



**STATE OF NEW MEXICO**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**  
**Minutes of Board Meeting held Tuesday October 6, 2020**  
**at 9:30 a.m. via web conference. Marianne Bowers, presiding.**

1. **Call to Order.** Marianne Bowers, Chair-designate, called the meeting to order at 9:32 a.m. Members Mark Myers and Nan Nash were also present, so that a quorum was established.
2. **Welcome new member Nan Nash and designation of new chair and vice-chair pursuant to NMAC 11.21.1.33.** The Board welcomed Nan Nash as its newest member. Ms. Nash disclosed that she has contracted with Bernalillo County (a party to PELRB 303-20) on a criminal justice matter unrelated to the proceedings before the Board. Counsel for both parties in 303-20 were present and stated they did not see a conflict of interest and had no objection to her participating in the Board's actions on that case. Having three new members, the Board named Marianne Bowers as Chair and Mark Myers as Vice-Chair, pursuant to NMAC 11.21.1.33.
3. **Approval of Agenda.** Chair Bowers moved to approve the agenda. Member Nash seconded the motion, and the agenda was unanimously approved upon a roll call vote.
4. **Approval of September 8, 2020 meeting minutes.** Member Myers moved to approve the minutes of the Board's August 13, 2020 meeting. Member Bowers seconded the motion, and the minutes were approved without modification upon a 2-0 vote with member Nash abstaining.
5. **Public Comments.** There were twelve members of the public present; none offered comment.
6. **Delegation of authority to Executive Director pursuant to 10-7E-9(E).** Pursuant to NMSA Section 10-7E-9(E), the Board delegated, as contemplated by NMAC 11.21.1.28, its authority described in Section 9 of the PEBA to the Board's Executive Director, Thomas J. Griego, who was given authority to act on the Board's behalf, subject to final review by the Board.
7. **Approval of Model Ordinance/Resolution/Charter Amendments for Local Boards.** The Executive Director informed the Board that staff met with an ad hoc committee regarding the model templates as directed by the Board during the September meeting. The committee reached consensus on several corrections regarding formatting and grammar but could not agree on the definition of "public employee" in the model ordinance template. At issue was whether the phrase "whose work is funded in whole or in part by grants or other third-party sources", part of the PEBA's definition of a "public employee" applied only to public school employees. The Executive Director presented arguments based in grammatical construction, the principles of statutory construction, and case law to support the staff's position that the definition of "public employee" contained in the PEBA (NMSA 1978 §10-7E-4(Q) (2020)) 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. Rather, the PEBA definition grants the right to bargain collectively through an exclusive representative to all employees of public employers (not otherwise exempted). Dina Holcomb presented grammatical arguments to support her position that an employee of a public employer whose work is funded through

third-party sources can only be considered a “public employee” under the PEBA if that employee works for a public school, and therefore should not be included in the definition of “public employee” for employers other than the public schools. She stated that a semicolon is used to separate independent clauses and the use of a semicolon in the definition indicates that the inclusion of grant-funded employees applies only to the public schools. Shane Youtz addressed the Board and stated that his office assisted the legislator who drafted the legislation and it was the legislative intent that bargaining rights be extended to all employees of public employers whose work is funded through third-party sources, not just those employed by the public schools; the language appears as it does in the PEBA due to legislative drafting conventions. Danny Jarrett also addressed the Board; he stated that he felt the PELRB staff’s interpretation would obviate the words “provided that” contained in the PEBA because “provided that” is used to set out an exception to a more general statement. The Executive Director stated that staff’s interpretation did not ignore or obviate the words “provided that” because the exception that phrase sets out is the inclusion of probationary employees of public schools. He also explained that the words “provided that” function as a conjunction so the two clauses of the definition could not be viewed as independent clauses. Lastly, he pointed out that the if the legislature intended exclude employees whose work is funded through third-party sources from collective bargaining they could have done so by exempting them in § 10-7E-5(A) as they did with confidential and management employees. The Chair then asked the other Board members for their opinions. Vice-Chair Myers and member Nash both expressed their agreement with the PELRB staff’s interpretation. Vice-Chair Myers moved to approve the Model Ordinance and Model Resolution with the definition of “public employee” that includes employees whose work is funded through third-party sources. Member Nash seconded the motion and the motion carried by unanimous roll-call vote. The Board discussed how to inform the public of the Board’s position and directed staff to post on the website the minutes of this meeting and directed staff to create a draft Practice Advisory for Board review at the November meeting.

8. **Use of electronic signatures for showing of interest under NMAC 11.21.1.10(C) and 11.21.2.11.** The Executive Director informed the Board that an ad hoc committee met and reached consensus on several aspects of the issue and presented their conclusions and recommendations to the Board in the form of a memorandum. The Chair then read those recommendations into the record:
  1. There is no need to promulgate new procedural rules regarding the use of electronic signatures for a showing of interest; the current statutory and regulatory schemes already allow for their use. (See memo from Lori Chavez, *infra*).
  2. The committee recommends the PELRB direct staff to create internal procedures for the verification of electronic signatures presented as support for a representation petition, and the NLRB materials appended to this memorandum are a good example of sufficient verification procedures that PELRB staff can use when creating those procedures.
  3. The committee recommends the PELRB direct staff to revise the PELRB forms associated with representation proceedings to indicate the electronic signatures are acceptable and what requirements must be met when using electronic signatures.

4. The committee recommends the PELRB direct staff to place on its website, either in the form of a revisions to the Practice Manual or as a separate Practice Advisory, the procedures and requirements for using electronic signatures in a showing of interest in light of the new procedures recommended in number 2, above.

The Chair then solicited comments from members of the Public. Dina Holcomb addressed the Board and stated it was important for the public to know how to bring allegations of fraud. The Executive Director suggesting adding that information to its Practice Manual posted on the website. Shane Youtz addressed the Board stating that he agreed with the committee's conclusions. The Chair then asked the other members of the Board for their opinions. Member Nash and Vice-Chair Myers both indicated their agreement with the conclusions of the committee. The Chair then stated the Board was directing staff to adopt the conclusions of the committee and put into effect the recommendations contained therein.

9. **Results of card check in lieu of election.** The Executive Director presented the results of a card check in *AFSCME & Bernalillo County*; PELRB 303-20, undertaken in lieu of an election pursuant to Section 14(C) of the PEBA. The results indicated the union had the requisite support to be certified as the exclusive bargaining representative for the bargaining unit. He further stated that no objections to the card check had been received. Counsel for both parties were present and stated they had no objections to the Executive Director's results. Vice-Chair Myers moved to approve the results of the card check. Member Nash seconded the motion and the motion carried by unanimous roll-call vote.
10. **Hearing Officer's Reports and Recommended Decisions.**
  - a. ***NMPRLEA & NMEMNRD*; PELRB 301-20.** The Chair explained that the Board received requests for review of the Hearing Officer's Report and Recommended Decision from both the union and the employer. The Board first entertained oral argument from Adrian Terry, counsel for the union, followed by argument from counsel for the employer, Bill Brancard. The Chair moved to go into closed executive session pursuant to NMSA § 10-15-1(H)(3). Vice-Chair Myers seconded the motion and the motion carried by unanimous roll-call vote at 10:42 a.m. At 11:17 a.m. the Chair moved to move back into open session and stated, pursuant to NMSA § 10-15-1(I)(1) and (J), that the only matter discussed in closed session was *NMPRLEA & NMEMNRD*; PELRB 301-20. Vice-Chair Myers seconded the motion and the motion carried by unanimous roll-call vote. Chair Bowers then moved to affirm the Hearing Officer's Report and Recommended Decision as the Board's Order. Vice-Chair Myers seconded the motion and the motion carried by unanimous roll-call vote.
  - b. ***AFSCME v. Santa Fe*; PELRB 106-20.** The Executive Director informed the Board that the union filed a request for Board review of the Hearing Officer's Recommended Decision, but the time for the employer to respond to that request had not yet passed, so the Board should take no action until the employer had had opportunity to respond. Shane Youtz, attorney for the union, stated that he agreed with the Executive Director. The Chair moved to table the matter until the next meeting. Vice-Chair Myers seconded the motion and the motion carried by unanimous roll-call vote.
  - c. ***Kessler et al. v. Ruidoso Schools*; PELRB 103-20 & 105-20, consolidated.** The Executive Director informed the Board that he had issued a Hearing Officer's Report and Recommended Decision in this case, that the deadline for requesting Board review was the end of the day but he had been informed by counsel for the employer that it did not intend to appeal. Dina Holcomb, counsel for the schools, affirmed that statement. Autumn Bergh,

counsel for the union, inquired about the timing of the posting of the Notice that was referred to in his decision. The Executive Director stated that the Notice would be prepared by the end of the day and he would leave it to the parties to verify immediate posting. He recommended the Board direct him to follow-up to confirm the Notice had been posted. The Chair moved to affirm the Hearing Officer's Report and Recommended Decision. Member Nash seconded the motion and the motion carried by unanimous roll-call vote.

#### 11. Voluntary Dismissals.

- a. Concerning *AFSCME v. SPO & NMCD*; PELRB 104-20, the Executive Director reported that the case was scheduled for Board review in anticipation of settlement and withdrawal of the complaint, which had not been filed prior to the meeting. Counsel for the union, Shane Youtz, stated that settlement negotiations were nearing completion and that a settlement and withdrawal of the claim was imminent. Counsel for the employer was not present. No action was taken by the Board.
- b. *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 had issued a Voluntary Dismissal. No action was taken by the Board.

#### 12. Director's Reports.

- a. *Practice Advisory re: online negotiations*. The Executive Director directed the Board's attention to a memorandum from the Jones Firm in their materials regarding the use of videoconferencing for negotiations. Traditionally, a refusal to bargain face-to-face was considered evidence of a refusal to bargain in good faith, but current public health concerns have altered that situation somewhat. He stated his view that this issue could usually be addressed in the Ground Rules that parties agree to before bargaining, but that would not help in cases where one party chooses to be recalcitrant. The Chair asked Autumn Bergh of the Jones Firm to speak. She stated that sometimes, if the parties cannot agree to virtual bargaining sessions, it results in delays to the bargaining process and that employers and unions need guidance on how to proceed when it is uncertain when face-to-face bargaining will be considered safe by public health officials. Dina Holcomb addressed that Board stating that she felt leaving it to the parties was the best way to proceed. Shane Youtz addressed the Board stating that the important thing to him was that the Board be clear that duty to bargain is not excused even if public health restrictions do not allow for face-to-face bargaining. The Executive Director asked participants their thoughts on virtual bargaining with respect to rural areas that perhaps do not have access to the technologies that allow for virtual bargaining sessions. Autumn Bergh stated that with the increased emphasis on distance learning in the public schools, areas without access to that technology were becoming increasingly rare. Dina Holcomb stated that she has personally participated in bargaining in rural areas during the public health crisis and the Board should deal with issues on a case by case basis. Shane Youtz stated that he felt guidance from the Board would be beneficial because he knew of certain cases where parties had refused to bargain due to public health guidelines and suggested the Board state their preferences for the methods of bargaining from most favored to least favored. The Chair asked the other Board members for their input. Vice-Chair Myers stated he would like the discussion to continue and felt giving some

- guidance along the lines that Mr. Youtz suggested would be beneficial. Member Nash stated that she concurred with Mr. Myers. Chair Bowers stated that she felt the Board should officially state that the duty to bargain in good faith is not excused by public health guidelines and while face-to-face bargaining is the preferred method, virtual meetings are the next preference and asked the opinion of the Board. Both of the other members agreed. The Board agreed to take up the discussion again at the next meeting after interested parties had had time to review the memorandum from the Jones Firm.
- b. *Appeal to District Court: Goodenough v. CYFD*; PELRB 106-19. The Executive Director reported to the Board that the Record on Appeal had been filed and that staff had received a request to file a supplemental record of the related case of *Goodenough v. CYFD*; PELRB 103-19, which had also been filed. Counsel for the Board reported that that statement of issues would be filed by November 2, at which point the Board will have 30 days to respond. No action was taken by the Board.
  - c. *Santa Fe New Mexican/Albuquerque Journal reporting*. The Executive Director referred the Board to newspaper articles in the September 18, 2020 editions of the Santa Fe New Mexican and the Albuquerque Journal about the Hearing Officer's Recommended Decision in PELRB 106-20 contained in their materials. The articles refer to the Hearing Officer's Recommended Decision as a ruling by the Board which is logically impossible since they had taken no action in that case until earlier this meeting. He further stated that staff was not contacted prior to publication and only learned about the articles after publication. He was bringing this to the Board's attention so that they were not taken by surprise by the news and to assure the Board that staff was in no way involved in the inaccurate reporting.
  - d. *CFO Monthly Financial Report*. CFO Tanya Ramirez reported to the Board that the appropriations request for FY22 had been submitted; the DFA had asked for a 5% reduction in the budget, which was taken out of the office rent budget, so something would have to be done there. Projections show that there will be some minimal funds remaining at the end of the fiscal year. The Executive Director then spoke on the topic of office rent. He stated that the existing rental agreement ends in December 2021 and cannot be renewed without a special waiver from the DFA; he will be contacting the current landlord to discuss the renewal of the lease. Tanya Ramirez stated that the Board was in the 18<sup>th</sup> year of the lease and it could possibly be renewed as the limit was 25 years. The Executive Director then stated he was currently pursuing several cost-saving avenues for securing office space when the lease is up. If none of these came to fruition, it would necessitate a request for emergency appropriation from the Legislature. He further stated that financial experts at DFA had advised to proceed with the budget request as is, and they would advocate for us before the legislature. Member Nash acknowledged that this was an impossible situation, to which statement the Chair agreed.
  - e. *FY20 Financial Audit*. Tanya Ramirez stated that the auditors' field work was not yet complete, but he expected them to complete it before the next meeting, as their report is due November 1, 2020.

13. **Set Next Meeting Date and Adjournment** After a brief discussion the next meeting was tentatively set for November 10, 2020 at 9:30 a.m., pending on Member Nash being able to rearrange her schedule. Chair Bowers moved to adjourn. Vice-Chair Myers seconded the motion and the motion carried by unanimous roll call vote. The time was 12:18 p.m.