

Dear Attorney General Balderas,

The purpose of this letter, submitted jointly by the United Electrical, Radio and Machine Workers of America (UE) and the University of New Mexico (UNM), is to seek clarification as to the applicability of NMSA 1978, 10-7-4(K) to a unit of graduate students holding assistantships employed by UNM and represented by UE.

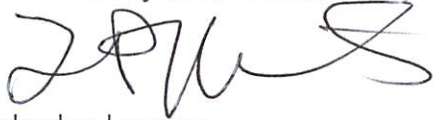
On March 11, 2022, after considering a Joint Motion for Clarification/Amendment of Orders submitted by UE and UNM in matter number PELRB 307-20, the Public Employee Labor Relations Board (PELRB) reissued its August 17, 2021 order clarifying that graduate students holding an assistantship are “public employees” eligible to bargain under the terms of the Public Employee Bargaining Act, NMSA 1978, 10-7E-1 et seq. (PEBA). https://www.pelrb.state.nm.us/pdf/board_decisions/2022/06-PELRB-2022.pdf. As a result of this clarification, UNM withdrew its appeal of the PELRB’s prior order, Case No. D-202-CV-2021-06615, and UE and UNM agreed to engage in collective bargaining, which process is ongoing.

Prior to the PELRB’s clarification, UNM considered graduate students holding an assistantship to be students for purposes of insurance benefits; accordingly, UNM did not consider the provisions of NMSA 1978, 10-7-4(K) – which limits institutions of higher education from paying more than eighty per cent of the cost of insurance of all employees – to apply to graduate students holding assistantships. By analogy, UNM found support for this position in the regulations governing application of the Educational Retirement Act, NMSA 1978, 22-11-1 et seq. (ERA), which explicitly exclude graduate students holding assistantships from eligibility to participate in that Act’s coverage. NMAC 2.82.2.11(A) (“Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the Educational Retirement Act”). As such, UNM’s consistent, historical practice has been to pay one hundred per cent of the cost of health insurance as a benefit to its graduate students holding assistantships.

However, subsequent to the PELRB’s clarification that graduate students holding assistantships are “public employees” for purposes of the PEBA and during the course of bargaining, the parties have become concerned that the provisions of 10-7-4(K) now apply to these employees. Thus, the parties are concerned that UNM can no longer pay one hundred per cent of these employees’ health insurance.

With this in mind, the signatories hereto seek an opinion from the Office of the Attorney General interpreting NMSA 1978, 10-7-4(K) as excluding graduate assistants holding assistantships from the definition of “employee” subject thereto, much like the exclusion of graduate students holding assistantships from coverage under the ERA in its regulations.

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