STATE OF NEW MEXICO
PUBLIC EMPLOYEES LABOR RELATIONS BOARD

American Federation of State, County and Municipal Employees, Council 18, AFL-CIO,	:	
Petitioner,	:	
vs.	:	**PELRB CASE NO. _____**
	:	**(Prohibited practices complaint)**
New Mexico Department of Human Services,	:	
Respondent.	:	

UNION'S PROHIBITED PRACTICES COMPLAINT

1. The Petitioner is the exclusive bargaining representative for bargaining unit employees in the Department of Human ("HSD") for the state of New Mexico.

2. The Petitioner and Respondent have entered into a collective bargaining agreement ("CBA") that went into effect on December 23, 2009 and which currently remains in effect.

3. The Income Support Division ("ISD") is a division of HSD and all employees in the division are covered under this agreement unless they are supervisory, managerial or confidential employees. As bargaining unit members, they are entitled to protections regarding their performance criteria and their health. The Union also has the right to bargain changes to rules and regulations affecting their conduct.

4. Article 15, Section 2 of the CBA provides that performance criteria shall be "*specific,*" "*attainable*" and "*measurable.*" It also states that performance criteria "*shall be*

applied fairly." Art. 15, § 2(B). Moreover, it states that "*The Employer shall take into account when evaluating an employee's performance, matters outside an employee's controls, such as equipment and resource problems and lack of training.*" *Id*.

5. Item 10 of Article 18, Section 1 of the CBA states that it is the Employer's right to "*provide reasonable rules and regulations governing the conduct of employees."*

6. However, Article 18 Section 2 states that "*Prior to implementing any change in existing terms or conditions of employment relating to items 9, 10 or 11 of Section 1 above, the Employer shall provide the Union with reasonable notice under the circumstances of such contemplated action and, if requested to do so, shall bargain with the Union in good faith to impasse prior to implementing such changes.*"

7. Section 17(A)(1) of the Public Employees Bargaining Act (NMSA 1978, § 10-7E-17(A)(1) (2003)) provides that the employer and the union "***shall*** bargain in good faith on wages, hours, and all other terms and conditions of employment…." (emphasis added). The United States Supreme Court has long held that it is a per se violation of the duty to bargain in good faith for an employer to make unilateral changes to an employee's wages, hours, and other terms and conditions of work that are mandatory subjects of bargaining. See *NLRB v. Katz*, 369 U.S. 736 (1962); *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991) ("The Board has determined, with our acceptance, that an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment."); *Visiting Nurse Services of W. Mass., Inc. v. NLRB*, 177 F.3d 52, 57-59 (1st Cir. 1999).

8. On June 2, 2017, Dustin Acklin, Employee Relations Manager for HSD, sent an

email to Joel Villarreal, AFSCME Council 18 Staff Representative, requesting to "sit down and discuss" ISD Performance expectations.

9. On or about June 5, 2017, Mr. Villarreal spoke with Mr. Acklin where he clarified that HSD had a duty to bargain their proposed changes.

10. On June 20, 2017, Mr. Acklin notified AFSCME Council 18 Staff Representative Joel Villarreal and AFSCME Council 18 Vice President Kenneth Long via email that the department wanted to discuss "ISD's plan for implementing productivity expectations for employees" and stated: "As I previously discussed with both of you, the Department is not bargaining these expectations with the union but we do want to give you opportunity to have input on this matter." By refusing to bargain the terms and conditions of employment as required, HSD failed to comply with the CBA.

11. On June 23, 2017, Mr. Villarreal requested to bargain those changes in his response to Mr. Acklin via email. To date HSD has not given dates to bargain, nor has HSD notified the Union of a change in its position, thereby bargaining in bad faith.

12. HSD instead chose to unilaterally implement a quota on ISD employees without bargaining those changes in violations of the CBA. Those changes have the effect of negatively impacting employees if they are not able to meet their quota; they are expected to have an impact on evaluations which could lead to discipline; and can cause undue stress and other mental and physical health issues.

13. Due to the foregoing, the Employer's actions violated § 19(F) (refuse to bargain collectively in good faith with the exclusive representative), § 19(G) (refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule) and § 19(H) (refuse or

fail to comply with a collective bargaining agreement) of PEBA (NMSA 1978 § 10-7E-1 *et seq.* (2003)).

14. The undersigned declares that the information contained herein is true and correct to the best of his knowledge and belief.

15. The addresses of the parties are:

AFSCME Council 18 Joel Villarreal Staff Representative 1202 Pennsylvania NE Albuquerque, NM 87110 Phone: (505) 818-2603 Fax: (505) 266-2404 Email: joel@afscmenewmexico.org	New Mexico Human Services Department, Dustin Acklin HR Employee Relations Manager P.O. Box 2348 Albuquerque NM 87504-2348 Phone: (505) 476-6249 Fax: (505) 476-6260 Email: Dustin.Acklin@state.nm.us
Petitioner	*Respondent*

WHEREFORE the Petitioner respectfully requests that this Board enter an order requiring the Respondent to: (1) rescind these unilateral changes, (2) bargain with the Union over those, and any future changes to terms and conditions of employment of bargaining unit members prior to implementation in accordance with Article 18, § 2 of the CBA, (3) public posting displayed prominently of the violation for 180 days in all NMHSD buildings where there are affected bargaining unit employees, (4) cease and desist from all violations of the PEBA, and (5) comply with any further relief the Board finds just and appropriate.

Dated: November 1, 2017.

Respectfully Submitted,

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Joel Villarreal
Staff Representative
AFSCME Council 18

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served on all parties to this action pursuant to 11.21.3.8 NMAC this 1st, day of November 2017.

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Joel Villarreal