**SUMMARY OF JUDICIAL AND PELRB DECISIONS**

Rev’d. 3/1/23

**COURT DECISIONS**

1. *State of New Mexico ex rel. UNM Sandoval Regional Medical Center, Inc. v. New Mexico Public Employee Labor Relations Board and United Health Professionals of New Mexico, AFT, AFL-CIO* (J. Ramczyck, October 26, 2021) No. D-202-CV-2021-06067; A-1-CA-40178 (In re: *United Health Professionals of New Mexico*, *AFT, AFL-CIO and University of New Mexico Sandoval Regional Medical;* PELRB No’s. 306-21 and 309-21). The Union filed a representation petition on August 13, 2021, seeking to represent a bargaining unit of employees of UNM Sandoval Regional Medical Center. UNM SRMC moved to dismiss the proceeding, claiming that they were not subject to the jurisdiction of the PELRB because they were not a ”public employer” because of the University Research Park Economic Development Act (“URPEDA”), which provides in part that “A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel…” NMSA 1978, § 21-28-7(A) (1998). URPEDA was first enacted in 1989; at that time, there was no state law providing for statewide collective bargaining.

* UNM SRMC moved to Dismiss the Union’s Petition on that basis. On September 10, 2021, the Executive Director issued a Letter Decision denying the Employer’s Motion to Dismiss and concluding that the URPEDA did not control the question of whether UNM SMRC is a “public employer” (and consequently whether its employees are “public employees”) within the meaning of NMSA 1978 § 10-7E-4(R) (2020) and § 10-7E-4(Q).
* UNM Sandoval filed a Request for Review, asking the PELRB Board to reverse the Letter Decision. The Board adopted the Letter Decision of the Hearing Examiner. See 70-PELRB-2021. UNM SRMC then filed a Petition for Writ of Mandate in the Second Judicial District Court requesting dismissal of the Union’s Petition. The District Court scheduled a 15-minute hearing on the Petition, did not allow testimony or exhibits and allowed UNM SRMC to file a reply brief, contrary to NMSA 1978, § 44-2-11 (2020) (“No other pleading or written allegation is allowed than the writ and answer.”)
* The Second Judicial District issued its Order Granting Petitioner’s Request for Writ of Mandamus on December 7, 2021, and the resulting Writ of Mandamus to the New Mexico Public Employee Labor Relations Board on December 9, 2021 required the PELRB to stop processing the Union’s representation petition on the grounds that the PELRB lacked jurisdiction because UNM Sandoval was not a public employer under the PEBA. The Union filed a notice of appeal from both on January 5, 2021.
* This case remains on appeal in the Court of Appeals as of this writing. However, the legislature amended the URPEDA since that time, to specifically state that a research park created pursuant to that Act is “a public employer for the purposes of the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978] if it owns, operates or manages a health care facility or employs individuals who work at a health care facility.” (NMSA 1978 21-28-7(B)(2) (2022)). After the URPEDA was amended staff received a new Petition for Representation of the same group of employees previously sought by the Union. See PELRB No. 304-22.)

2. *UNM Sandoval Regional Medical Center, Inc. v. International Association and Aerospace Workers, AFL-CIO,* Case No. D-202-CV-2023-00132 (In re: *IAMAW & UNM Sandoval Regional Medical Center;* PELRB 303-22). On January 9, 2023 UNM Sandoval Regional Medical Center appealed the New Mexico Public Employee Labor Relations Board’s Order issued in 24-PELRB-2022, in which the Board concluded that UNM SRMC’s objections to a card check resulting in certification of a unit at the Medical Center. The Board conducted a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards and entered findings and conclusions including:

a) The Petition contemplated a bargaining unit consisting of all full-time, regular part-time, and per diem, non-probationary Security Guards, Security Guard Leads, Cooks, Food Service Workers, Food Service Leads, Kitchen Staff Workers, Registration Representatives, Prior Authorization Clerks, Patient Access Representatives, Central Registration Representatives, Charge Entry Specialists, Clerks, Facilities Services Maintenance Technicians, Facilities Services Maintenance Technicians Leads, Maintenance Technicians, Materials Technicians, Materials Coordinators, Housekeepers, Housekeeper Leads, Environmental Services Workers (EVS) employed by the University of New Mexico Sandoval Regional Medical Center at its acute care hospital.

b) Following a hearing held on July 27, 2022, the Board's Executive Director issued a Hearing Officer’s Report and Recommended Decision dated August 11, 2022, finding that the Lead Maintenance Mechanic and the Lead Housekeeper positions were not supervisors as contemplated by the Act and that employees in a probationary status at the time the Petition was filed should not be included in the employee list for the purposes of a card check.

c) On September 15, 2022, the Executive Director and Board staff conducted a card check indicating 58% majority support.

d) UNM-SRMC Objected to the Card Check Results and Certification of Representation contending that cards obtained or signed prior to May 18, 2022 should not have been included or considered by the Hearing Officer, that the cards provided by IAMAW were stale, that "a couple of cards obtained by the union were done so through coercion," and that the card check was invalid because UNM-SRMC was not provided notice or the opportunity to observe the card count.

e) On October 18, 2022, the Executive Director filed his Director’s Report on Objections to Card Check. The Executive Director concluded that there was “no authoritative support for SRMC’s objection to the consideration or inclusion of any authorization cards obtained and/or signed prior to May 18, 2022” and that UNM-SRMC’s argument to the contrary overlooked the fact that the cards submitted by the Union said nothing about having been submitted under the authority of, or pursuant to a proceeding under, the Public Employee Bargaining Act. The Executive Director further found that none of the cards submitted by IAMAW were stale because they were not more than a year old and no other factual basis could be found to the contrary. In addition, he concluded that UNM-SRMC had provided no facts that would indicate that any of the cards submitted were obtained by fraud or coercion. Finally, he found that there was no legal authority for UNM-SRMC's contention that it had a right to notice or attend the card count.

* The card check was conducted pursuant to and in accordance with Section 10-7E-14(C) of the PEBA and 11.21.2.33 NMAC.
* UNM-SRMC's first objection, that cards obtained or signed prior to May 18, 2022 should not have been included or considered by the Hearing Officer, is without merit. Although May 18, 2022 was the effective date of Senate Bill 41, the authorization card itself simply indicates that the employee has designated IAMAW to be the employee's exclusive bargaining representative. As the representation petition in this case was filed on May 18, 2022, this does not involve the retroactive application of Senate Bill 41.
* UNM-SRMC's second objection, that the cards provided by IAMAW were stale, is without a factual basis. None of the cards submitted by IAMAW were more than a year old at the time of their submission, and the requirements of NMAC 11.21.2.13 were met in that the cards were reviewed for assurance that the cards are signed, dated and sufficiently current.
* UNM-SRMC's third objection, that cards were obtained by fraud or coercion, is similarly unsupported by the evidence. The objection was not articulated based on facts, but instead "[u]pon information and belief," which is not a sufficient basis to invalidate any particular cards.
* Finally, while UNM-SRMC's fourth objection maintains that it had a right to attend and observe the card count conducted by the Director, no provision within the PEBA vests an employer with such a right and UNM-SRMC has not identified such a provision. This objection is therefore without merit.
* As a result, the concluded that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards and ordered that UNM-SRMC'S objections to the results of the card check are denied and the Certification of Exclusive Representation issued September 15, 2022 was affirmed.
* This case remains on appeal at the time of this writing and has not yet been scheduled for briefing or argument.

3*. UNM Sandoval Regional Medical Center, Inc. v. United Health Professionals of New Mexico, AFT, AFL-CIO,* Case No. D-202-CV-2022-07805 (J. O’Connell) (In re: PELRB 111- 22). UNM Sandoval Regional Medical Center, Inc. appealed the PELRB’s Order issued on December 1, 2022, 28-PELRB-2022, in which it reversed in part and adopted in part, its Hearing Officer’s Decision dated September 28, 2022. The Board reversed the Hearing Officer’s conclusion that UNM SRMC violated § 19(B) of the PEBA but adopted the remaining conclusions that Respondent violated §§ 19(D), (E) and (G) of the PEBA after an SRMC manager “made disparaging comments about the union in a staff meeting” and SRMC “threatened [the employee] with discipline for engaging in concerted activity” that the employer believed violated its social media policy. The Board ordered UNM Sandoval Regional Medical Center to cease and desist from all violations of the PEBA as found, including enforcing its social media policy against Complainant, its constituents or its officers, and to post notice of its violation, giving assurances that it will comply with the law in the future. This case remains on appeal at the time of this writing and has not yet been scheduled for briefing or argument.

4. *University of New Mexico v. United Electrical and Machine Workers of America,* Case No. D-202-CV-2021-06615 (J. Barela-Shepherd 3/16/2022). (*In re: United Electrical and Machine Workers of America and UNM Board of Regents,* PELRB 307-20; 66-PELRB- 2021; 8-17-21; 73-PELRB-2021). The union sought recognition as the exclusive representative for Graduate Assistants working for the University. The Hearing Officer found that the Graduate Assistants were not “regular employees” as that term is defined in the PEBA. See NMSA 1978 § 10-7E-4(Q) (“’public employee’ means a regular nonprobationary employee of a public employer; provided that, in the public schools, ‘public employee’ shall also include a regular probationary employee and includes those employees whose work is funded in whole or in part by grants or other third-party sources”. The Board reversed this finding and held the Graduate Assistants to be regular employees entitled to bargain collectively through an exclusive representative. See Order 66-PELRB-2021. Holding the Graduate Assistants to be public employees under the Act did not end the parties’ dispute however, because UNM further disputed the appropriateness of including the Graduate Assistants with other employees in the in the same bargaining unit as petitioned-for, and challenged Petitioner’s status as a “labor organization” under the PEBA. See, NMSA 1978 § 10-7E-4(K). (“’labor organization’ means an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations”). The Board resolved those issues in favor of the Union and directed its Executive Director to proceed with a card check. See 73-PELRB-2021 (10-4-21).

* On 2-24-2022 UNM appealed the Board’s Order 66-PELRB-2021 holding the Graduate Assistants to be public employees under the Act to the District Court pursuant to Rule 1-074 NMRA. The University withdrew its Appeal on March 16, 2021 so that the Board’s Orders stand.
* Objections to the card check conducted December 17, 2021 were denied and the unit was certified on January 28, 2022. See Board Order 4-PELRB-2022.
* As concerns the Petitioner’s status as a “labor organization” under the Act, the Board rejected UNM’s argument that because the New Mexico Taxation and Revenue Department requires a 501(c)(5) organization, such as UERMWA, to be registered to do business in New Mexico, and UERMWA is not so registered, it does not qualify to be a labor organization as defined by NMSA 1978 § 10-7E-4(K) (2020).

4. *Albuquerque Bernalillo County Water Utility Authority v. American Federation of State, County and Municipal Employees, Council 18, AFL-CIO, Local 3022, and Public Employee Labor Relations Board*, Case No. D-202-CV-2023-00071. (In re: PELRB No. 114-22; 25-PELRB-2022, December 9, 2022). The PELRB affirmed and adopted the Hearing Officer’s Report and Recommended Decision dated November 3, 2022 finding that on January 21, 2022, the ABCWUA unilaterally imposed changes to the original O/M Supervisor—Drinking Plant job description, refusing to negotiate and enter a written agreement with the Union regarding such changes to employees’ hours, and terms and conditions of employment, thereby committing a prohibited practice under NMSA § 10¬7E-19(F). Any other alleged violations of the PEBA were rejected. The Board ordered the Water Authority to return to the *status quo ante*, including reinstating seniority rights, with regard to the O/M Supervisor-Drinking Plant and Groundwater System Operator Positions. The parties were directed to resume bargaining begun in December of 2021 until a written MOU is entered into on the issues or an arbitrator's decision is entered after impasse. If upon return to the status quo ante the Union can prove that those previously holding an O/M Supervisor-Drinking Plant position suffered monetary damages in the form of back pay for lost time or overtime and/or standby pay, and the parties do not agree in their negotiations to the amount of damages, if any, to be paid, this Board shall reserve jurisdiction to determine damages, if any, upon proper application. ABCWUA is further ordered to post notice of its violation of PEBA as found herein and its assurances that it will comply with the law in the future in a form acceptable to the parties and this Board for a period of 30 days.

* ABCWUA filed a Notice of Appeal on The Water Authority appealed from that decision on 1-9-23. The Record on Appeal was filed on February 9, 2023. The case remains on appeal as of this writing and has not yet been scheduled for briefing or argument.

5. *Board of Education for the Gallup-McKinley County Schools v. McKinley County Federation of United School Employees Local 3313, AFT-NM and State of New Mexico Public Employee Labor Relations Board*; Case No. D-202-CV-2022-07617. (In re: PELRB 104-22). Gallup-McKinley County Schools appealed from this Board’s Order 27-PELRB-2022 whereby Gallup McKinley Schools was ordered to rescind its unilateral elimination of the Instructional Coach position and reassignment of its duties outside of the bargaining unit. Respondent was also ordered to engage in bargaining with the Union to impasse or agreement over any changes to the Instructional Coach position and duties. A Notice of Appeal by Gallup McKinley Schools was filed on December 20, 2022. The Board filed the naming PELRB as a party. The Record on Appeal was filed on January 20, 2023. The case remains on appeal as of this writing and has not yet been scheduled for briefing or argument.

6. *AFSCME, Council 18, Local 2851 v. City of Las Vegas, New Mexico and City of Las Vegas LMRB,* Case No. D-412-CV-2015-369 (J. Aragon, November 22, 2021); (In re: PELRB 305- 20). In 2015, AFSCME, Council 18, Local 2851 filed a Petition with the City of Las Vegas Labor Management Relations Board seeking to accrete five supervisor and superintendent positions into an existing collective bargaining unit of blue-collar employees. On September 10, 2015, the Board issued an "Order Dismissing Clarification Petition" on the ground that the positions to be accreted exercised “independent judgment," which the local board described as "one of the overriding principles for all the positions that we’re going to be discussing." As to each of the five positions the Board summarily concluded that “[AFSCME] ha[d] not met its burden of proof to accrete.” The order contained neither a discussion of the evidence nor findings of fact to support the LMRB’s decision and provided no explanation of its ruling. The next day, AFSCME appealed to the District Court and requested the preparation and filing of the record proper in accordance with Rule 1-074 NMRA. When the Board had not filed the record nearly three months later, AFSCME moved for an order to show cause. The day after AFSCME filed a request for hearing on its motion, the Board filed approximately two hundred pages of documents designated as the “Record Proper.” Three weeks later, the Board filed an Amended Record Proper, containing numerous new documents and some, but not all, of the records originally filed in the Record Proper, totaling nearly four hundred pages. AFSCME thereafter withdrew its motion for an order to show cause.

* The district court held a hearing on August 4, 2016 wherein AFSCME argued that the LMRB decision “goes against the overwhelming evidence and is not based at all on substantial evidence” and that it “failed to apply the facts to black letter law when it comes to whether someone is a supervisor, manager, or confidential employee.” AFSCME noted that the Board's decision failed to even specify what exemption, i.e. supervisor, manager, or confidential employee, it applied to justify denying the petitioning employees their presumptive right to join a bargaining unit. AFSCME also argued that the Board's reliance on federal law on the “independent judgment” standard evinced a clear misapprehension of the law because New Mexico does not follow the federal definition of “supervisor”.
* The City argued that AFSCME had not met its burden to show that there was insufficient evidence to support the Board's decision and that AFSCME was impermissibly trying to reargue the case before the district court. The City primarily focused on what it contended was AFSCME's failure to apprise the district court of the evidence AFSCME presented that the Board failed to consider and that the LMRB's determination that AFSCME did not “meet [its] burden” constitutes substantial evidence to support its decision.
* On August 15, 2016, the district court upheld the Board's decision, concluding that “the record supports the [Board’s] decision[,] that the decision ‘is not arbitrary, capricious, or contrary to law[,]’ and that the Board ‘acted appropriately and within its scope of authority.’
* The New Mexico Court of Appeals granted AFSCME’s petition for a writ of certiorari and concluded that the record does not support the LMRB's decision and, therefore, reversed remanded the matter to the District Court undertake whole record review of the entire record to determine whether substantial evidence supports the Board’s determination that none of the five positions is eligible for accretion. In the event that no recording of the merits hearing was ever made or currently exists, the district court shall vacate the Board’s decision and remand the case to the Board with instructions that it conduct a new merits hearing. The appellate court also allowed that “the district court may very well determine on remand that remanding to the Board for findings and conclusions is appropriate despite the parties’ contention to the contrary, see Rule 1-074(T)(l), or that the parties should have to re-brief their arguments following the filing of the complete record proper in order to comply with Rule 1-074(K)-(M).” See Case No. A-1-CA-35840 (2/4/2019).
* On August 23, 2019 the 4th Judicial District Court issued its Order on Remand noted that it was unable to determine after review of the record on what specific facts the local labor board relied for its decision or the weight given any particular evidence. Therefore, the district court remanded the matter to the City’s Labor Board for entry of appropriate Findings and Conclusions.
* While the matter was on remand, the City of Las Vegas repealed its Labor Management Relations Ordinance. With the repeal of the ordinance, and pursuant to NMSA 1978 § 10-7E-10(G)(1) (2020), the Las Vegas Labor-Management Relations Board ceased to exist and all matters pending before it, specifically, the remand for Findings and Conclusions concerning AFSCME’s accretion petition, came under the jurisdiction of this Board. See NMSA 1978 § 10-7E-10(G) (2020).
* On December 30, 2020, the PELRB’s Hearing Officer concluded that accreting the positions would not render the existing unit inappropriate and the recognition of this bargaining unit and its exclusive representative should be amended to reflect inclusion of those position in the bargaining unit. On January 15, 2021 the PELRB adopted as affirmed the Hearing Officer’s Decision in its Order 4-PELRB-2021. The City appealed that Order to the 4th Judicial District Court on February 15, 2021. On 11-22-21 the District Court affirmed the PELRB and instructed the City to take appropriate action. After the time passed in which the City could seek further appeal without a Petition for Writ of Certiorari having been filed, the District Court’s Judgment in D-412-CV-2015-00369 stands and the case was closed on 1-19-2022.

7. *Albuquerque Bernalillo County Water Utility Authority v. AFSCME, Council 18, AFL-CIO, Local 3022,* Case No. D-202-CV-2021-06572 (J. O’Connell; November 17, 2021). (In re: *AFSCME, Council 18, Local 3022 v. Albuquerque Bernalillo County Water Utility Authority*; PELRB 107-21).

AFSCME alleged the Water Authority violated the parties’ CBA in relation to continuing longevity pay when employees are promoted from one bargaining unit to another. The issue had previously been through binding arbitration in which the arbitrator held that longevity pay must continue when a promotion results in an employee moving from one unit whose bargaining agreement calls for longevity pay, to another bargaining unit, whose CBA does not include a longevity pay provision. That decision was affirmed by the District Court at which point it became a judgment of the Court pursuant to the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-24 (A) and (C) (2001).

* Relying on the doctrines of res judicata and collateral estoppel the PELRB Hearing Officer found the District Court’s Judgment affirming the arbitrator’s decision to be binding on the Water Authority and rejected its claim that prior settlement agreements resolving unpaid longevity pay meant the Water Authority was absolved from future compliance with the arbitrator’s decision. The PELRB affirmed that decision on October 18, 2021 (68-PELRB-2021). The Water Authority sought further review, appealing to the District Court on November 17, 2021 as D-202-CV-2021-06572. PELRB staff filed the Record on Appeal on December 17, 2021 and after numerous requests for extensions of time, the District Court dismissed the appeal for lack of prosecution on October 11, 2022. Staff closed the file on November 7, 2022 and the Board’s Order affirming the Hearings Officer’s decision that the arbitrator’s decision requiring longevity pay upon promotion in certain circumstances applies prospectively, stands.
* On February 24, 2022 UNM appealed the Board’s Decision *University Of New Mexico v. United Electrical, Radio and Machine Workers of America,* Case No. D-202-CV-2021-06615.

8. *(In re: United Electrical Radio and Machine Workers of America and University of New Mexico* PELRB No. 307-20 4-PELRB-2022 1-27-2022.) Following a five-day hearing held in March and April 2021, the Board’s Executive Director issued a Hearings Officer’s Report and Recommended Decision dated June 11, 2021, finding that graduate students are not public employees as that term is described by the Public Employee Bargaining Act, NMSA 1978, Section 10-7E-1 to 26 (2003, as amended through 2020) (“PEBA”), and recommending dismissal of the Petition. Upon consideration of the June 11, 2021 Hearings Officer’s Report and Recommended Decision and the record created before the Executive Director, on August 17, 2021, the Board issued its Order, concluding that graduate students fall within PEBA’s definition of regular employees and directing the Executive Director to proceed with processing the Petition. See 66-PELRB-2021 and 6-PELRB-2022 amending it.

* Following an August 27, 2021 Status and Scheduling Order and supplemental briefing by the parties, the Executive Director issued a Hearings Officer’s Report and Recommended Decision dated October 4, 2021 providing a lengthy analysis in support of finding that graduate students are regular public employees, the Union’s petitioned-for job titles form an appropriate bargaining unit, and the Union is a labor organization under PEBA.
* On November 9, 2021, the Board issued its Order adopting the Executive Director’s recommended decision concerning the appropriate bargaining unit for UNM graduate students, as stated in the October 4, 2021 Hearings Officer’s Report and Recommended Decision, and directed the card check to proceed “without delay.” See 75-PELRB-2021.
* On December 17, 2021, the Executive Director and Board staff conducted the card check at the Board offices. The public was invited to observe via a Zoom link. Counsel for the union and counsel for the employer were present during the card check. They were able to observe the proceedings and to lodge objections while the card check was conducted.
* The results of the card check are memorialized on a Results of Card Check form signed and dated by the Executive Director on December 17, 2021 memorializing 57.3 percent majority support. On January 4, 2022
* UNM Objected to the Executive Director’s Card Check conducted on December 27, 2021 on the grounds that the Board has not adopted rules governing the process of card checks in lieu of elections. UNM’s objections may be summarized as follows: procedural rules were not adopted by the Board before proceeding with the card check; an updated employee list was not utilized during the card check; multiple lists were used; the total number of graduate students in the bargaining unit differed from the initial check to the final check; and not all cards were dated.20.The Union argued that even in the absence of procedural rules, the Board is bound by PEBA to certify a labor organization as the exclusive representative of all public employees in an appropriate bargaining unit upon verification that a majority of the employees in the bargaining unit have signed valid organization cards. See NMSA 1978, Section 10-7E-14 (C) (2003, as amended through 2020).
* On December 30, the Executive Director provided his Report on Objections to the Card Check, in which he notes “it makes no sense to lock the union into a time frame for gathering interest cards at one point, then allowing the employer to choose another later point for verifying the cards when, as it acknowledges the transitory nature of the graduate students’ employment over one third of the original list are no longer in the unit. Unless a card check can be completed within the same semester in which a union submits its Petition for Recognition, this Board risks entering into a never-ending cycle of a filed Petition for Recognition, followed by scheduling a card check, followed by an amended employee list from the employer on the eve of the scheduled card check, followed by another rescheduled card check date giving the union time to update its interest cards. That this may be accomplished within a single semester is belied by the fact that it has taken this Board over a year to reach this stage of the proceeding. The better course is to adopt the approach advocated by the union that the purpose of a card check is to test majority support as of the time a petition is submitted."
* The Executive Director then recommended that the Board proceed with a fact-finding hearing, as contemplated by Section 10-7E-14(C) of PEBA, during its January 4, 2022 meeting and make appropriate findings thereafter.
* At the January 4 meeting, after hearing from both counsel for UNM and the Union, the Board concluded, that the card check was properly conducted pursuant to and in accordance with PEBA Sec. 10-7E-14(C).[[1]](#footnote-1)
* Procedural rules on the conduct of a card check are not specifically mandated by PEBA and the Board has discretion to determine what rules are “necessary to accomplish and perform its functions and duties as established in the (PEBA).” Section 10-7E-9(A) NMSA. Therefore, UNM’s first objection, that procedural rules were not adopted by the Board before proceeding with the card check, is without merit. The card check encompasses the simple task of counting the cards. Furthermore, the parties were present during the card check to lodge their objections as the counting proceeded. The lack of rules for the conduct of this card check does not render the card check invalid.
* UNM’s second objection, that an updated employee list was not utilized during the card check, is without merit. A majority of the employees of the proposed bargaining unit signed valid authorization cards within 3 months of the petition which were submitted with the petition.
* UNM’s third objection, that multiple lists were used, is not supported by the evidence. Only one list was used. Furthermore, if the electronic cards that were not counted were included in the tally, it would have increased the showing of support for the Union.
* UNM’s fourth objection, that the total number of graduate students in the bargaining unit, differed from the initial check to the final check, is without merit. The difference was 1547 compared to 1542, five students. The number is inconsequential to the outcome of the card check. Further, UNM raised no objection to the initial count of 1542 when it was first reported in March of 2021.
* UNM’s fifth objection, that not all cards were dated, is without merit. The Executive Director reported that the cards were all signed within three months of the Petition submitted on December 9, 2020. In addition, the Executive Director reported that one card had a date that was nonsensical in the context of the proceeding. Removing that one card would be inconsequential to the outcome of the card check. A majority of the employees in the appropriate bargaining unit have signed valid authorization cards. See 4-PELRB-2022.
* UNM’s objections to the results of the December 17, 2021 card check were therefore, denied; and Board staff was hereby directed to issue a Certification of Exclusive Representation.
* This appeal followed but on 3/16/2022 UNM filed a Notice that it was withdrawing its appeal. Therefore, the Board’s Order 4-PELRB-2022 designating the appropriate bargaining unit stands. Staff closed the file on October 13, 2021.

8. *Albuquerque Bernalillo County Water Utility Authority v. American Federation of State, County and Municipal Employees, Council 18, AFL-CIO, Local 3022 and New Mexico Public Employee Labor Relations Board,* No. D-202-CV-2021-06572 (In re: PELRB Case No. 107-21 consolidated with 109-21). On August 31, 2021, the PELRB Executive Director issued a Report and Recommended Decision concluding that the Water Authority violated the parties’ Collective Bargaining Agreement concerning the continuation of longevity pay when an employee is promoted from the B-Series to the M3 Series and recommending that AFSCME be granted certain relief. The PELRB adopted that Report and Recommended Decision in an Order entered on October 18, 2021. See 68-PELRB-2021.

* The Water Authority appealed the Board’s Decision to the District Court on November 17, 2021. After an extension of time in which to file appellate Issues Statements, the District County dismissed the Appeal for Lack of Prosecution on October 11, 2022. Staff closed the file on October 17, 2022.

1. *Rhonda Goodenough v. State of New Mexico, Children, Youth and Families Dep’t, and New Mexico Public Employee Labor Relations Board*, Case No. D-101-CV-2020-01743 (J. Biedscheid April 30, 2021); cert. denied and Motion to Dismiss granted August 26, 2021; Case No. A-1-CA-39777. (In re: Rhonda Goodenough v. N.M. Children Youth and Families Dep’t; PELRB 106-19).
   1. CYFD employee, Rhonda Goodenough, filed a PPC on September 16, 2019 claiming that CYFD terminated her employment in retaliation for having filed a prior prohibited practice complaint, PELRB No. 103-19. (Summarily dismissed without requesting Board review and closed September 18, 2019). After a hearing the Board’s Hearing Officer decided on June 15, 2020 that Complainant did not meet her burden of showing that CYFD engaged in a prohibited practice under NMSA § 10-7E-19(B) or (E). Complainant did not establish that disparate treatment occurred, nor did she prove by a preponderance of the evidence that CYFD acted in a retaliation or restrained her right to conduct any protected activity in violation of the Public Employee Bargaining Act. Evidence of a *Weingarten* violation is not sufficient basis because Complainant has not demonstrated the materiality of that violation to the decision to terminate. Furthermore, the discipline here was not taken as a direct result of having asserted *Weingarten* rights. Rather, she was disciplined for other cause. The Board affirmed its Hearing Officer on July 22, 2020 and dismissed the complaint. See 9-PELRB-2020.
   2. Ms. Goodenough appealed the Board’s Order to the first Judicial District Court on August 21, 2020. After hearing argument on February 16, 2021, the District Court upheld the PELRB on April 30, 2021 holding:
      1. The PELRB applied the correct standard, correctly apprehended her claims, and appropriately evaluated CYFD’s defense.
      2. The PELRB appropriately evaluated the records CYFD deemed confidential.
      3. The Court did not credit Goodenough’s argument that Executive Director Griego “did not consider Complainant’s arguments/analysis as presented in her bench memos at all dismissing them outright as improper.” The Director was found to have considered the Bench Memorandum insofar as they shared the same explanation of the term ‘discrimination’ against a public employee as do cases considered under § 19(E) of the Public Employee Bargaining Act.
      4. The PELRB decision was supported by substantial evidence.
2. Ms. Goodenough sought further review by the Court of Appeals on May 26, 2021. The New Mexico Court of Appeals denied certiorari and granted a Motion by the PELRB to Dismiss Appellant’s Docketing Statement for failure to timely file a Petition for Writ of Certiorari .
3. Accordingly, the District Court’s Order upholding this Board’s Order in the case stands as precedent.
4. 5. *Hendrickson v. AFSCME Council 18*, 992 F. 3d 950 - Court of Appeals, 10th Circuit 2021.
   1. Plaintiff sought retroactive relief for dues paid while a member of a union following the Supreme Court decision in *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018). The Plaintiff contended that, under *Janus*, the Union cannot retain dues that had been deducted from his paychecks or serve as his exclusive bargaining representative. In *Janus*, the Court said the First Amendment right against compelled speech protects non-members of public sector unions from having to pay “agency” or “fair share” fees—fees that compensate the union for collective bargaining but not for partisan activity.
5. The Plaintiff sought a declaration that “the Union and [the Governor] cannot force public employees to wait for an opt-out window to resign their union membership and to stop the deduction of dues from their paychecks” and a declaration that the New Mexico statute providing for exclusive representation “constitute[s] an unconstitutional violation of his First Amendment rights to free speech and freedom of association.” These claims were dismissed because the Governor and Attorney General therefore do not fall within the *Ex Parte Young* exception and thus have Eleventh Amendment immunity.
6. J*anus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31,* 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018).
   1. *Janus* reversed the longstanding rule announced in *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) that allowed employers to deduct “fair share” or agency fees from non-union members’ pay and transfer those fees to the union. *Janus* held that “Neither an agency fee nor any other payment to the union may be deducted from a nonmembers wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.” 138 S. Ct. at 2473.
7. *American Federation of State, County and Municipal Employees, Council 18 v. New Mexico Corrections Department,* D-202-CV-2013-01920 (J. Perez, May 15, 2015). (In re: *American Federation of State, County and Municipal Employees, Council 18 v. New Mexico Corrections Department*, PELRB 311-11, 2-PELRB-2013, January 23, 2013).
   1. The Corrections Department appealed from the Board’s Order upholding its Hearing Officer’s determination that Lieutenants in the State Corrections Department are not “supervisors” as that term is defined in PEBA § 4(U) and therefore, their accretion into an existing bargaining unit of Corrections Officers, did not render the unit “inappropriate”. The Second Judicial
8. District upheld the PELRB establishing as precedent that the Board’s Hearing Officer 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. See 08-PELRB-2012 (July 13, 2012) and 02-PELRB-2013 (January 23, 2013).
   1. 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 concluded that 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.
   2. 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.
9. *APOA, et al. v. City of Albuquerque, Albuquerque Police Department and Richard Berry*, 2013-NMCA-110, 314 P.3d 667. (J. Garcia, August 29, 2013); Cert. Denied November 20, 2013.
   1. The requirements and obligations of the parties regarding the funding of a public employee collective bargaining agreement are statutorily controlled by the PEBA, the Labor Management Relations Ordinance and the specific terms of the CBA.
   2. The City’s expenditures of funds to comply with the CBA was subject to both “the specific appropriation of funds” and the “availability of funds” under PEBA § 10-7E-17(H) and LMRO § 3-2-18. LMRO § 3-2-18, referenced in Section 2.1.1.5 of the parties’ CBA, required the City Council to “adopt a resolution” appropriating funds to cover the economic components of the contract when the CBA was approved by the City in 2008. As such, the City adopted the appropriate resolution in 2008 to cover the economic obligation for the new three-year CBA. Multi-year collective bargaining agreements are beneficial to both sides and provide stability and continuity for both management and public employees. LMRO § 3-2-18 does not prohibit the City from adopting a contract that has fiscal implications over several years. Its re-opening requirement ensures that the City has a mechanism to address unexpected deficit spending or budgetary shortfalls that arise during the subsequent years of multiyear collective bargaining agreements.
10. *AFSCME, Council 18, AFL–CIO, CLC, v. State of New Mexico, New Mexico State Personnel Board, and Sandra K. Perez, Director of New Mexico State Personnel Board,* 2013-NMCA-106, 314 P.3d 674.

The State Personnel Board adopted a regulation defining the phrase, “shift work schedule” differently than did Article 21, Section 5 of the State’s Collective Bargaining Agreement with AFSCME. The Union prevailed at arbitration and sought enforcement of the arbitrator’s decision asserting that the regulation violated the Contract Clauses of the United States and New Mexico Constitutions. The District Court dismissed the union’s petition for injunctive and declaratory relief or failure to state a claim. However, the Court of Appeals reversed the district court because, having lost the arbitration, the State attempted to circumvent the arbitrator’s decision and the State’s obligations under the Agreement by adopting a definition that was the exact opposite of the definition adopted by the arbitrator. The Union adequately pled that the new regulation would substantially impair an existing contract right, to make the regulation unconstitutionally retroactive by impairing the Agreement in violation of the Contract Clauses of the United States and New Mexico Constitutions.

1. *AFSCME, Council 18 v. New Mexico Human Services Dep’t*. (CV-2012-02176, J. Ortiz,

June 14, 2013.)

* 1. The presence of security guards at the workplace is a term and condition of employment and a mandatory subject of bargaining and the Court upheld the PELRB’s determination that the employer impermissibly made a unilateral change in terms and conditions of employment without bargaining.
  2. HSD relied upon the management rights and scheduling clauses in its CBA as constituting a waiver by the union of its right to bargain removal of security guards but the Court, referring to another section of the same CBA that required HSD to negotiate in good faith prior to making any changes in terms and conditions of employment related to “reasonable standards and rules for employees’ safety”, found that HSD did not meet its burden of showing a clear and unmistakable waiver of the union’s right to bargain those issues.

1. *AFSCME Council 18, AFSCME Local 1888, AFSCME Local 3022, AFSCME Local 624, and AFSCME Local 2962 v. The City of Albuquerque,* (Ct. App. No. 31,631, April 17, 2013).
   1. Because of the City’s Labor-Management Relations Ordinance grandfather the absence of an evergreen provision does not fundamentally violate the PEBA. The LMRO does not permit the City to unilaterally impose conditions of employment once a CBA has expired. Instead, the LMRO includes provisions for impasse resolution through mediation and voluntary binding arbitration. These provisions ensure that the Unions are participants in the determination of employment conditions even after a CBA has expired.
   2. The PEBA 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.” It says nothing about the relative effectiveness of the procedures adopted. See *City of Deming,* 2007-NMCA-069, ¶¶ 22-24, 141 N.M. 686, 160 P.3d 595, (stating that application of the grandfather clause is not dependent on an evaluation of the quality or effectiveness of the collective bargaining procedures).
2. *Northern New Mexico College, et al., v. PELRB and NFEE, AFT Local 4935*, (1st Judicial Dist. CV-2012-02100, J. Singleton, April 18, 2013.)
   1. PELRB acted correctly when it dismissed PPC’s having concluded the College’s labor management relations board is “duly constituted and fully functional.”
   2. PELRB does have “subject matter jurisdiction” of PPC’s and it acted consistently with the minimum requirements of PEBA. Its decision and order is consistent with the Court’s understanding of jurisdiction and is consistent with PEBA. The College’s appeal is therefore denied and the PELRB’s Order and Decision is therefore upheld.
3. Even if one accepts that the undisputed evidence shows that the management and labor representatives were appointed anew in 2011 and that they did not agree on a third “neutral” member, the previously agreed-upon “neutral” continues to serve in that position pursuant to Article XX, Section 2 of the New Mexico Constitution, which applies to Northern New Mexico College as a State institution.
   1. The PELRB, having decided that Northern New Mexico College’s labor management relations board was duly constituted and fully functional, properly dismissed the Union’s PPC’s and because those PPC’s were reviewed by the Board as an original tribunal, not as an appellate body, a remand of those matters to the local board would not have been procedurally appropriate.
4. *City of Albuquerque v. AFSCME, Local 1888,* 2nd Judicial Dist. CV-2012-02239 (consolidated), J. Baca, May 1, 2013.)

The PPC’s were properly dismissed but the PELRB was without jurisdiction remand to the local board for further proceedings – they did not originate at the local board and make their way via appeal or removal to the State Board.

1. *Luginbuhl v. City of Gallup, Gallup Police Department*, 2013-NMCA-053, 302 P.3d 751.
   1. Petitioner as a public employee working for a public employer as those terms are defined in the PEBA is therefore subject to the PEBA and the grievance arbitration process in the applicable CBA, not the grievance process in the City’s personnel rules for non-union employees.
   2. An arbitration clause in a validly negotiated CBA does not fail for lack of consideration and the CBA at issue was supported by adequate consideration.
   3. The CBA’s arbitration clause is not vague or uncertain in its application.
   4. Petitioner’s contention that as a non-union member of the bargaining unit he is not bound by the agreement to arbitrate disputes is refuted by the plain language of the PEBA §§ 10-7E-15(A) and (B) and 20(D) is rejected. The Petitioner is bound by the requirement of the CBA as well as the PEBA that a grievance challenging termination is subject to binding arbitration.
2. *AFSCME, Council 18, AFSCME, Local 1888, AFSCME, Local 3022, AFSCME, Local 624 and AFSCME, Local 2962 v. City of Albuquerque,* 2013-NMCA-012, 293 P.3d 943.
   1. The PEBA does not impose a requirement that the Courts review the City’s LMRO for effectiveness, citing *City of Albuquerque v. Montoya*, 2012-NMSC-007, 274 P.3d 108.
   2. Although the Legislature included requirements for compliance with PEBA in both PEBA I and PEBA II, that requirement is applicable only if a public employer other than the state adopts a system of provisions and procedures permitting collective bargaining after October 1, 1991. In such instances the grandfather clause does require for grandfather status that the newly adopted system include impasse resolution procedures equivalent to those set forth in the PEBA. But the Legislature specifically did not include any such requirement for public employers adopting ordinances prior to October 1, 1991.
   3. PEBA § 17(E) requirement that agreement provisions that require the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds applies to economic components of the extension of expired collective bargaining agreements under the PEBA evergreen provision. It is not an issue whether the City appropriated funds for or during the life of the agreement; no appropriation occurred to extend the agreements and the City contends it does not have funds sufficient to fund the extension. The PEBA leaves that determination to the legislative functions of the public employer.
   4. The PEBA does not require the extension of existing collective bargaining agreements in conflict with Section 10-7E-17(E).
   5. The complaint was moot with regard to two unions that entered into successor agreements with the City while the appeal was pending.
3. *State of New Mexico v. AFSCME Council 18 and CWA*, 2012-NMCA-114, 291 P.3d 600.
   1. The State appealed two separate arbitrators’ decisions determining that the State’s pay package for FY 2009 violated the terms of the parties’ CBA’s. The arbitrators did not exceed their powers in finding that the legislature appropriated sufficient funds to cover the salary increases. The State previously had agreed to submit the issues of its interpretation of the legislative bills in question and how it interpreted the language “average salary increase” in those bills to arbitration. The State was bound by the arbitrators’ legal and factual findings on the issues submitted.
   2. Even if the arbitrators committed legal or factual error, as the State claimed on appeal, the Court of Appeals found “no permissible basis for reviewing the merits of the issues that were arbitrated.”
4. “[l]egal and factual mistakes, such as applying the wrong standard of proof, do not comprise an abuse of power” under Section 44-7A-24(a)(4).
   1. The arbitrators did not exceed their powers by issuing awards that allegedly require retroactive salary increases for the Unions’ employees in violation of Article IV, Section 27 of the New Mexico Constitution. The remedies mandated by the arbitrators were not “extra compensation” as used in Article IV, Section 27 for services performed in FY2009, but compensation that the Unions’ employees were entitled to and would have received were it not for the State’s violation of the Agreements.
   2. The arbitrators did not exceed their powers by mandating monetary relief that will require the Legislature to appropriate funds. The arbitration awards did not require further appropriation or a reappropriation of funds by the Legislature because arbitrators determined that the Legislature already appropriated sufficient funds in FY2009 for the State to meet its contractual obligations under the Agreements and that the State failed to meet its contractual obligation to distribute the funds according to the terms of the Agreements. The State’s representation that it has already used the funds appropriated by the FY2009 legislative appropriations should not affect the arbitrators’ decisions and awards in favor of the Unions.
   3. There is no difference between this case and other cases where adverse judgments are rendered against the State; as in those cases, the State cannot avoid its obligation to comply with the judgment by maintaining that compliance would require it to seek further appropriations from the Legislature.
5. *Northern Federation of Education Employees v. Northern New Mexico Community College, et al.* (July 2, 2012), upheld on appeal in First Judicial District Court Case No, D-101-CV-2012-02100.
   1. The Board found Respondent’s local Labor-Management Commission to be duly constituted and fully functional, citing to the New Mexico Supreme Court’s decision in *AFSCME v. Martinez and the State of New Mexico*, 2011-NMSC-018, 150 N.M. 132, 257 P.3d 952. Therefore, the Board did not have jurisdiction over the parties and the subject matter in three of the consolidated PPC’s alleging violations that would come under the jurisdiction of the local board. The Board found that it did have jurisdiction over three other consolidated PPC’s alleging a violations of PEBA §19(G). With regard to those claims the Board held that the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local Board.
6. *City of Albuquerque v. Montoya,* 2012-NMSC-007, 247 P.3d 108.

As a result of a deadlock, Albuquerque’s local Labor Board could not adjudicate a PPC filed by AFSCME on behalf of one of its members, a City employee. The union then filed the same PPC with the PELRB and the City moved to dismiss for lack of jurisdiction. The PELRB Director determined that the PELRB had jurisdiction because the local ordinance was not grandfathered. The Director’s decision was upheld by the Court of Appeals but reversed by the Supreme Court.

* 1. The City Council President does not serve in either a "management" or a "labor" capacity, and therefore the City Ordinance provision that provides a 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.

1. *San Juan College v. San Juan College Labor Management Relations Board*, 2011-NMCA-117, 267 P.3d 101.
   1. The Board is charged with the statutory duty of designating appropriate bargaining units for collective bargaining. There is no absolute rule of law as to what constitutes an appropriate bargaining unit and courts will defer to the Board’s decision on what constitutes an appropriate bargaining unit if that determination is supported by substantial evidence and otherwise in accordance with the law.
2. *AFSCME v. Martinez*, No. CV-2011-10200 (2nd Judicial Dist. Feb. 9, 2012, J. Nash) cert. denied Mar. 29, 2012.
3. Upon expiration of the labor-recommended appointee to the Board in July of 2011 six public employee labor organizations recommended his reappointment. The Clovis Police Officers’ Association recommended appointment of someone else. Governor Martinez appointed the CPOA recommendation. Six unions then petitioned the Second Judicial District Court for a writ of mandamus to order the Governor to rescind her appointment of Bartosiewicz, rescind all PELRB decisions made during his time on the board, and to retroactively reappoint the former labor recommended appointee. The Unions’ petition was denied because the Court did not agree with the Unions’ position that CPOA was without authority to make a recommendation. While the Governor solicited a PELRB recommendation to her liking no evidence was presented that by doing so she improperly interfered with the recommendation process.
   1. PEBA does not prohibit local labor organizations from making recommendations.
   2. The Governor is not compelled to appoint the labor member recommended by a majority of organized labor representatives.
   3. Because CPOA’s recommendation was valid the Governor had two labor recommendations from which to choose and her appointment was not an unconstitutional official action. Compare, *AFSCME v. Martinez*, 2011-NMSC-018, 150 N.M. 132, 257 P.3d 952.
4. *AFSCME v. Martinez,* 2011-NMSC-018, 150 N.M. 132, 257 P.3d 952.
   1. The Governor may not use the broad removal authority under Article V, Section 5 of the New Mexico Constitution to remove members of the Public Employee Labor Relations Board who have the responsibility of adjudicating the merits of disputes involving the Governor.
   2. None of the PELRB members serve at the pleasure of the Governor because the Public Employee Bargaining Act obligates the Governor to appoint one member recommended by organized labor, one member recommended by public employers, and one neutral member jointly recommended by these two appointees.
   3. The Governor’s responsibility under the Act and Article V, Section 4 of the New Mexico Constitution to “take care that the laws be faithfully executed” requires that the Governor respect the Act’s requirement for continuity and balance by not attempting to remove appointed members of the PELRB.
   4. Constitutional due process requires a neutral tribunal whose members are free to deliberate without fear of removal by a frequent litigant in that forum, such as the Governor. Due process considerations are also implicated because when the Governor reserves the power to remove board members at any time and for any reason, the Governor exerts subtle coercive influence over the PELRB, further compromising its balanced and fair character. “A fair trial in a fair tribunal is a basic requirement of due process.” Citing *In re Murchison*, 349 U.S. 133, 136 (1955); *Reid v. N.M. Bd. of Exam’rs in Optometry*, 1979-NMSC-005, 92 N.M. 414, 416, 589 P.2d 198, 200.
5. C*ounty of Los Alamos v. John Paul Martinez, et al.*, 2011-NMCA-027, 150 N.M. 326, 258 P.3d 1118.
   1. Any direct communication with a union represented employee made for the purpose of altering terms and conditions of employment constitutes a violation of the PEBA.
   2. There is no definition of the phrase “wages, hours and other terms and conditions of employment” in either the PEBA or the local ordinance so as to delineate exactly what constitutes a mandatory subject of bargaining.
   3. A union can contractually waive its right to mandatory bargaining if the waiver is expressed clearly and unmistakably. However, courts will not infer a waiver unless it is clear that the parties were aware of their rights and made the conscious choice, for whatever reason, to waive them.
   4. A “zipper clause”, standing alone, did not constitute a waiver as to a specific bargaining item. Such clauses are to be given such effect as the negotiating history and other surrounding circumstances seem to make appropriate.
6. *City of Albuquerque v. AFSCME Council 18,* 2011-NMCA-21, 149 N.M. 379, 249 P.3d 510.
   1. Once an employee’s status has changed from probationary to non-probationary, an employer cannot revert the employee to probationary status.
7. *Akins v. United Steelworkers of America,* 2010-NMSC-031, 148 N.M. 442, 227 P.3d 744.
   1. The New Mexico Supreme Court declined to limit a union’s liability for breach of a DFR by imposing a per se exclusion of punitive damages much as the U.S. Supreme Court has done for similar actions against federally regulated labor unions.
   2. The unanimous opinion underscored the public policy served by punitive damages and held that “punitive damages should be available in DFR suits where the union’s conduct is malicious, willful, reckless, wanton, fraudulent or in bad faith.”
8. *IAFF Local 1687 v. City of Carlsbad*, 2009-NMCA-97, 147 N.M. 6, 216 P.3d 256.
   1. Court of Appeals Reversed the district court’s grant of summary judgment to Union, granting summary judgment to the City.
   2. Provisions of PEBA stating that arbitration awards are contingent on the appropriation and availability of funds prevail over the provisions of PEBA stating arbitration awards shall be final and binding.
9. *Akins v. United Steelworkers of America, Local 187*, 2009-NMCA-051, 146 N.M. 237, 208 P.3d 457. Retroactive application of the six-month statute of limitations adopted by the PEBA was not appropriate in a suit brought by a union member for breach of a duty of fair representation. DFR actions are not within PEBA’s administrative framework because the PEBA does not specify breach of the DFR as a prohibited practice.
   1. Punitive damages are available under New Mexico law against a union for breach of a DFR.
10. *City of Las Cruces v. Juan B. Montoya and PELRB*, Supreme Court of New Mexico, Case No. 31,629 (March 24, 2009). Order dismissing petition for writ of prohibition against the PELRB from hearing a PPC that alleged the City’s local labor ordinance, grandfathered under §26(B) of PEBA, fails to meet the requirements of that section.
    1. The Court provided no reasoning or analysis for dismissal. However, the underlying briefing to the PELRB and the Court demonstrates that both New Mexico Courts and the PELRB have routinely upheld the PELRB’s authority to review local ordinances’ compliance with PEBA, even where grandfathered; and that local boards grandfathered under §26(B) are subject to many more substantive requirements than §26(A) boards, and thus permit greater grounds for the PELRB’s exercise of jurisdiction to review such ordinances.
11. *Granberry v. Albuquerque Police Officers Assoc.,* 2008-NMCA-094, 144 N.M. 595, 598 189 P.3d 1217, 1220.
    1. Granberry involved a claim for breach of the duty of fair representation against the Albuquerque Police Officers Association brought after it settled a prohibited practices complaint on behalf of four police sergeants and did not include non-dues paying members of the bargaining unit in the settlement. Summary Judgment granted by the District Court in favor of the Union was reversed on appeal because it is for a jury to resolve the question of whether Appellants were precluded from recovery by a particular APOA bylaw and whether APOA’s actions breached its duty of fair representation, whether Appellants suffered damages, and whether APOA’s actions were the proximate cause of those damages.
12. See also, *Howse v. Roswell Independent School Dist.*, 2008-NMCA-095, 144 N.M. 502, 188 P.3d 1253; *Mario Alderete, et al. v. City of Albuquerque, et al.* NMCA No. 33,151; 33,380; 33,714 (consolidated) February 23, 2015 (unpublished memorandum opinion) finding that no breach of DFR occurred when union refused to file grievance if City was compliant with CBA); *Sanchez v. Jimenez et al. District of New Mexico*, nmd-2:2012-CV-01122, finding no breach of DFR when union negligently failed to file for arbitration within the appropriate time period.
13. *City of Albuquerque v. Juan B. Montoya and PELRB*, 2nd Judicial Dist., Case No. CV-2008-02007 (June 26, 2008, J. Lang).
    1. Summarily granting a petition for writ of prohibition and superintending control before the PELRB could file its Answer, on grounds that the PELRB lacked jurisdiction to hear a PPC because the City of Albuquerque had its own, grandfathered, local board). Decision appealed as Court App. 28,846, Opinion Number: 2010-NMCA-100, cert. granted No. 32,570.
14. *Health Care Local 2166, National Union of Hospital and Health Care Employees District 1199 v. University of New Mexico Health Science Center,* 2nd Judicial Dist. Case No. CV 2007-8161 (Feb. 20, 2008, J. Nash).
    1. A labor relations board has jurisdiction under §19(D) of PEBA, and the equivalent section of a local resolution or ordinance modeled on PEBA, to hear PPCs alleging the retaliatory discharge of probationary employees, for their participation in Union activities and in order to discourage Union membership.
    2. Probationary employees' rights to form, join or assist a union are not protected under § 19(A).
15. *City of Deming v. Deming Firefighters Local 4251,* 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595.
    1. Upholding the PELRB’s denial of grandfathered status to a provision of the City’s local labor ordinance that defined certain classes of public employees (fire fighter lieutenants and captains) as “supervisors” and therefore automatically excluded from the coverage of the local ordinance.
    2. Reversing the PELRB’s and the District Court’s denial of grandfathered status to the arbitration provision that was not final and binding.
16. *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).
    1. Mandamus is inappropriate where the petitioner fails to exhaust its administrative remedies. “Where an appeal process is available to a litigant, mandamus is not an appropriate vehicle for challenging an administrative decision,” and the extraordinary remedy of mandamus is not proper where the only consequences alleged are “the usual delay and expense inherent in all litigation.” Citing *State ex rel. Hyde Park Co., LLC v. Planning Comm’n of the City of Santa Fe*, 1998-NMCA-146, ¶¶ 11 and 13, 125 NM 832.

In the case below, 2nd Judicial District Case No. CIV-2005-07443 (Nov. 23, 2005) Judge Clay Campbell denied the Schools’ Petition for Writ of Mandamus and Stay of Proceedings against the PELRB, finding that the PELRB did not infringe on a clear legal right of the School and did not exceed its authority under PEBA by exercising concurrent jurisdiction when a local board had been approved.

1. *Laura Chamas-Ortega v. 2d Judicial District Court,* 7th Judicial Dist., Case No. CV-04-7883 (Mar. 10, 2006, J. Kase).
   1. Upholding the PELRB’s determination in 1 PELRB 2004 that the PPC was not moot, even though the Complainant quit working for the courts, because the question involved an issue of substantial public interest and the issue was capable of repetition.
   2. Reversing as arbitrary and an abuse of discretion the PELRB’s determination that PEBA applied to court employees, “on the basis of grounds asserted[,] … and … the arguments and authority contained in” the Second Judicial District Court’s statement of appellate issues and reply.
2. *Callahan v. NM Federation of Teachers-TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.
   1. A compensatory claim against a union for breach of its statutory duty, as exclusive representative, to fairly and adequately represent a bargaining unit member does not state a prohibited practice under PEBA. Additionally, the PELRB and local boards lack authority to either award monetary damages to an aggrieved union member for a union’s breach of its duty of fair representation, or to order the Union to reinstate an employee allegedly improperly terminated as a result of the Union’s breach. Therefore, such claims cannot be brought before a Labor Relations Board and must instead be filed in District Court. See also, *Callahan v. N.M. Federation of Teachers-TVI*, 2010-NMCA-004, 147 N.M. 453, 224 P.3d 1258. Both *Callahan* cases reiterate the holding in *Jones v. International Union of Operating Engineers*, 1963-NMSC-118, 72 N.M. 322, 330-32, 383 P.2d 571, 576-78.

40. In re: Communications Workers of America, AFL-CIO v. State of New Mexico and New Mexico Public Employee Labor Relations Board, 2019-NMCA-031, No. D-202-CV-2015-03814 (J. Butkus, March 15, 2017) (In re: PELRB No. 122-14).

• CWA filed a PPC over unilateral changes made by the State to its policy regarding paid time for employee union representative for their time spent filing and investigating grievances. The Hearing Officer found, and PELRB rejected, that a letter the State sent CWA presented a “fait accompli” by which the State relieved CWA from any duty to request bargaining and concurrently breached § 10-7E-19(F). The Court upheld the PELRB’s rejection of the findings related to CWA being relieved of the duty to demand bargaining after waiting six months to file the PPC. According to the District Court the PELRB had evidence before it to support the conclusion that the State's letter was not a fait accompli. The Court concluded, therefore, that it was not unreasonable for the PELRB to reject the HO’s finding that CWA did not have the opportunity to request bargaining. (Citations omitted).

• Regarding the State’s cross-appeal the Court determined that PELRB’s Order sustaining a violation of Section 10-7E-19(B) was inconsistent with its conclusion rejecting a finding of bad faith. Accordingly, the Order was reversed as arbitrary and capricious. The union sought and obtained a writ of certiorari and the Court reversed and remanded to the Board to determine whether the CBA’s zipper clause eliminated the past practice of paying bargaining unit employees for time spent preparing for and participating in grievance meetings.

• After the State sent a letter to the union stating that it was discontinuing a past practice of allowing bargaining unit employees to use paid time (union time) to prepare for and participate in grievance meetings, subject to supervisor approval. The union filed a Prohibited Practice Complaint alleging (inter alia) that the State had refused to bargain in good faith about the subject. The Hearing Officer considered the Union’s unchallenged evidence of the parties’ past practice. Indeed, the State’s own witness stated that he was aware of at least five instances in 2012 and 2013 in which employees who were not union officers or union stewards, were coded as utilizing union time in the payroll system.” the Hearing Officer determined “the past practice of paying employees for preparing and attending their own grievance meetings as either union time or regular work time [was] clearly established.” As a result, the Hearing Officer concluded that “the State violated PEBA § 10-7E-19(B) when it unilaterally altered a mandatory subject of bargaining and a longstanding past practice thereby unlawfully restraining and interfering with employees’ rights under PEBA. The Hearing Officer’s decision held that the letter presented the union with a fait accompli which relieved them of the duty to request bargaining over the subject of union time and found that the State had violated § 10-7E-19(F). The Board reversed the Hearing Officer’s determination of a violation of § 10-7E-19(F) citing the union’s inadequate explanation of why it took no action in a six-month period to request bargaining. The District Court affirmed the PELRB’s finding that no violation of § 10-7E-19(F) occurred because the union was not relieved of its duty to request bargaining because the State provided them sufficient time to do so and had not implemented the change before notifying the union. Having determined that the union had waived any claim about the timeliness of the State’s

notice, the Court of Appeals reversed the District Court and held the Board’s conclusion that no

violation of § 10-7E-19(F) occurred was arbitrary and capricious because it had not considered the State’s intent when deciding the issue. The Board’s decision “contains no indication that it

considered the possibility that the State had already implemented, or was in the process of

implementing, its stated shift in policy, so as to warrant a finding that the State had no intention of changing its mind.” Id. at ¶23. The case was remanded to the PELRB to consider, in light of the Court of Appeal’s decision, whether the State’s actions constituted a fait accompli.

1. *United Steel Workers of America, Local 9424 v. City of Las Cruces*, 3d Judicial Dist., Case No. CV-2003-1599 (April 1, 2005, J. Robles).
   1. Ruling that the City of Las Cruces’ refusal to provide the Union with bargaining unit members’ home addresses constitutes a refusal to bargain in good faith, in violation of the local ordinance and PEBA, and ruling that City Resolution 00-136 is void as inconsistent with PEBA to the extent it forbids disclosure of the home addresses of bargaining unit employees to the Union.
2. *City of Albuquerque v. Chavez*, 1998-NMSC-033, 125 N.M. 809, 965 P.2d 928.
   1. New Mexico Courts have found the “Mathews test” from Mathews v. Eldridge, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976), provides useful framework for determining the appropriate amount of process to protect liberty. “Under the Mathews test, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”
3. *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors,* 1998-NMSC-20,125 N.M. 401.
   1. To be grandfathered under § 26(A), a local ordinance or resolution must constitute a system of provisions and procedures permitting public employees to form, join or assist any labor organization and it must have been enacted before October 1, 1991. Thus, to remain grandfathered, provisions of a grandfathered labor ordinance or resolution may not deny the right to bargain collectively to any public employees who have been afforded this right under PEBA. Where a provision of a grandfathered ordinance or resolution does not meet the requirements under § 26(A) for grandfathered status, the particular provision shall be denied grandfathered status, not the ordinance or resolution as a whole.
   2. The New Mexico Supreme Court confirmed the supremacy of PEBA’s definitions of “public employee” and “supervisor” over those of grandfathered provisions.
   3. When reviewing administrative agency decisions, the courts begin by looking at two interconnected factors: (a) is the question one of law, fact, or both; and (b) is the matter is within the agency's specialized field of expertise. If the agency decision is based upon its interpretation of its statute, the court will accord some deference, especially if the legal question implicates agency expertise. However, the court may always substitute its interpretation of the taw for that of the agency because it is the function of the court to interpret the law. If the court is addressing a question of fact, the court will accord greater deference to the agency's determination, especially if the factual issues concern matters in which the agency has specialized expertise.
   4. The party appealing the agency decision has the burden of showing that the agency action is (a) arbitrary and capricious, (b) not supported by substantial evidence, and/or (c) represents an abuse of the agency's discretion by being outside the scope of the agency's authority, clear error, or a violation of due process.
   5. “Substantial evidence" is evidence that a reasonable mind would regard as adequate to support a conclusion. If the agency's factual findings are not supported by substantial evidence, the court may adopt its own findings and conclusions based upon the information in the agency's record.
   6. When reviewing an administrative agency’s findings of fact, courts apply the whole record standard of review, meaning the reviewing court looks at both favorable and unfavorable evidence. The reviewing court may not exclusively rely upon a selected portion of the evidence and disregard other convincing evidence if it would be unreasonable to do so. The decision of the agency will be affirmed if it is supported by substantial evidence in the record as a whole.
   7. It is the policy of New Mexico courts to determine legislative intent primarily from the legislation itself, because New Mexico has no state-sponsored system or recording the legislative history of particular enactments. Thus, New Mexico courts do not attempt to divine what legislators read and heard and thought at the time they enacted a particular item of legislation. If the intentions of the legislature cannot be determined from the actual language of the statue, then New Mexico courts resort to rules of statutory construction, not legislative history.
4. *Las Cruces Professional Fire Fighters v. City of Las Cruces* (“Fire Fighters II”), 1997-NMCA-31, 123 N.M. 239.
   1. The New Mexico Court of Appeals held that the Las Cruces Fire Department's no-solicitation rule that encompassed rest breaks, lunch time, and residential hours presumptively violated § 19(B), and the city made no showing that its firefighting efforts would be hampered if employees were permitted to engage in union organizational activities during times when fire fighters were not needed for emergency services; thus, the record supported a finding that enforcement of the rule constituted a prohibited employer practice.

Both PEBAs were generally modeled on the NLRA. Accordingly, “absent cogent reasons to the contrary,” interpretations of the NLRA must generally be followed in interpreting substantially similar PEBA provisions, “particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted.”

* 1. Questions asked by a local board member at an administrative hearing concerning the possibility of compromise does not indicate prejudgment or bias where the board member directed the questions to both the employer and the union representatives, and he did not indicate what he thought the compromise should be. A board member is not disqualified for bias simply because he was nominated by union interests, or because he had expressed support for aggressive unionization of the public sector prior to being appointed to the Board.

Work time is for work, but the time outside working hours (such as rest and lunch breaks, and residential hours for employees working 24-hour shifts, such as firefighters) is an employee’s time to use as he wishes without unreasonable restraint, although the employee is rightfully on company property.

* 1. It violates PEBA to promulgate work rules or restrictions with the intent to interfere with employees’ rights under PEBA, rather than for legitimate business purposes. For example, an employer may impose limits on general fraternization during work time, but it may not forbid or prevent union organizational activities at all, even during non-working periods.

1. *Las Cruces Professional Fire Fighters v. City of Las Cruces* (“Fire Fighters II”), 1997-NMCA-44, 123 N.M. 329.
   1. Local boards approved by the PELRB under § 10 are required to follow all procedures and provisions of the Act, and therefore must follow PEBA’s definition of “supervisor” where the local ordinance’s definition of supervisor differs.
   2. In reviewing a labor board’s decision on a claim of insufficiency of the evidence, the appellate court resolves all disputes of facts in favor of the prevailing party and indulges all reasonable inferences in support of the prevailing party. The courts do not reweigh the evidence or substitute their own judgment for that of the board.
2. *City of Las Cruces v. PELRB,* 1996-NMSC-24, 121 N.M. 688.
   1. The PELRB rule providing for the confidentiality of a showing of interest in support of a petition for representation, See, 11.21.1.21 NMAC, is an authorized exception “as otherwise provided by law” to the Inspection of Public Records Act (IPRA), under § 14-2-1(F) of IPRA. See Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t, 2012-NMSC-26, 283 P.3d 853.
   2. PELRB regulations have the force of law if promulgated in accordance with the statutory mandate to carry out and effectuate the purpose of PEBA.
3. *Board of County Commissioners of Otero County et al. v. State of New Mexico Public Employee Labor Relations Board*, Twelfth Judicial Dist. Case No. CV-93-187 (July 13, 1993, J. Leslie C. Smith).
   1. New Mexico district courts confirmed the Board’s authority under § 10-7E-10 to review the content of labor ordinances and resolutions, as part of the process of approving local boards.
4. *AFSCME v. Stratton,* 1989-NMSC-003, 108 N.M. 163, 769 P.2d 76.
   1. In 1989, the Court upheld the State Personnel Office’s authority to enter into a CBA pursuant to agency rules, where the CBA did not “conflict with, contradict, expand or enlarge” rights provided under any existing or future state, county or municipal merit system.
5. *IBEW v. Farmington*, 1965-NMSC-090, 75 N.M. 393.
   1. The Court upheld Farmington’s authority to enter into a CBA where there was no applicable merit system in place.

**BOARD DECISIONS**

1. 2-PELRB-2022 (January 4, 2023) In re: *AFSCME, Local 3022 v. ABCWUA*; PELRB 120-22. The Board affirmed its Hearing Officer’s Summary Dismissal of a Union Complaint after both parties filed competing Motions for Summary Judgment. AFSCME, Local 3022 filed a PPC on September 15, 2022 alleging that one of its represented Training Specialists was deemed by the Employer to be ineligible for an equity pay step increase upon her promotion to M-26, Step 22, whereas another Training Specialist, is classified as an M-26, Step 23. The Employer took the position that according to a long-standing past practice, employees is in a position classified above Step 20 are not eligible for equity pay adjustments. The Union alleges that the failure to adjust the lower paid Training Specialist’s pay upward to match that of the higher paid Training Specialist violates NMSA 1978 § 19(F) and (H) (2020) (prohibiting refusal to bargain collectively in good faith with the exclusive representative and refusal or failure to comply with a collective bargaining agreement, respectively).

The Board’s Hearing Officer found that the “equity increase” in question arises out of the Water Authority’s Personnel Rules and Regulations Section 705, which provide for a *discretionary* step increase in the event employees are promoted into a position in which there are lower paid incumbent employees. The Water Authority exercised that discretion in accordance with a method applicable to all M-Series employees equitably. The limitation that the Water Authority does not permit equitable step adjustments beyond step 20, has been applied consistently. There was no evidence to the contrary. The Hearing Officer denied the Union’s Motion for Summary Judgment because there is no provision of the CBA applicable to equity adjustments for employees promoted within the M-Series bargaining unit. Complainant has produced no evidence that the Water Authority’s discretion to allow such adjustments or its method of applying that discretion, violated any provision of the Public Employees Bargaining Act nor that it discriminatorily applied the method improperly to employees within any protected class. Accordingly, ABCWUA’s Motion for Summary Judgment was granted and the PPC dismissed.

2. 12-PELRB-2022 (May 16, 2022) In re: *United Electrical, Radio and Machine Workers of America*

*and New Mexico State University Board of Regents*; PELRB 313-21. NMSU objected to a Card Check conducted on March 17, 2022 pursuant to Section 10-7E-14(C) of the PEBA. NMSU’s objections are summarized as follows: (1) the Board did not adopt rules governing the administration of card check proceedings before conducting the card check related to the Petition; (2) the Board did not use an updated bargaining unit list for the card check proceedings; (3) the misspelled printed names on the challenged authorization cards raised concerns about fraud in the card check proceedings; (4) the Card Check Agreement was violated because (a) an administrative assistant conducted the card count along with the Executive Director and (b) the Union had two observers physically present during the card count; (5) the authorization cards were not “sufficiently current” under the Board’s rules; and (6) the Board’s form used to record the results of the card check is misleading because it is titled “Results of Card Check in Lieu of Election” and states that the “above [tally] is a true statement of the *election returns*” (emphasis added).

After reviewing the Director’s Report on Objections to Card Check issued on April 18, 2022, the Results of the Card Check, and the pleadings in this matter, hearing oral argument from the parties, and being otherwise sufficiently advised, the Board concluded:

1. The Board has jurisdiction over the parties and the subject matter in these proceedings.
2. Section 10-7E-14(C) of PEBA provides:

“As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.”

1. The March 17, 2022 card check was conducted under and in accordance with Section 10-7E-14(C).
2. As the Board previously decided in In re: United Electrical, Radio and Machine Workers of America and University of New Mexico (“UE v. UNM”), PELRB No. 307-20 (Jan. 27, 2022), 4-PELRB-2022, the Board’s statutory obligation to hold a fact-finding hearing on an employer’s challenge to the Board’s verification under Section 10-7E-14(C) is self-executing and does not require or depend on the adoption of procedural rules. For the same reasons discussed in that decision, the lack of rules for the conduct of a card check did not render the card check related to the Union’s Petition invalid.
3. The Board also decided in UE v. UNM that PEBA does not require the Board to use an updated bargaining unit list when conducting a card check proceeding. Section 10-7E-14(C) allows labor organization to submit authorization cards from a majority of employees in the proposed bargaining unit with its representation petition. The Board then verifies “that a majority of the employees in the bargaining unit have signed valid authorization cards,” and, if so, certifies the labor organization as the exclusive representative. The Board’s verification is based on the authorization cards submitted with the petition, which means the Board necessarily relies on the list of employees in the bargaining unit at the time the petition is filed. As stated in the Board’s decision in UE v. UNM, “the purpose of a card check is to test majority support as of the time a petition is submitted” (quoting from the Director’s Report in UE v. NMSU on objections to the card check).
4. The misspelled printed names on the authorization cards do not, by themselves, indicate fraud. The cards were challenged based on the misspellings and properly removed from the count. No showing was made that the challenged cards affected the validity of the remaining cards included in the count.
5. NMSU’s objections related to alleged violations of the Card Check Agreement are without merit. The Agreement did not preclude the Executive Director from having a staff member under his supervision assist in conducting the card check. The Agreement’s provisions governing observers is based on the Board’s rules for observers during ballot counts, which specify that “observers shall not be ... labor organization employees” and allow “representatives of the parties in addition to the observers to observe the counting of ballots.” 11.21.2.29 NMAC. Under these rules, the Union had only one eligible observer, Mr. Montalbano, who was physically present at the card check and signed the card check results. NMSU did not show what effect, if any, the alleged violations of the Card Check Agreement had on the validity of the authorization cards or the card check process.
6. NMSU’s objection related to whether the authorization cards are “sufficiently current” is premised on the submission of the cards ten months before the card check was conducted. However, as with the list of eligible employees discussed above, the time for determining whether an authorization card is “sufficiently current” is when the representation petition is filed, not at the time of the card check proceedings. See 11.21.2.13(A) NMAC (requiring the Director to investigate the petition within 30 days of filing, including whether the signatures on the showing of interest (in the form of cards or a petition) “are sufficiently current”). NMSU does not claim that the authorization cards were insufficiently current when the Union submitted the Petition to the NMSU Labor Management Relations Board. Because the cards presumably were “sufficiently current” when the NMSU Labor Management Relations Board reviewed the Petition, there are no grounds for the objection.
7. NMSU’s contention that the title of the Board’s form used to record the results of the card check and references in the form to “election returns” are misleading has no merit. No evidence was presented that parties and other persons participating in the card check were confused or misled by the challenged language on the form or that it affected the validity of the authorization cards or card check proceedings.
8. A majority of the employees in the appropriate bargaining unit have signed valid authorization cards, as evidenced by the Results of the Card Check in Lieu of Election dated March 17, 2022.

The Board, therefore, dismissed NMSU's objections to the results of the March 17, 2022 card check and directed its staff to issue a Certification of Exclusive Representation.

3. 18-PELRB-2022 (August 10, 2022) *In re: AFSCME, Local 3022 v. Albuquerque Bernalillo County*

*Water Utility Authority;* PELRB 106-22. ABCWUA refused to negotiate with the Union over a successor contract because the Union failed to request bargaining within a 30-day window called for in Article 61 of the parties’ CBA. The PELRB affirmed the Executive Director’s Summary Dismissal of the Union’s claims under NMSA 1978 §§ 10-7E-15; 10-7E-22; 10-7E-24; 10-7E-25 and 10-7E-26. However, Summary Judgment was affirmed in favor of the union on its claim that ABCWUA committed a prohibited labor practice under Section 10-7E-19(F) of the Public Employee Labor Relations Act by refusing or failing comply with its obligation to bargain collectively in good faith with AFSCME.

4. 26-PELRB-2022 (December 1, 2022) *In re: UHPNM & UNM Sandoval Regional Medical Center*; PELRB 304-22. On December 1, 2022 this Board issued its Order 26-PELRB-2022, in which it adopted, its Hearing Officer’s recommended decision that House Supervisors and Charge Nurses are not excluded from coverage under the PEBA and are appropriate for inclusion in the bargaining unit, but reversed, that decision with respect to the Hearing Officer’s conclusion that “SRMC employees employed on a per diem or ‘PRN’ basis are not 'regular' employees" for the purposes of the PEBA. The Board remanded the case to the Hearing Officer for the purpose of determining whether the PRNs share a community of interest with others in the petitioned-for unit so that their inclusion in the unit would not render it inappropriate. See NMSA 1978 § 10-7E-13 (2020) re: Appropriate bargaining units.

On January 13, 2023 the Board’s Hearing Officer issued his Report and Recommended Decision Concerning Designation of An Appropriate Bargaining Unit, concluding that PRNs in the proposed unit shared a community of interest with others in the unit so that their inclusion would not render the unit inappropriate. The Executive Director then conducted a card check and determined that there was a

sufficient showing of interest to establish majority support for United Health Professionals of New Mexico, AFT-AFL-CIO as the exclusive representative for collective bargaining. Therefore, a Certification of Representation was issued on January 19, 2023. SRMC filed a Motion to Strike the card check results as premature and invalid, and requested to remove approval of the card check results from the Board’s February 7, 2023 agenda. The Board denied the request to remove the matter from its agenda, considered the Motion to Strike and rendered two Orders:

a. 8-PELRB-2023, by which the Board affirmed found that the Executive Director resolved all questions concerning representation and his designation of the appropriate bargaining unit as including PRN or Per Diem positions was affirmed; and,

b. 9-PELRB-2023, by which, the Board denied UNM SRMC’ Motion to strike card check results as premature and invalid and its request to remove review of the card check results as without merit. Because there was no timely filed objection to the card check results pursuant to NMAC 11.21.2.34 and the Executive Director’s card check was not premature nor invalid, the PELRB ratified and affirmed the Executive Director’s Card Check Results Report issued January 19, 2023 and the Certification of Representation resulting from it.

As of this writing, the time for seeking Judicial review pursuant to SCRA 1-074, has not yet passed, so that the file remains open until appellate review is completed or waived.

5. 29-PELRB-2022, (August 28, 2022) *In re: American Federation of Teachers and International Association of Machinists and Aerospace Workers, AFL-CIO v. University of New Mexico Sandoval Regional Medical Center,* PELRB 112-22. UNM SRMC appealed to the Board from the Hearing Officer’s Report and Recommended Decision dated September 28, 2022 concluding that that SRMC violated NMSA 1978 § 10-7E-5(A)(2020), which guarantees public employees’ rights to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by them without interference, restraint or coercion; NMSA 1978 § 10-7E-5(B)(2020), which guarantees public employees’ rights to engage in concerted activities for mutual aid or benefit, and NMSA 1978 § 10-7E-14(A) requiring a public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. Inasmuch as NMSA 1978 § 10-7E-5(19)(G) (2020) makes it a prohibited practice to “refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule” the Hearing Officer further concluded that the UNM SRMC violated PEBA by declining to provide the Union with the list of bargaining unit employees in the proposed unit in PELRB Case No. 303-22, along with their contact information.

The Board adopted the Recommended Decision and findings therein and ordered Respondent to cease and desist from violating the PEBA as therein, acknowledge the violations found therein by posting notice to its employees of the violations in a manner by which its employees customarily receive notice from Respondent.

6. 65-PELRB-2021, *AFSCME, Council 18, AFL-CIO v. Board of County Commissioners for Bernalillo County,* PELRB No. 101-21 (August 28, 2022). On March 24, 2021 the Hearing Officer issued his letter decision denying summary judgment as to claims of retaliation but recognizing the parties’ resolution of the union’s allegation in paragraph 13 of the Second Amended PPC that the County violated the terms of a Memorandum of Understanding regarding hazard pay, and summarily dismissing the alleged violation of Section 19(H).

A hearing on the merits was held on April 21 and 22, 2021 and on June 8, 2021 The Board’s Hearing Officer concluded that the County committed a prohibited labor practice pursuant to NMSA 1978 Section 10-7E-19(F) (2020) by failing or refusing to bargain elimination of Boundary Spanners job positions without bargaining. The County committed a second violation of Sections 17(A)(1), and Section 19(F) by withholding information relevant to the layoff of Boundary Spanners. The County violated Sections 19(B), 19(D) and 19(E) of the Act by its investigations of two employee union organizers arising out of the HR Complaint by another employee. All other allegations of violations of Sections 19(A), 19(B), 19(D), 19(E) and 19(F) not sustained and were dismissed. The Hearing officer recommended that the Employer be ordered to (1) Cease and desist from all violations of the PEBA;

(2) Post and email notice of its violations of PEBA as found herein on a form acceptable to the parties and this Board with assurances that it will comply with the Public Employee Bargaining Act in the future;

(3) Bargain in good faith with the Union regarding the terms under which the laid off Boundary Spanners who have not already been, can be placed in the same or similar position with DBHS; and

(4) Bargain in good faith with the Union to reach agreement on an appropriate back-pay or damages award for the Boundary Spanners who have not already been or cannot now be placed in the same or similar position with DBHS.

The Board affirmed the Hearing Officer’s Decision and adopted his Recommended Decision after amending the remedies to include requiring the County remove any reference to the investigation at issue in the case from the personnel files of the two employees involved.

7. *American Federation of State, County and Municipal Employees, Council 18, AFL-CIO, Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, PELRB No. 108-21. On July 27, 2021 the PELRB Executive Director issued his Report and Recommended decision concluding that the Water Authority did not refuse to bargain, as required by both Article 19 of the CBA and § 17 of the PEBA, as the Union’s PPC alleged, because it already bargained for such job descriptions to be performed and approved in management’s discretion and was not required to bargain the specific issue further, midterm. Therefore, it did not violate §§ 19(F) 19(H) of the PEBA by its actions in this case. As there is no argument that the Water Authority failed or refused to comply with the parties’ collective bargaining agreement in any other respect, the Executive Director Dismissed the Complaint.

The Board affirmed the Recommended Decision on October 18, 2021. See 69-PELRB-2021. Neither party sought further appeal and staff closed the file on December 10, 2021.

8. 54-PELRB-2021 *In re: Bernalillo County Court Deputies Association v. Bernalillo County Sheriff’s Office and Bernalillo* *County,* PELRB No. 121-20.

• The Complainant filed a PPC alleging the Respondent breached a duty to bargain before changing shift hours and transferring bargaining unit work to non-bargaining unit employees. The opposing parties are in separate bargaining units, covered by separate CBAs, and represented by different unions. However, NMSA 1978, § 10-7E-6 allows the transfer of public employees unless limited by the provisions of the CBA. In this case, the CBA’s Management Rights Clause stated that management could transfer unit employees and change shift hours in order to maintain the governmental operations entrusted to it by law. In the absence of any explicit restriction within the CBA, the complaint was dismissed.

9. In re: *Peñasco Federation of United School Employees v. Peñasco Independent School District,* PELRB No. 108-20 (2021).

• Union employees claimed the School District had committed prohibited practices violating §§ 10-7E-19(A), (B), (D) or (E) (2020), by discriminating against several of the School’s Union employees, some of whom were also Union Officers, after the Union members discussed the removal of the School’s Superintendent at a few public-school board meetings while wearing Union insignia. Shortly following these events the Union member’s contracts were not renewed for various School Board policy violations. Additionally, Union members had email correspondence circulated encouraging teachers to not participate in the District’s voluntary grant survey. The District’s Superintendent cited this action as insubordinate while the Union claimed it to be concerted activities, protected under Section 5 of PEBA. After reviewing the evidence and utilizing the *Wright Line* analysis, the Hearing Officer found in favor of some, but not all Union members whose contracts were not renewed. [Board Decision?] Upon appeal, the Court affirmed the Hearing Officer’s decision with exception to the concerted activities (due to the action having occurred prior to the 2020 PEBA amendments which added protection for concerted activities, overlooking the Board’s long history of protecting concerted activities prior to the 2020 amendment).

10. *In re: AFSCME, Council 18, AFL-CIO, Local 3022 v. ABCWUA*, PELRB No. 106-21.

• A past practice will not be binding if there is insufficient evidence to establish it. Local 3022 “did not establish that the Water Authority deviated from past practice” and “the testimony presented at the hearing established that the Water Authority had a past practice of assigning new supervisors to a shift rather than having them immediately participate in a shift bid.” The instant PPC is not based on allegations the Employer violated a past practice but is entirely based on breach of the parties’ CBA and failure to bargain, as stated in the Stipulated Pre-Hearing Order, wherein Complainant alleges violations of § 17(A)(1) (requiring Respondent and AFSCME to “bargain in good faith on wages, hours and all other terms and conditions of employment”); § 19(F) (making it a prohibited practice to “refuse to bargain 13 collectively in good faith with the exclusive representative”); and § 19(H) (making it a prohibited practice to “refuse or fail to comply with a collective bargaining agreement”). To the contrary it is ABCWUA that is asserting a past practice when it argues that the Water Authority had a long history of assigning new supervisors to a shift of its choosing and that the Water Authority had a past practice of not allowing employees to bid on all available shifts, and instead included “qualifiers” limiting the shifts that were available.

11. *In re: NMCPSO and Rio Rancho Police and Dispatch Ass’n.*, 2-PELRB-2018.

• A severance petition is a petition filed by a labor organization to sever a group of employees

comprising an occupational group listed in § 10-7E-13 of PEBA, from an existing bargaining unit.

The procedure for filing a severance petition is the same as that for a basic Petition for Recognition under subparagraph IV A above, including the requisite 30% showing of interest among the group of employees to be severed. See 11.21.2.41 NMAC. 11.21.2.41 NMAC.

• The group to be severed must be one of the occupational groups listed in NMSA 1978, § 10-7E-13 (2020), e.g., blue-collar, secretarial, clerical, technical, professional, paraprofessional, police, fire or corrections.

12. *In re: DEA & Deming Public Schools,* PELRB No’s. 304-17 and 305-17.

• The labor board concluded that the “[c]ontinued recognition of the existing wall-to-wall bargaining unit is mandated by NMSA 1978, Section 10-7E-24(A) which allows bargaining units established prior to July 1, 1999 to continue to be recognized as appropriate bargaining units” and “[t]he Board’s rule 11.21.2.37 NMAC expressly exempts bargaining units under Section [10-7E-24(A)] … from being subject to unit clarification except in limited circumstances not applicable here.”

13. *In re: AFSCME, Council 18 v. NM Department of Workforce Solutions,* PELRB No. 102-17, 11-PELRB-2017.

• Hearing examiner granted the Department’s Motion for a directed verdict as to the § 10-7E-19(F) and § 10-7E-19(H) claims. Additionally, the Union did not meet its burden of proof regarding whether denial of pay increases in connection with the pay band adjustment constituted a failure to bargain or a breach of the contract. Directed verdict was denied, however, as to whether NMDWS increased performance measures without bargaining. AFSCME appealed the Board’s Order affirming the Directed Verdict to the District Court and NMDWS appealed the Board’s Order concluding that it violated § 10-7E-19(F) and § 10-7E-19(H) when the Employer increased performance measures without bargaining. The District Court affirmed the Board’s conclusion that the number of inspections employees were required to perform each month was a term or condition of employment and a mandatory subject of bargaining under the PEBA and that NMDWS violated § 10-7E-19(F) when it unilaterally changed the required number of inspections.

14. *In re: AFSCME, Council 18 v. NMHSD and NM PELRB,* PELRB No. 309-15, (D-202-CV-2016-07671).

• AFSCME argued that a unit clarification petition was proper. The Board disagreed stating that the argument made, “confuses the merits of the underlying dispute with the threshold requirement to demonstrate changed circumstances. Neither the refusal to deduct dues, the creation of new positions, nor a change in supervision were changes sufficient to justify a petition for clarification. The court noted that prohibited practice complaints or petitions for representation or accretion were alternatives when the dispute is about whether certain positions are included in a unit or not. See *In re Kaiser Found. Hosps.,* 337 NLRB 1061 (2002), describing longstanding doctrine that NLRB will not entertain unit clarification petition seeking to accrete historically excluded classification into the unit unless the classification has undergone recent, substantial changes. Changed circumstances is the threshold requirement for resolving the dispute in a unit clarification proceeding.

15. *In re: AFT v. Cuba Independent School District,* PELRB No. 129-14.

• This case was opened on 11/3/2014 alleging that termination of an employee union representative was retaliation, interference with the union and coercion in violation of PEBA § 19(A); § 19(B); § 19(C); and a violation of contract or PEBA rights in violation of § 19(G) and § 19(H). The Hearing Officer granted Summary Judgment in favor of the Employer on 2/6/2015 holding that:

o The Union did not demonstrate the existence of a factual dispute requiring an evidentiary hearing on the question whether any of its employee’s union activities, taken alone or in the aggregate, created anti-union animus, nor that any anti-union animus was a motivating factor in the decision not to renew her employment contract. See § 19(D).

o The Union did not demonstrate the existence of a factual dispute requiring an evidentiary hearing on the question whether the employee was treated differently than any other employee based on her union activities. See § 19(B)(3).

o The Union did not demonstrate a material issue of fact that would require an evidentiary concerning whether the District interfered with, restrained or coerced the employee in the exercise of a right guaranteed pursuant to the PEBA § 19(B).

o The undisputed evidence reflects significant departures by the employee from the District’s policies coupled with marginal performance followed by forewarning and progressive discipline. That evidence has not been refuted and Complainant may not rest on the mere allegations of its complaint in response to a Summary Judgment motion.

o Because alleged violation of PEBA § 5 (Interference and Coercion) were not supported, the union’s § 19(G) claims were without a basis in any section of PEBA other than § 19.

Accordingly, to avoid repetitive and duplicative liability, that claim was dismissed.

o The undisputed evidence demonstrated legitimate, non-discriminatory reasons for the

employee’s termination that satisfy the contractual requirements at issue. Complainant may not rest on the mere allegations of its complaint in response to a Summary Judgment motion and so, the Union’s claim for violation of § 19(H) was dismissed.

16.

10. *In re: AFSCME, Local 3999 v. City of Santa Fe*, PELRB No. 111-14.

• Case opened on 5/1/2014 alleging failure to provide information necessary for the grievance

procedure.

• The Director entered a Voluntary Dismissal after Complainant withdrew the PPC as part of a

settlement agreement reviewed and approved on 7/14/2014.

11. In re: Central Consolidated School Association v Central Consolidated School District, 27-PELRB-2013.

• Order Adopting the Hearing Officer’s Recommended Decision.

• Finding that the District Committed a PPC by refusing to hear grievances appealed to the school board pursuant to the CBA, violating NMSA § 10-7E-19(G) and (H).

• Finding that the District Committed a PPC by giving three bargaining unit members stipends without negotiating those stipends, violating NMSA § 10-7E-17(A)(1), 19(C), (F), and (G).

• Finding that the violated PEBA §19(H) by failing to follow Article 17 of the CBA when it hired a foreman from outside the Shiprock facility.

12. In re: Weingarten v. NLRB. AFSCME, Council 18 v. N.M. Children, Youth & Families Dep’t. 10-PELRB2013 (May 15, 2013).

• Adopting the Hearing Officer’s Recommended Decision. (2-1 Split)

• Finding that Section 5 of PEBA provides “basically the same rights” as section 7 of the NLRA. The differences in text “appear to be directed to streamlining the language utilized in the NLRA, rather than limiting or narrowing the enunciated rights."

• Finding that Weingarten-type rights exist under PEBA.

• In his dissenting opinion, Board member Wayne Bingham wrote that he would reverse the prior Board decisions recognizing Weingarten rights for 3 reasons:

1. No express grant of Weingarten rights in PEBA.

2. PEBA’s language is different than the NLRA’s as it pertains to concerted activities for mutual aid and benefits – the language upon which the Weingarten decision was based.

3. The NLRA applies only to the private sector.

See also 2-PELRB-2006 and 6-PELRB-2007.

13. In re: AFSCME, Council 18 v. N.M. Regulation & Licensing Dep’t, 5-PELRB-2013 (Feb. 22, 2013).

• Refusing to recognize an employee as union steward and disciplining that employee for acting as steward is a violation of § 19(A).

• “Other agreements” should logically also include Memorandums of Understanding, and settlement agreements concerning grievances and PPCs.

14. In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton, 3 PELRB 2013 (June 20, 2013).

• Where the local ordinances’ definition of “supervisor” leaves out most of the criteria established by PEBA for testing whether a particular position is supervisory or not, including the rather basic criterion that a supervisor actually supervises someone it so broadly defines the term that it encompasses those who only occasionally assume supervisory or directory roles; or perform duties which are substantially similar to those of his or her subordinates, are “lead employees” and arguably includes those who merely participate in peer review or occasional employee evaluation programs. Therefore, it impermissibly excludes a class of employees entitled to bargaining rights under the PEBA.

• Board held that where provisions of the City of Raton’s grandfathered ordinance do not meet the requirements of § 26(A) (Repealed in 2020), for grandfathered status, the particular provision shall be denied grandfathered status, not the ordinance as a whole.

• Although the local ordinance contains a more expansive management rights reservation than the usual that reservation of management rights is expressly subject to other “restrictions contained in this section and the collective bargaining agreement and any provision of this Chapter”. Therefore, it is merely a general reservation of management rights and such general reservations do not operate to defeat the obligation to bargain collectively over wages, hours and working conditions established by contract or under a collective bargaining law to the extent those subjects constitute mandatory subjects of bargaining. Consequently, the management rights clause in question did not violate ?????

15. In re: AFSCME, Council 18 v. N.M. Children, Youth and Families Dep’t. 1-PELRB-2013 (PELRB 122-12, May 15, 2013)

• Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition against public employee strikes. See § 10-7E-5(B). The PELRB has historically followed the NLRA with regard to employees claiming protections for their activities either for union-related purposes aimed at collected bargaining or for other “mutual aid or protection” so that even before the 2020 amendment to the Act expressly protecting concerted activities for mutual aid or benefit such concerted activities enjoyed protected status.

• PELRB held that furloughs are an exercise of management’s reserved rights under an article of the parties’ CBA reserving to management the right to relieve an employee from duties because of lack of work or other legitimate reason, or under sections reserving to management the right to determine the size and composition of the work force, or to determine methods, means, and personnel by which the employer's operations are to be conducted. Therefore, the State was not obligated to bargain further over the furloughs.

16. In re: New Mexico Coalition of Public Safety Officers Ass’n and County of Santa Fe, 78-PELRB-2012 (Dec. 5, 2012).

• Sergeants were accreted into an existing bargaining unit because their actual duties as performed did not meet the three-part test established by the Board to determine whether an employee is a “supervisor” as that term is defined by the Act. The test included the following:

o Whether there was sufficient “change of circumstances” from the creation of the original bargaining unit to now warrant a change in that unit;

o Whether a grandfathered bargaining unit may be accreted or clarified at all; and

o Whether accretion is otherwise appropriate, i.e., requiring a community of interest between the new and existing groups of employees.

17. *In re: CWA Local 7076 v. New Mexico Public Education Dep’t.,* 76-PELRB-2012 (Nov. 26, 2012).

• The union was found to have waived bargaining by failing to make a timely demand. The District Court reversed the Board on the waiver issue and remanded the matter for further findings on which RIF effects are covered under the contract.

• The Hearing Officer decided in favor of the Employer finding that the duty to bargain the effects of the layoffs identified in this case had been discharged prior to implementation of the RIF, but that the union waived bargaining the effects of the layoff at issue by failing to make a timely demand for bargaining. The Employer’s Counterclaims were found to be without merit and were dismissed. The Union appealed the Decision first to the Board which upheld the Hearing Officer on 11/26/12.

• The employer’s duty to provide information to the union is not met when the employer does the bare minimum of providing notice to, and meeting with, the Union while purposely withholding information relevant to a layoff.

18. *In re: AFSCME Council 18 v. NM Tax & Rev. Dep’t.,* PELRB Case No. 104-12, 55-PELRB-2012

• An employee - union member was reprimanded by her supervisor allegedly for using state phones to conduct union business. The Union filed a PPC alleging that the reprimand violated §§ 19(A), (B), (C), (F) and (H) of the PEBA. At a hearing on the merits May 16, 2012, the Hearing Officer granted the State’s motion for directed verdict dismissing all claims. The PELRB affirmed the Hearing Officer’s recommended decision concluding that there were substantial reasons for taking disciplinary action apart from the employee’s union activities and affiliation. While the union established the employee’s union affiliation and activities and established that correction and disciplinary action has been taken, it did not establish a nexus between the two. Relegating union-related calls to the last 15 minutes of the day, without more, was not enough when the evidence showed that there were 40 hours of personal phone use for which the employee was disciplined but only 2 hours of which were union related calls. The Union did not show that restricting union-related calls to the last 15 minutes of the day interfered with union business so that PEBA § 19(B) would be implicated. No evidence was presented as to any other specific provisions of PEBA or the parties’ violated. Accordingly, there was no evidence to support a claim that PEBA § 19(G) or (H) was violated.

19. *In re: AFSCME, Council 18 v. State of New Mexico*, 33-PELRB-2012.

• The jurisdiction of the Board has been challenged because of its failure to abide by the time

limitations set forth in its own rules. See 11.21.2.18 NMAC, 11.21.2.21 NMAC, 11.21.3.14 NMAC

and 11.21.3.18 NMAC. The challenge by the State Personnel Office arose after extensive prehearing motion practice including two separate motions to Dismiss filed by the State, a Summary Judgment motion, a Motion to have the merits heard by the Board en banc without a Hearing Officer, a Motion to Disqualify the Hearing Officer, all of which needed to be briefed and argued before they could be decided and which necessarily delayed holding a hearing on the merits of the Union’s claims, coupled with a period when the Board was without an Executive Director to schedule and hold hearings, the State moved to dismiss the Union’s claims for failure of the Board to hold a merits hearing within the deadlines set in the Board’s rules.

• The PELRB held that the limits established for the Board to investigate complaints and conduct hearings are directory rather than mandatory. Exceeding those limits does not require dismissal of the complaint. That decision is in accord with *N.M. Dep’t of Health v. Compton,* 2000-NMCA-078, ¶¶ 12-13, 129 N.M. 474. (Although some mandatory statutory time limitations are jurisdictional, others are only intended to promote expeditious review. Under New Mexico case law, “mandatory statutory requirements…raise a bar to jurisdiction when the requirement [is] essential to the proper operation of the statute.”)

20. *In re: AFSCME, Council 18 v. N.M. Regulation & Licensing Dep’t.,* 4-PELRB-2012 (Feb. 21, 2013).

• There is nothing in the CBA’s requirement that the union provide the Employer a written list of the names, address, telephone numbers of those authorized to act on behalf of the Union and the extent of their authority that gives the Employer the right to veto the Union's designation of a steward because the steward’s name is absent from the required quarterly listing, especially in light of the fact that the Employer would have refused to recognize the union’s appointment of its steward regardless of whether the steward’s name had been added to the list because the Employer’s stated justification for its actions was that the parties’ agreement “does not permit, authorize or contemplate an RLD Steward outside of Albuquerque, Santa Fe or Las Cruces work location areas.” Thus, whether or not the name appears on a list is irrelevant to the reason given for refusing to honor his appointment. The steward’s “post of duty” is irrelevant to the question whether he may serve as the designated union Steward.

• The Employer did not commit a PPC by refusing to allow a contested union steward to attend on paid status, meetings agreed to by the parties for purposes of administering their CBA because the CBA’s definition of the term “Union officials” entitled to such leave listed the Local Union Presidents, Local Vice-Presidents, and “any other union official as designated by mutual agreement of the parties.” The CBA does not include union stewards as an official for whom leave must be approved and it is plain from the context of the PPC and the parties’ respective dispositive motions that the contested union steward is not mutually agreed to be entitled to such paid status. A different result obtains, however, with regard to the Employer’s obligation under the CBA to grant leave for the investigation and processing of grievances, which was also denied the contested steward where the parties’ CBA requires the Employer to allow union stewards paid leave “for the purposes of representing employees only within their respective agency at grievance meetings, disciplinary appeals based on suspension, demotion, or dismissal and cases to the PELRB”.

21. In re: AFSCME Council 18 v. New Mexico Regulation and Licensing Department, 06-PELRB-2010 (June 25, 2010).

• Reversing the hearing officer’s decision and finding that the employee had waived rights to union representation when the employee retained an attorney and continued to waive those rights when the employee was provided with a written statement from his attorney allowing him to continue discussion of issues with his employer.

22. In re: CWA Local v. New Mexico Environment Department, 09-PELRB-2009 (July 6, 2009).

• When a PELRB litigant is collaterally estopped from pursuing his or her PPC due to a previously rendered State Personnel Board (SPB) decision, that SPB decision shall only apply to that specific case, and shall not preclude the PELRB from reaching a different conclusion in a subsequent case involving similar facts.

• A PELRB hearing examiner is collaterally estopped from reviewing for compliance with PEBA

another agency's decision, in a matter based on essentially the same facts and issues, when the

elements of collateral estoppel are met.

• The PELRB is collaterally estopped from reviewing another agencies' decision for compliance with PEBA when the PELRB matter and the other agency's matters concern the same parties, or parties in privity, and the two cases concern the same ultimate issue of fact which was actually litigated and necessarily determined in the other forum.

23. *In re: CWA Local 7911 v. County of Socorro,* 08-PELRB-2009 (July 6, 2009).

• PEBA's "evergreen clause”, which states that expired contracts continue in full force and effect in the event of impasse until replaced by a subsequent written agreement, prevents an employer from implementing its last, best and final offer after impasse as may be done under case law interpreting the National Labor Relations Act (NLRA).

• The Section 18(D) language, "[i]n the event impasse continues after the expiration of a contract” does not require that impasse be declared prior to the contract's expiration, for the contract to continue in effect.

• Under Section 18(D), the Board cannot and does not require that a salary increase be granted or maintained by the employer after impasse.

24. *In re: IAFF Local 4366 v. Santa Fe County*, 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009).

• The Board reversed a hearing examiner’s conclusion that Battalion Captains did not spend a

majority of their time engaged in work requiring the exercise of independent judgment with the result that Santa Fe County Fire Department Battalion Captains may not be accreted into the existing bargaining unit because they are supervisory and possibly managerial employees.

25. *In re: AFSCME Council 18 v. New Mexico Department of Labor*, 01-PELRB-2007 (Oct. 15, 2007).

• A motion for summary judgment. and the response thereto, shall follow New Mexico Rules of Civil Procedure, specifically Rule 1-056 NMRA, for guidance.

• In a motion for summary judgment, the movant shall set out a concise statement of all material facts to which it is contended there is no genuine dispute, the facts set out shall be numbered, and the motion shall refer with particularity to those portions of the record upon which the party relies. The respondent shall file a response that includes a concise statement of all material facts to which it is contended there is a genuine dispute, the facts set out shall be numbered, and the response shall refer with particularity to those portions of the record upon which the party relies. Both sides may include supporting affidavits, based on personal knowledge and setting forth evidence that would be admissible at trial.

• If a motion for summary judgment is made and properly supported, the opposing party may not rely upon the mere allegations or denials of his pleadings on in the PPC, but rather must by affidavit and reference to the record, set forth specific facts showing there is a genuine issue of material dispute for trial.

26. *In re: Santa Fe Police Officers’ Association v. City of Santa Fe,* 02-PELRB-2007 (Oct. 14, 2007).

• The PELRB has determined that the omission of “supervisors” from § 10-7E-5 of PEBA II was a

clerical error.

• Where there is a conflict between general and specific statutory provisions, the specific provision shall control over the general provision. (Citing Crutchfield v. New Mexico Dept. of Taxation and Revenue, 2005-NMCA-022, 137 N.M. 26, and Stinbrink v. Farmers Inc. Co., 1990-NMSC-108, 111 N.M. 179, 182.)

27. *In re: McKinley County Federation of United School Employees, AFT Local 3313 v. Gallup-McKinley County School District and Gallup-McKinley County School District Labor Management Relations Board,* 03-PELRB-2007 (undated).

• The PELRB has jurisdiction to review and remedy rule-making actions by a local board that amend the local ordinance, raise serious and significant issues affecting public sector collective bargaining statewide, and threaten the consistent and uniform administration of PEBA.

• The PELRB has jurisdiction to review and remedy a rule promulgated by a local board that violates § 14(A), § 14(D) and the PELRB's decision in NEA-Alamogordo and Alamogordo Public Schools, 05-PELRB-2006, by permitting an employer to determine whether an incumbent union could demonstrate majority support by election or card count and, in the event of election, by requiring that at least 50% of the total members of the bargaining unit vote for continuing representation. Note: The initial action was filed as a PPC, but the Hearing Examiner concluded that neither § 19 nor § 20 provided for PPCs to be filed against local boards. The Hearing Examiner then recast the PPC as a request for re-approval of the local board and found jurisdiction under its general power of approval under § 10, and under the post-approval reporting requirements established under 11.21.5.13 NMAC. The Board upheld the Hearing Examiner's subsequent denial of the local Board’s motion to dismiss for lack of jurisdiction but in doing so it stated that the "[PELRB] has jurisdiction of the prohibited practices complaint filed by the Union." After due notice and failure of the local board to rescind the offending rule, the prior PELRB approval of the local board was revoked.

28. *In re: AFSCME Council 18 v. New Mexico Department of Corrections,* 04-PELRB-2007. (December 13, 2007).

• Adopting and affirming the Hearing Examiner’s Report, which concluded that the Department

violated § 19(F) (duty to bargain in good faith) by meeting with an employee outside of the presence of the Union, to privately adjust a grievance filed by the Union on that employee’s behalf.

• The discipline imposed by the Department in this and a related case (PELRB 113-12; 4-PELRB2012, Feb. 21, 2013) was taken for an employee acting as a union steward against the wishes of the Employer, which acted improperly in refusing to recognize his appointment by the union as a steward, by denying him leave for union-related activities and by imposing discipline for attempting to act as a union steward. See 5-PLERB-2012.

29. In re: SSEA, Local 3878 v, Socorro Consolidated School District, 05-PELRB-2007. (December 13, 2007).

• The failure to provide a Union with the names and home addresses of proposed bargaining unit employees interfere with, restrains or coerces the public employees in their right to form, join or assist a union for purposes of collective bargaining.

30. In re: AFSCME Council 18 v. Department of Health, 06-PELRB-2007, PELRB Case No. 168-06

(December 3, 2007).

• The failure to give a union representative notice of a mandatory employee meeting concerning the terms and conditions of employment after the representative requested such notice constitutes interference with the union's status as exclusive representative and interference in the collective bargaining relationship, contrary to § 19(C).

• “PEBA protects peaceful concerted activity for mutual aid and support to the same extent as does the NLRA… Comparing PEBA to the NLRA…the protections provided by PEBA are sufficiently similar to those provided by the NLRA to warrant the inference that the New Mexico Legislature intended to protect public employees engaged in more general concerted activities, not only those activities performed to assist a labor organization.”

• Once the hearing is closed, the hearing examiner’s decision will be rendered based on all relevant evidence admitted without objection.

• The present day PELRB has in one final Decision and Order provided that the appellant could file a Motion for Reconsideration showing prejudice, where the appellant had argued on appeal that the hearing examiner improperly raised sua-sponte the issue for which it was found liable.

31. In re: AFSCME Council 18 v. State of New Mexico, 07-PELRB-2007 (Dec. 13, 2007).

• Concluding that the grievance and arbitration procedures that § 17(F) requires in all collective

bargaining agreements are not required to apply to all disputes pertaining to terms and conditions and related personnel matters. Parties to a collective bargaining agreement can limit the scope of the required grievance and arbitration procedures to apply only to disputes concerning the interpretation, application and/or violation of the collective bargaining agreement.

32. In re: Petition for Recognition, Federation of Teachers and Pecos Independent Schools, 07-PELRB-2006 (Sept. 10, 2006).

• Stay of negotiations by the PELRB pending any appeal to District Court is not warranted under

the Act but stay of the obligation to reduce any agreement into a contract is appropriate. Stay of the obligation to reduce any agreement to writing in this particular case was denied because the School District is not likely to prevail on merits and neither public policy nor the equities favor such a stay.

33. In re: NEA-Alamogordo and Alamogordo Public Schools, 05-PELRB-2006 (June 1, 2006).

• Public employers may insist on a secret ballot election, except as to incumbent unions.

• A petition for certification as incumbent, by definition, does not present a QCR as to unit inclusion or exclusion, because § 10-7E-24(A) deems the grandfathered bargaining unit to still be appropriate.

• Under 11.21.2.36 NMAC, the § 10-7E-24(B) demonstration of majority support is done through a card count even over the employer’s objection, unlike in normal representation cases.

34. In re: Application of the University of New Mexico for Approval of Local Board, 04-PELRB-2006 (May 31, 2006).

• Concluding that, under 11.21.5.10 NMCA, there is good cause to grant UNM a variance from the PELRB template resolution creating a local board, to add language regarding the “allocation” or “reallocation” of funds following the template’s references to “appropriation” or “re-appropriation” of funds. The former terminology is more appropriate to UNM’s situation, since the UNM Board of Regents “allocates” funds appropriated to it by the Legislature, rather than “appropriating” its own funds. The variance, therefore, promotes statutory clarity, avoids disharmony with § 17(E) of PEBA, is consistent with legislative intent, and places UNM on an equal footing with other governmental entities under PEBA.

35. In re: American Federation of Teachers Local 4212 and Gadsden Independent School District, 03-PELRB-2006, PELRB Case No. 169-06 (May 31, 2006).

• Under § 24(B), an employer is required to negotiate in good faith with an incumbent labor

organization prior to its demonstration of majority support, even though it is barred from reducing that agreement to writing prior to a demonstration of majority support. Otherwise, the incumbent labor organization could not meet the duties imposed on it under § 15 and § 17, as the unit’s exclusive representative. Note: This decision was issued as part of a representation case, PELRB Case No. 309-05, and was adopted without further review by the Board after the School District withdrew its appeal.

• The Amended Hearing Examiner’s Report found and concluded: Administrative Interns, or

“principals-in-training,” are not excluded supervisors but are excluded confidential employees;

Custodian Heads and other “head” employees are not excluded supervisors; Day Care Managers are excluded managers; Food Service Managers are excluded supervisors.

• Under specified criteria, a school district’s administrative interns, or “principals-in-training,” were found to be confidential employees because they could be on a bargaining team and are regularly exposed to the District’s labor-management policy.

• An employer may not remove an appointee from a local board prior to the expiration of his or her term of service under the ordinance or resolution, without a hearing and a determination of just cause under the ordinance, such as by disqualification as a result of being an employee of a labor organization or a public employer.

• An employer violates § 19(G) where it effectively amends a resolution without prior PELRB approval, contrary to 11.21.5.13 NMAC, by instituting a policy requirement that board appointees be “local” to the area. (Hearing Examiner’s letter decision, Nov. 2, 2007).

36. In re: AFSCME, Council 18 v. State of NM Dep’t of Labor, PELRB No. 149-06.

• If a motion for summary judgment is made and properly supported, the opposing party may not rely upon the mere allegations or denials of his pleadings or in the PPC, but rather must by affidavit and reference to the record, set forth specific facts showing there is a genuine issue of material dispute for trial. ‘The summary judgement procedures used in this case did not enable the PELRB to accurately assess whether the undisputed material facts entitle the DOL to summary judgment.”

37. In re: Pita S. Roybal v. Children, Youth and Families Department, 02-PELRB-2006 (May 12, 2006).

• Concluding that an employee was not denied “Weingarten rights”—the right of employees to request and obtain union representation during investigatory meetings— in violation of PEBA where the purpose of the meeting was not to investigate or gather information, but rather to deliver a reprimand for previous conduct.

38. In re: In the Matter of Petition for Recognition filed by Teamsters Local No. 492, 01-PELRB-2006 (April 13, 2006).

• Under § 24(B), a petition to represent certain employees will be dismissed where another union was the grandfathered exclusive representative of those employees. The new union

argued that the grandfathered union had not acted timely to renew collective bargaining for this group of employees. The Board held that § 24(B) does not impose a time limit for an incumbent union to exercise its grandfathered status.

39. In re: National Union of Hospital and Health Care Employees, District No. 1199 v. UNMH, 3-PELRB-2005 (Oct. 19, 2005).

• Concluding that the University of New Mexico Hospital’s (UNMH) labor resolution lost its

grandfathered status as a result of a substantive amendment in 2001 that added arbitration

procedures for the hearing of grievances, and that “superseded and replaced in its entirety” the

previously enacted policy or policies.

• Also ruling that there is no abuse of discretion to decline to defer to arbitration when there is no final and binding arbitration before a neutral.

• Thereafter, concluding that the Hospital violated PEBA by refusing to grant negotiated pay increases and to provide certain information necessary to administer the contract upon request; and concluding that interpreters and dieticians shared a community of interest with and were properly accreted into the existing bargaining unit of nurses and professional employees.

• Where evidence has been received in the course of litigation without objection, a prohibited practice complaint may be amended to conform to the evidence.

• Where the terms of a collective bargaining agreement are plainly stated, the intention of the parties must be ascertained from the language of the contract. Absent a finding of ambiguity, provisions of a contract need only be applied, rather than construed or interpreted, and in that case, it is unnecessary and improper to consider witness testimony supporting an alternate interpretation of the contract language. The mere fact that the parties disagree on construction to be given to the contract does not necessarily establish an ambiguity.

40. In re: United Staff-UNM Employees Local No. 6155 v. UNM, PELRB Case No. 101-05, Hearing Examiner Report at 11-13, 32-34 (Aug. 17, 2005).

• An employee was held not to be probationary under UNM personnel regulations where she had worked in the same position doing the same job for almost a year, for six months as a temporary employee and five months as a regular employee; and where the stated purpose of probationary status was to “give the University the opportunity to evaluate” a new employee’s performance and to allow the new employee “the opportunity to understand the mission and goals of the University and department and to demonstrate satisfactory performance.”

41. In re: Chamas-Ortega v. Second Judicial District, 01-PELRB-2004 (Nov. 9, 2004).

• The PELRB will hear a matter in which the issues have become moot if the matter involves issues of substantial public interest or issues capable of repetition yet evading review.

• See Laura Chamas-Ortega v. 2nd Judicial District Court, 7th Judicial Dist. Ct. Case No. CV-04-7883 (March 10, 2006, J. Kase) in which the District Court reversed as “arbitrary and an abuse of

discretion” the Board’s decision in Chamas-Ortega v. Second Judicial District, 01-PELRB-2004 (Nov. 9, 2004) holding that PEBA applies to employees of the New Mexico judiciary.

42. In re: New Mexico Coalition of Public Safety Officers, Local 7911, CWA, AFL-CIO and Town of Bernalillo, 1 PELRB No. 21 (July 7, 1997).

• The PEBA definition of “supervisor” is very strict so that while a position may be designated by the employer as supervisory and may in fact constitute a supervisory position under law other than PEBA, “[i]t is not the rank nomenclature (corporal, sergeant, lieutenant, captain, etc.) that is determinative but rather the facts related to whether the individual functions as a supervisor as defined under the Act.”

• Community of interest is determined on a case-by-case basis.

43. In re: Local 7911, Communications Workers of America and Doña Ana Deputy Sheriffs ' Association, Fraternal Order of Police and Doña Ana County, 1 PELRB No. 19 (Aug. 1, 1996).

• Duties performed by a sergeant are not supervisory merely because the County has designated the sergeant position to be supervisory. Otherwise, an employer could, merely by labeling positions as supervisory, exclude whole classes or groups of employees from the Act's coverage, without regard to statutory definitions and the Board's role in adjudicating unit determination issues.

• Under the PEBA I definition of supervisor, 40% of work time was held to be insufficient to constitute "substantial amount of work time”.

• There is no right to file post-hearing briefs. Rather, the matter lies in the discretion of the hearing examiner. See 11.21.2.20 NMAC. Note: This rule, which is also relevant to 11.21.3.17 NMAC, provides that when any party requests permission to file a post hearing brief and that request is granted, then the hearing examiner shall permit all parties to file briefs. By this decision the Board has interpreted its rule to mean that if one party’s request for submission of a written brief is granted, then all parties shall likewise submit briefs. Permission to submit written briefs in lieu of oral argument remains in the discretion of the Hearing Examiner and the rule should not be read to make the submission of written briefs mandatory upon request of any party.

• The time limit established in PELRB rules for the issuance of a Hearing Examiner's report are

directory rather than mandatory, so its violation does not require Board rejection of the report unless there is a demonstration of prejudice to the appellant by the Hearing Examiner's delay in the issuance of the report.

• Request for review may not rely on any evidence or argument not presented to the hearing

examiner. A five-minute time limitation on oral presentations to the Board as part of a request for Board review of a hearing examiner's decision does not violate due process. Such a time limit is reasonable under the circumstances because the decision to permit oral arguments at this stage of the proceedings resides solely in the Board's discretion, and the parties are afforded an opportunity to fully develop their cases prior to that stage of the proceedings.

• Any suggestion of improper conduct on the part of a hearing officer is highly inappropriate absent evidence of bias or a showing of some impermissible motive which might lead to an inference of bias and without such evidence the Board will not entertain mere allegations of impropriety.

• It is not reasonable to produce, on the day of the hearing, fifteen (15) boxes of original documents on which a summary is based. Summaries of evidence may be properly excluded in the hearing examiner's discretion when the opposing party and/or hearing examiner raise issues with the summaries' reliability, accuracy and relevancy and the proponent fail to produce the original documents on which the summaries are based at a "reasonable time and place" prior to the hearing.

44. In re: NEA v. Bernalillo Public Schools, 1 PELRB No. 17 (May 31, 1996).

• The public employer retains the right to designate a position as supervisory in nature, but PEBA provides the definition for supervisor for purposes of collective bargaining and unit composition, even over a conflicting definition of a local ordinance.

• The PELRB may review and invalidate portions of § 26(A) grandfathered ordinances that violate PEBA.

• In enacting § 26 (Repealed, 2020), the legislature did not intend that a public employer could lose grandfathered status in a garden-variety dispute over unit inclusion or exclusion of a particular employee.

• A statewide parent union has standing to bring claims on behalf of a local union.

• There is an affiliation and comity of interest between 'parent' NEA-NM and 'sibling' NEA-Bernalillo, including (1) negating or lessening a potential loss of members and dues; (2) eliminating or minimizing the potential harm flowing from an abridgement or denial of statutory rights; and (3) Seeking to influence the PELRB’s interpretation of PEBA.

• A word is properly interpreted out of the statute and its presence did not accord a special meaning, where it was not used elsewhere and the Board finds its inclusion to be the result of awkward drafting.

45. In re: Communications Workers of America, Local 7911 and Doña Ana County, 1 PELRB No. 16 (Jan. 2, 1996).

• The PELRB is not the proper forum to address claims of gender discrimination, even where Union asserts that the Doña Ana County withheld proper rank of lieutenant from a Detention Center training sergeant on the basis of her gender, and that such action interfered with the designation of an appropriate bargaining unit.

• The ten-day time limit to seek review in a representation matter begins to run on day after receipt of a report and the request for review is timely filed if deposited into the mail on the tenth day as evidenced by the postmark. See 11.21.2.22(A) NMAC.

• The ten-day time limit to seek review in a representation matter begins to run on day after receipt of a report and the request for review is timely filed if deposited into the mail on the tenth day as evidenced by the postmark. See 11.21.2.22(A) NMAC.

• The Board is to independently review any recommended decision by a hearing examiner regarding the scope of the bargaining unit. See 11.21.2.22(C) NMAC.

• Under 11.21.2.22(D) NMAC, an un-appealed recommended decision adopted by the Board in a representation matter can constitute binding precedent unlike an un-appealed recommended

decision concerning a PPC that is pro forma adopted by the Board under 11.21.3.19(D) NMAC.

Reliance on Board-adopted recommended decisions regarding the scope of a bargaining is also warranted under 11.21.2.22(C) NMAC, which requires the Board to independently review any recommended decision by a hearing examiner regarding the scope of the bargaining unit.

46. In re: McKinley County Sheriffs Association, Fraternal Order of Police and McKinley County, 1 PELRB No. 15 (Dec. 22, 1995).

• Vague and unspecific comments of a Board member are insufficient to preserve objection of bias particularly when record shows appellant otherwise granted due process regarding pleadings and oral arguments allowed and considered

47. In re: United Steelworkers of America, Gila Regional Medical Center and Grant County Board of County Commissioners, 1 PELRB No. 14 (Nov. 17, 1995).

• There is no legal agency relationship between a County and its instrumentality or institution such as would make the alleged principal the public employer and appropriate governing body under PEBA where the institution routinely acts independently of the County, disregards County Commission recommendations and where the County has historically denied legal liability related to the operation of the institution.

• The term “public employer” has also been found to include public facilities run by private contractors if the public governing body retains authority and control over the business, policies, operations and assets of the facility.

48. In re: New Mexico State University Police Officers' Association and New Mexico State University, 1 PELRB No. 13 (June 14, 1995).

• Testimony that police sergeants are expected to supervise 100% of the time only reflects the

expectation that they will perform supervisory duties whenever called upon to do so. Where, in fact, the expectation only results in the occasional performance or assumption of supervisory or directory roles, the position meets the proviso in the definition for excluding a position from supervisory status.

• A telecommunicator supervisor is excluded from a bargaining unit where he is responsible for the overall supervision of the communications personnel; has sole scheduling responsibility: disciplines and evaluates subordinate telecommunicators or effectively recommends such action; is responsible for other telecommunicators' proficiency training; and there is no evidence presented demonstrating that he does not devote a substantial amount of work time to supervisory duties, or that he performs substantially the same duties as his subordinates.

• The definition of “supervisor” in PEBA is not the same as, or closely similar to, the definition

contained in the NLRA because PEBA's definition is delimited by provisos that do not exist in the

NLRA definition. Consequently, positions that may be supervisory under the NLRA and excluded

from the bargaining unit under that act may not be supervisory under PEBA given the difference in definitions.

• Under the PEBA I definition of supervisor, "substantial" was interpreted "according to its plain and ordinary meaning found in Webster's New Collegiate Dictionary' to mean ·' ... considerable in quantity, significantly large.... being largely but not wholly that which is specified," and 25% of work time was held to be insufficient to meet this standard.

• An appropriate bargaining unit of police officers, investigators and telecommunicators does not include administrative secretaries, because there is no clear and identifiable community of interest between the two types of positions to justify varying from the normal designations under PEBA, or the NLRB precedent of treating safety officer and clerical employees separately. Specifically, clerical employees are not certified in law enforcement; they do not wear a uniform; they perform clerical duties; they do not work the same shifts as officers and telecommunicators and are not engaged in the same or even similar skills; the record does not show a great deal of contact between these employees and other members of the proposed bargaining unit; and the clerical employees’ impact upon the primary function of the department is tangential.

• An administrative body such as the PELRB does not have the authority to reverse or reconsider its final action unless the legislature expressly granted the Board the power to do so, and the legislature did not do so.

• The Board may, upon review of the whole record, summarily adopt a Recommended Decision

regarding unit inclusion or exclusion in the absence of exception, but that part of the Board's

Decision will not have precedential effect.

49. In re: NEA and Jemez Valley Public Schools, 1 PELRB No. 10 (May 19, 1995).

• The secretary to a school principal who is or will definitely be on the school district’s negotiating team is confidential where she types and files documents related to labor relations matters and has access to the principals’ offices, even if she does not have substantive input in creating the documents typed or filed. On the other hand, the District’s payroll manager is not a confidential employee where she carries out her job functions almost entirely independent of anyone else, any financial information to which she has access is also available to others and while the financial information she handles may be used by the employer for cost proposals in collective bargaining that use Supervisors does not require further input by the payroll manager.

50. In re: Firefighters and City of Santa Fe, 1 PELRB No. 6 (Jan. 19, 1995).

• Notwithstanding their job descriptions or the paramilitary structure of the Santa Fe Fire Department, captains are not supervisors under PEBA, but rather are lead employees with limited authority, whose duties are substantially similar to those of their subordinates including firefighting, and who exercise no independent judgment in directing other employees.

• Decisions from other jurisdictions cannot substitute for performing the community of interest analysis under § 13(A).

• An appropriate bargaining unit of firefighter personnel includes the position of fire captain but not the position of battalion chief, which is a supervisory position.

• That the Santa Fe Fire Department is organized into a paramilitary structure does not create a

conflict of interest in having fire captains represented in a bargaining unit with subordinates or

destroy the community of interest among these employees.

• Where the parties present decisions from other labor boards in representation proceedings, the fact specific nature of representation proceedings requires that each party's reliance upon such opinions be buttressed with (1) the specific wording from the labor law of the jurisdiction from which the decision issued; (2) how the wording is similar or dissimilar to comparable wording in the New Mexico PEBA; and (3) justification why the PELRB should find such decisions persuasive in the circumstances of the instant proceeding.

51. In re: AFSCME and Los Alamos County Firefighters v. County of Los Alamos, 1 PELRB No. 3 (Dec. 20, 1994).

• A union that has been decertified for strike activity cannot be barred from collecting dues.

• Section 10-7D-21(C) of PEBA I (Section 10-7E-21(C) of PEBA II) expressly provided for

decertification "for a period of not more than one year." Where a union has engaged in illegal strike activity. Therefore, under PEBA I, a three-year bar on recertification could not be imposed.

• The time limit established in PELRB rules for the Board (or its agents) to conduct a hearing are

directory rather than mandatory, so its violation does not deprive the Board of jurisdiction. See

11.21.2.18 NMAC.

• A local ordinance does not violate PEBA by requiring a party to elect between proceeding with a grievance and bringing a PPC regarding the same or substantially the same set of facts and

circumstances or subject matter.

• The Board will reject exceptions based on technical violations of rules that are not alleged or proven to cause prejudice and that do not affect the outcome, such as issuing a decision more than 20 after the close of a hearing or submission of post-hearing briefs.

• Prohibitions against interference with officials to obtain concessions, and against interference with "normal" negotiation processes are so vague and so broad as to chill employee rights guaranteed by PEBA and the Ordinance, including the right to organize and assist a labor organization.

• Prohibitions in a local ordinance on soliciting union membership during duty hours, and on using county time, property, or equipment for union business without advance approval of the County Administrator, do not promote the principles of the prohibited practice sections of PEBA. Such prohibitions do not exist in PEBA and are best addressed by employer rules and disciplinary procedures that are subject to the rights guaranteed by PEBA and are therefore not a proper subject for a PPC.

• An employer or a labor organization violates its duty to bargain in good faith by placing

unreasonable conditions on bargaining, such as by insisting upon agreement concerning

“permissive" subjects of bargaining.

• Because ground rules for negotiation are permissive subjects of bargaining, it is a violation of the duty to bargain in good faith to impose them through a local ordinance as a precondition to

bargaining.

• Punitive damages and attorneys’ fees are not an appropriate administrative remedy. NMSA 1978, Section 10-7E-9(F) (2020) concerning Board and local board powers and duties.

52. In re: NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools, 1 PELRB No. 2 (May 13, 1994).

• Signed authorization cards evidence employees' desire for union representation, and the Director’s determination of sufficiency of the showing of interest is not subject to question or review. If a group of employees were not interested in representation by a particular union, they could have chosen not to sign the cards, they could have sought representation by a different union, or they could have organized their own independent union. They pursued none of these alternatives, and therefore the only evidence of their desire to be represented by a union is expressed in the showing of interest presented by the particular union seeking to represent them.

• Occupational groups generally are identified as blue-collar, secretarial clerical, technical,

professional, paraprofessional, police, fire and corrections are only advisory, not mandatory.

53. In re: Santa Fe County and AFSCME, 1 PELRB No. 1 (Nov. 18, 1993).

• Interpretations of the NLRA must generally be followed in interpreting substantially similar PEBA provisions.

• Where alternative impasse procedures are authorized for employers other than the stale, they must still be equivalent to PEBA's procedures.

• The Board or local board must examine or investigate on a case-by-case basis to determine whether an exclusive representative caused, instigated, encouraged or supported a strike, before the sanction of decertification can be imposed.

• An existing CBA cannot be automatically voided as a penalty for strike of voiding, without a case-bycase determination of whether the exclusive representative caused, instigated, encouraged or supported a strike.

• Being a home rule jurisdiction under Article X, Sections 5 and 6 of the New Mexico Constitution does not shield a public employer other than the state from the PELRB's jurisdiction.

1. Section 10-7E-14 provides at subsection C:

   “As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.” [↑](#footnote-ref-1)