

Questions frequently asked about labor-management relations

What is PEBA?

The Public Employee Bargaining Act, sometimes called "PEBA", is the primary law governing relations between unions and public employers. The PEBA guarantees the right of employees to organize and to bargain collectively with their employers, or to refrain from all such activity.

What is collective bargaining?

The Public Employee Bargaining Act defines "collective bargaining" as the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment. NMSA 1978 § 10-7E-4(F) (2003).

Who are public employees and public employers covered by the Act?

For purposes of the Public Employee Bargaining Act the term "public employee" means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee. A "public employer" means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only. NMSA 1978 § 10-7E-4(R) and (S) (2003).

What is the PELRB?

The Public Employee Labor Relations Board (PELRB) is the state agency charged with administering the PEBA. As such, the PELRB has authority and jurisdiction to enforce the provisions of the PEBA and the Board's rules and regulations. This means the PELRB has jurisdiction 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 pursuant to the PEBA. The PELRB also has jurisdiction to ensure that local labor ordinances and resolutions (and in some instances, local labor boards) comply with PEBA. 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." See PEBA, § 2 (Purpose of Act).

In carrying out this mission, the Board's primary functions are to:

1. promulgate rules as needed to perform its duties, including establishing procedures related to the determination of prohibited practice complaints, the approval of local boards, and the processing of petitions concerning representation,
2. hold hearings to determine appropriate bargaining units;
3. conduct secret ballot elections or other alternative appropriate procedures for determining whether public employees desire union representation;
4. approve voluntary recognition agreements;
5. certify the bargaining status of incumbent labor organizations;
6. certify, decertify, modify, clarify, accrete, and sever bargaining units;
7. hold hearings to determine whether a practice prohibited under PEBA has occurred and, if so, issue an appropriate administrative remedy;
8. issue temporary injunctive relief or restraining orders prior to a hearing on the merits, if warranted;
9. approve local boards, upon submission and consideration of an appropriate application;
10. revoke prior approval of local boards upon a determination that the local board no longer meets the requirements of § 10 of PEBA, notice of such finding, and adequate opportunity to cure the deficiency;
11. maintain a record of all hearings and proceedings;
12. timely issue written decisions related to the foregoing;
13. periodically compile, classify, index and publish its decisions;
14. educate public employers, public employees and unions as to their rights and responsibilities under PEBA;
15. gather information, conduct studies and disseminate information as needed concerning relations between public employers, public employees and bargaining agents; and
16. seek judicial enforcement of board orders as needed.

How does a labor organization become a recognized exclusive representative for collective bargaining with a Public Employer?

First, the labor organization files a petition for recognition containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit. A form "Petition for Initial Certification of a New Bargaining Unit" may be found as Form #3 on our website at www.pelrb.state.nm.us.

Next, Notice of the Petition having been filed is posted at the workplace and other labor organizations interested in representing the employees are given a chance to intervene.

After that, the PELRB or local board will schedule a secret ballot election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the bargaining unit.

As an alternative, a public employer and a labor organization may agree to an alternative procedure, such as, submission of authorization cards from a majority of the employee in an appropriate bargaining unit.

How is a representation election conducted and who pays the cost?

If the State Board is conducting the election, the State Board pays its staff, pays for preparing the ballots and any other costs involved. If a local board is conducting the election you should refer to your local board's rules for specifics. It may contract with an independent party to conduct the election.

What is the definition of an "appropriate bargaining unit"?

An appropriate bargaining unit is a group of employees designated by the board or local board for the purpose of collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups.

What if a unit is organized and employees no longer wish to be represented by the union?

There is a procedure for decertification of an exclusive bargaining agent (union). The procedure is the same for decertification as it is for certification.

What does "Fair Share" mean?

Fair Share is the amount paid by non-union members in a bargaining unit to the union for their representation of bargaining unit members. The union has a duty to represent all bargaining unit members, not only dues-paying union members. The Courts have stated that costs associated with bargaining the employees' contract (CBA) are allowed to be passed on to non-union members and has also stated what costs may not be passed along. Fair Share is a permissive bargaining issue.

How can PELRB staff help you?

We are happy to help you whenever we can. However, we must be fair to everyone and so, cannot take sides or give you legal advice. Outlined below are some of the most common ways we can or cannot assist you:

Staff CAN:

Staff CANNOT:

Encourage you to seek legal advice from a licensed attorney or refer you to another agency that may be able to help you.	Endorse specific lawyers or community resources, or contact them for you.
Refer you to sections of the PEBA and sections of the Board's Practice Manual that may be relevant to your inquiry.	Perform legal research by applying the law to specific facts or expressing an opinion about what law applies or whether you should file a case.
Provide Board approved forms and instructions without advising any specific course of action.	Create documents for you.
Provide information about what is requested on forms WITHOUT suggesting specific words to put into the forms.	Fill in forms for you.
Provide general information about Board rules, available citations, legal terminology, administrative orders, procedures and practices.	Provide interpretation or application of Board or administrative rules or regulations, constitutional or statutory provisions, legal terminology and case law based on specific facts.
Provide publicly available, non-sequestered information on docketed cases.	Provide you with information that has been restricted by court order, statute, rules or regulations or case law.
Provide general information about Board processes, procedures and practices, including Board schedules and how to get matters	Explain Board orders or decisions, or assist or participate in communications with the Director outside the presence of opposing parties.

scheduled.	
Provide information about proper conduct when appearing before the Board or one of its Hearing Officers.	Advise you what to say.