandfather status (See *Deming Firefighters Local 4521*, 2007-NMCA-069, ¶ 14), once the determination is made that a labor relations system has grandfather status and that its collective bargaining system has not substantially changed after January 1, 2003, no other provision of the PEBA applies to that employer. *Id.* ¶ 6.

2. *AFSCME, Local 1888 v. City of Albuquerque*, D-202-CV-2012-02240 (Consolidated into D-202-CV-2012-02239). This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 discussed above.
3. *American Federation of State, County and Municipal Employees, Local 1888 v. City Of Albuquerque*, D-202-CV-2012-02242 (Consolidated into D-202-CV-2012-02239). This case is one of nine appeals from the PELRB consolidated into D-202-CV-201202239 discussed above.
4. *International Association of Firefighters Local 244 v. City of Albuquerque*, D-202-CV-2012-01862, (Consolidated into D-202-CV-2012-02239). This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 discussed above.
5. *Albuquerque Police Officers' Association v. City of Albuquerque*, D-202-CV-201201856 (Consolidated into D-202-CV-2012-02239). This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 discussed above.
6. *American Federation of State, County and Municipal Employees Local 3022 v. City of Albuquerque*, D-202-CV-2012-01857 and 01856 (Consolidated into D-202-CV-2012-02239). This case is one of nine appeals from the PELRB consolidated into D202-CV-2012-02239 discussed above.

7. *American Federation of State, County and Municipal Employees, Local 1888 v. City of Albuquerque*, D-202-CV-2012-02254. This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 discussed above. (Consolidated into D-202-CV-2012-02239).
8. *International Association of Firefighters Local 244 v. City of Albuquerque*, D-202-CV-2012-01862. This case is one of nine appeals from the PELRB consolidated into D-202-CV-2012-02239 discussed above. (Consolidated into D-202-CV-2012-02239).
9. *American Federation of State, County and Municipal Employees, Local 1888 v. City of Albuquerque*, D-202-CV-2012-02246 (Consolidated into D-202-CV-2012-02239).
10. *American Federation of State, County and Municipal Employees, Local 1888 v. City of Albuquerque*, D-202-CV-2012-02247 (Consolidated into D-202-CV-2012-02239).
11. *American Federation of State County & Municipal Employees Council 18 v. State of NM Children Youth & Families Department*, D-202-CV-2012-05410 (2nd Judicial Dist. 7/25/2012). Union appealed PELRB Order in PELRB 101-12 dismissing PPC on the basis that obligation to bargain to impasse applied to entire contract, not to single contract article. District Court (J. Brickhouse) remanded the matter to the PELRB on 1-30-13 for determination of whether unilateral implementation of shift bid violated the contract and whether there was a waiver of bargaining rights. Parties settled and case was closed 5/21/13.
12. *Northern New Mexico College, et al., v. State of New Mexico Public Employee Labor Relations Board*, D-101-CV-2012-02100 (1st Judicial Dist. 08/29/2012). College appealed decision dismissing consolidated PPC's PELRB No. 123-11, 124-11, 125-11, 130-11, 136-11 but remanding any issues over which the local board may still have jurisdiction on the theory that Board could only dismiss. The Union appealed that portion of the decision with regard to the appointment of the local board's neutral member and whether the PELRB should have exercised jurisdiction over the PPC's. District Court (J. Singleton) upheld the PELRB on 4/18/13. No further appeal was filed and the case closed to be reviewed by Board 12/10/2013.
13. *City of Albuquerque v. Montoya*, 2012-NMSC-007, N.M. , 247 P.3d 108 (March 6, 2012). In 2007 AFSCME filed a PPC with Albuquerque's local board alleging discrimination against one of its members because of his union activities. Following the prohibited practices complaint hearing, the "neutral" member of the Local Board recused himself from the matter resulting in a deadlocked board. The union then filed the same complaint with the PELRB and the City moved to dismiss for lack of jurisdiction. The PELRB Director determined that the PELRB had jurisdiction because the board lost grandfathered status due to its inability to provide for a balanced neutral

board. The Court of Appeals upheld that decision stating the City Ordinance establishing [the Local Board is not eligible to be grandfathered pursuant to Section 10-7E-26(A)]. The Supreme Court reversed and remanded to the Court of Appeals for consideration of the other issues not previously addressed. The City Ordinance's procedure by which the City Council President appoints a member to the Local Board during the absence of a member does not violate the Act's grandfather clause requirement that a local ordinance create a system of collective bargaining.

14. *American Federation of State, County and Municipal Employees, Council 18, AFL-CIO v. State of New Mexico Human Services Department*, D-101-CV-2012-02176 (1st Judicial Dist. 09/11/2012). HSD appealed the Board upholding the hearing officer's decision in PELRB 151-11 finding that the Department violated PEBA §17 (A) and (F) and §19(G) and (H) when it removed security officers from several offices without bargaining. District Court (J. Ortiz) upheld the PELRB. The Court found that the presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining and that there was a unilateral change in terms and conditions of employment without bargaining. HSD did not meet its burden of showing a clear and unmistakable waiver of the union's right to bargain those issues. No further appeal was filed and on 8/2/2013 HSD submitted a letter to the Board confirming compliance with the Board's Order. Case closed after Board review on 12/10/13.
15. *CWA Local 7076 v. NM Public Education Department*, D-202-CV-2012-11595, (2nd Judicial Dist. 02/08/2013). The Union appealed the Board upholding the Hearing Officer's Finding in PELRB 134-11 that although the State had a duty to bargain the effects of a Reduction in Force, the Union failed to make a timely demand and therefore waived its right to bargain before implementation. In an Opinion and Order issued 8/9/13 the District Court (J. Bacon) reversed the PELRB on the waiver issue and remanded the case back to the PELRB for further findings regarding contract coverage. Supplemental findings were issued by the Hearing Officer on 9/30/13. No appeal from the recommended supplemental findings was filed by the 10/14/13 deadline and case was closed after Board review on 12/10/13.
16. *American Federation of State, County and Municipal Employees, Council 18 v. New Mexico Corrections Department*, D-202-CV-2013-01920 (2nd Judicial Dist. 02-222013). Corrections Department appealed from the Board's Decision in PELRB 311-11 that Lieutenants are not "supervisors" as that term is defined in PEBA §4(U) and their inclusion in an existing bargaining unit of Corrections Officers did not render the unit "inappropriate". The Second Judicial District upheld the PELRB on 5/15/14. The Hearing Officer therefore was correct in his approach of determining, based on the testimony presented, how many hours of each shift lieutenants are performing supervisory duties as opposed to nonsupervisory duties.

Regarding which duties constitute "supervisory duties," the Court concluded that it was not arbitrary or capricious for the Hearing Officer to determine: (1) the use of independent judgment is required before an activity qualifies as a "supervisory duty" under PEBA; and (2) the duties of lieutenants largely do not require the use of independent judgment. The Court also concludes the Hearing Officer did not abuse his discretion by relying on federal authority to determine that the use of independent judgment is an important indicator of supervisor status and that even though lieutenants may sometimes exercise independent judgment and perform supervisory duties, lieutenants are not supervisors for purposes of PEBA because they are not performing supervisory duties a majority of the time. Additionally, given the multi-level review involved in the disciplinary process, it was not arbitrary or capricious for the Hearing Officer to conclude that lieutenants do not effectively recommend discipline. The lieutenants do not effectively recommend discipline not only because they lack authority to select a particular sanction, but also because lieutenants lack discretion with respect to their recommendations; indeed, the very purpose of the multiple levels of review is to remove discretion from the disciplinary process. As a result, the third element of the definition of a "supervisor" had not been met. That the third element was not satisfied was therefore an independent basis upon which to affirm the Board's decision. No further appeal was taken and the case was closed 6/26/14.