STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT

UNITED ACADEMICS OF THE UNIVERSITY OF NEW MEXICO – AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS/ AMERICAN FEDERATION OF TEACHERS, AFL/CIO

Petitioner,

and **Case No. _____**

UNIVERSITY OF NEW MEXICO BOARD OF REGENTS, and the UNIVERSITY OF NEW MEXICO LABOR-MANAGEMENT RELATIONS BOARD

Respondents.

VERIFIED EMERGENCY PETITION FOR WRIT OF MANDAMUS AND ORDER TO SHOW CAUSE

COMES NOW Petitioner, United Academics of the University of New Mexico – American Association of University Professors (AAUP)/American Federation of Teachers (AFT), AFL-CIO, and hereby files this Petition seeking an Emergency Writ of Mandamus and an Order to Show Cause issued to both the University of New Mexico Board of Regents and the UNM Labor-Management Relations Board. Petitioner seeks a hearing on this matter at the Court's earliest convenience due to the emergency nature of this Petition as stated below.

I. FACTUAL RECITATION

1. On February 13, 2019, the United Academics of the University of New Mexico, AAUP/AFT (AAUP/AFT, the Union) filed a certification petition with the University of

New Mexico Labor-Management Relations Board (Labor Board) seeking to represent faculty members at the University of New Mexico (UNM).

2. On April 29, 2019, the parties reached agreement before the Labor Board on the scope of the bargaining unit. In June, July and August of this year, the parties negotiated the scope of a Consent Election Agreement, which was approved by the Labor Board on August 28th and is being finalized as a draft as of the date of this filing and signed by the parties.
3. On July 19, 2019, the Labor Board set an election in this matter – for faculty to decide whether or not to select AAUP/AFT as their certified bargaining agent – for October 16-17, 2019. The election is six weeks away.
4. In anticipation of the election campaign currently underway between the parties, the Union on August 20th communicated to UNM and requested, by September 5, 2019, a copy of what is commonly known in labor law as an *Excelsior* list – that is, the names, addresses, job classifications, work locations and shifts of employees, as well as their personal email addresses and phone numbers.
5. As described below, under state and federal law, the *Excelsior* list includes the contact information enumerated in the previous paragraph and is to be released shortly after the parties get approval of their Consent Election Agreement.
6. Approval of the Consent Election Agreement was given by the Labor Board on August 28, 2019.
7. UNM has refused to release anything other than names, titles and job locations of the potential eligible voters in the October election. UNM sought to release this list as late as October 2nd, two weeks before the election.

8. The parties brought their dispute to the Labor Board on August 28, 2019. At that meeting the Board heard arguments of both parties and then issued a ruling (*see* Exhibit 1) in which it gave neither side what it requested, but instead provided for the following:
    a. UNM is to provide one voter list by September 13, 2019.
    b. That list is to include only the employee name, position/title, job location, and the employee's UNM *work* email address and UNM *work* phone number.
    c. The Labor Board did not order the release of the personal addresses, telephone numbers and email addresses of the prospective voters.
9. The Board offered no factual or legal basis for its refusal to comply with state and federal law regarding the release of addresses and personal phone numbers and email addresses. The Board has a nondiscretionary duty to follow state law and to order the release of the information requested but the Board failed to carry out its mandate under law.
10. As of the date of this filing, UNM refuses to release the addresses and personal phone numbers and email addresses of the prospective voters. UNM has a nondiscretionary duty to follow state law and release the information requested.
11. The failure to share voter information mandated by law provides UNM with an advantage over the Union and prejudices the Union by denying it the same access to all employees that UNM itself has during the campaign leading up to the election in mid-October.
12. UNM has represented to the Labor Board that it is important that the electorate be fully educated and informed about the issues before an election takes place. To that end, UNM requested that the election be held as late as November 2019 in order for the parties to conduct a thorough campaign that fully educated potential voters.

13. As it is, with six weeks to go until the election, UNM has unfettered access to all potential voters but is intentionally denying the Union that same access.

14. The Union now petitions this Court for a Writ of Mandamus asking this Court to order the Labor Board to (1) comply with its duty under the law and (2) issue an immediate order requiring UNM to produce the information.

15. The Union also petitions this Court for a Writ of Mandamus ordering UNM to (1) comply with its duty the law and (2) produce the information immediately upon an order of this Court or the Labor Board.

16. The Union asks the Court to order both the Labor Board and UNM to appear before the Court in an emergency hearing, at the court's first earliest convenience, to show cause as to why they should not be compelled immediately to comply with their duties under state and federal law.

II. LEGAL ARGUMENT

17. The obligation of an employer to provide the Union with names, addresses, phone numbers (and as recently determined, e-mail addresses) is a fundamental and well-established bedrock principle of labor law:

18. It is settled law in New Mexico that the employer has a legal obligation to provide the union with information necessary for the union's role as the exclusive bargaining representative of the entire bargaining unit, not just union members. Critical to that role is the union's ability to communicate with all members of the bargaining unit, including the non-members, regarding issues the union is bargaining for on their behalf.

A. The New Mexico PELRB Has Adopted Federal Regulations

19. In 2005, the New Mexico Public Employee's Labor Relations Board determined that Employers are obligated to provide this information to Unions. *NUHHCE v. UNM Hosp.*, 3-PELRB-2005, at 16-19 (Oct. 19, 2005).

20. The New Mexico Public Employee's Labor Relations Board reaffirmed this principle as recently as May 3, 2016, in a decision involving Santa Fe County. See *AFSCME v. Board of Cty. Comm'rs of the County of Santa Fe*, 6-PELRB-2016 (affirming the hearing officer's conclusion at Page 5 that any prohibition of the release of such information under state public records statutes is trumped by established labor law).

21. The State Labor Board's decisions reflect the fundamental principle that labor unions must have this information in order to properly discharge their duty to fairly represent bargaining unit members. *See, generally, Callahan v. New Mexico Fed'n of Teachers-TVI*, 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.

22. Under the Public Employees Bargaining Act (PEBA) (NMSA 1978, § 10-7E-17(A)(1) (2003)) the employer and the union "shall bargain in good faith on wages, hours, and all other terms and conditions of employment…." Section 19(F) makes it a prohibited practice for the public employer to "refuse to bargain collectively in good faith with the exclusive representative."

23. In 2007, the PELRB formally adopted federal law and regulations as stated 41 years earlier in *Excelsior Underwear, Inc.*, 156 NLRB 111 (1966), which requires an employer to provide a union with names and addresses of proposed bargaining unit employees following the adoption of a Consent Election Agreement between the parties and in advance of the representation election. *See SSEA Local 3878 v. Socorro Consolidated*

School District, 05-PELRB-2007. In *SSEA*, the PELRB argued that "[b]y not providing the Union with a list of proposed bargaining unit employee names and addresses, [the employer] has violated the provisions of the … PEBA." *Id.* at 1.

24. The PELRB found that failing to comply with *Excelsior* and provide such a list violates two sections of PEBA: Section 10-7E-5, which assures the right of public employees to form, join or assist a labor organization for the purpose of collective bargaining, and Section 10-7E-19(B), which forbids a public employer from interfering with, restraining or coercing a public employee in the exercise of rights under PEBA. *Id.* "The requirement to provide a union with such [a] list of proposed bargaining unit employee names and addresses is a bedrock principle of labor law[.]" *Id.* at 2.

25. The PELRB provisions are substantially identical to the relevant provisions in the National Labor Relations Act (NLRA) upon which they were modeled. *Compare* 29 U.S.C. § 157 (ensuring that employees "have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing"); 29 U.S.C. § 158(a)(1) (making it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" under the NLRA); 29 U.S.C. § 158(a)(5) (making it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees").

26. Our courts have noted that "[a]bsent cogent reasons to the contrary, we should interpret language of the PEBA in the manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted." *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-31, ¶ 15, 123 NM 239, 938 P.2d 1384.

27. Further, the UNM's own Labor Resolution mirrors the language of PEBA.[1] Under the Resolution, employees have the right to "form, join, or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint, or coercion." LMRO, § 5. Further, it is a prohibited practice for UNM to "interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under" the Resolution. *Id*., § 16(A)(2).

28. Thus, the duty to bargain under the PEBA and UNM's own ordinance should be interpreted in line with the same statutory duty imposed by the NLRA.

29. Indeed, the PELRB has already so held. *See NUHHCE v. UNM Hosp.*, 3-PELRB-2005, at 16-19 (Oct. 19, 2005).

B. The *Excelsior* Case and Current Federal Regulations

30. The *Excelsior* case set the standard for producing the critical information. It also knocked down potential counter-arguments as to why the information should not be produced.

31. Further, in 2015, the NLRB expanded the scope of information to be provided and reduced the deadline for producing the information to within two days after the consent election agreement is finalized.

32. In the *Excelsior* case, the NLRB reasoned that representation elections must be free not only from coercion but also "from other elements that prevent or impede a free and reasoned choice." 156 NLRB at 1240. "Among the factors that undoubtedly tend to impede such a choice is a lack of information with respect to one of the choices available." *Id*.

[1] UNM's Resolution is at: http://hr.unm.edu/docs/labor-relations/labor-management-relations-resolution.pdf.

33. Providing a list of names and addresses puts employees "in a better position to make a more fully informed and reasonable choice" and "remove[s] the impediment to communication to which" the rule was directed." *Id.*

34. Without such a list, a union would have "no method by which it can be certain of reaching all the employees with its arguments in favor of representation." *Id*. at 1240-41.

35. The NLRB concluded that "the access of *all* employees to such communications can be insured only if all parties have the names and addresses of all the voters" in order to "maximize the likelihood that all the voters will be exposed to the arguments for, as well as against, union representation." *Id*. at 1241.

36. A failure to produce the list in a "prompt" manner is now regarded as "tending to interfere with prospects for a fair and free election." *Id*. at 1242.

37. The duty to provide information is not limited to periods of contract negotiation or grievance administration; rather, it is tied to the Union's role as exclusive bargaining representative for the entire bargaining unit. "The duty to bargain collectively, imposed upon an employer by § 8(a)(5) of the National Labor Relations Act, includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative." *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979) (citations omitted); *see also KLB Indus., Inc. v. NLRB,* 700 F.3d 551, 556 (D.C. Cir. 2012) (citation omitted). Put differently, the "[e]mployees' certified representative is entitled to information that will enable the union to negotiate effectively and to perform properly its other duties as bargaining representative." *Country Ford Trucks, Inc. v. NLRB,* 229 F.3d 1184, 1191 (D.C. Cir. 2000) (citation and internal

quotations omitted); *see also N.Y. & Presbyterian Hosp. v. NLRB,* 649 F.3d 723, 729 (D.C. Cir. 2011).

38. In fact, employers have to provide such contact information to a union *even before the collective bargaining relationship is established*. The *Excelsior* list—long a stalwart of labor law—includes the addresses of the eligible voters. *Excelsior Underwear, Inc.,* 156 NLRB at 1239–40.

39. The NLRB's latest election rule, adopted in 2015, increased the requirements of disclosure by employers. Federal regulations now require that the voter list to include a "list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters." 29 C.F.R. § 102.62(d). The list is to be produced "within 2 business days after the approval of an election agreement." *Id*.

40. The production of the *Excelsior* list is viewed as serving a fundamental purpose: "[I]t is long established that requiring the employer to disclose employee names and contact details to the union furthers NLRA objectives 'by encouraging an informed employee electorate and by allowing unions the right of access to employees that management already possesses.'" *Federated Logistics and Operations v. NLRB*, 400 F.3d 920 (D.C. Cir. 2005) (quoting *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969)).

41. The cases holding that an employer must provide the Union with the addresses of the members of the bargaining unit are legion. *See Superior Protection, Inc.*, 341 NLRB 267, 269 (2004) ("Moreover, it is well established that information concerning unit employees' names, addresses, phone numbers, work assignments, and hours is

presumptively relevant for purposes of collective bargaining and must be furnished on request."); *see also, e.g., Stanford Hospital & Clinics*, 338 NLRB 1042 (2003); *MEMC Electronic Materials, Inc*., 338 NLRB No. 142 (2003); *American Logistics, Inc*., 328 NLRB 443 (1999), *enfd*. 214 F.3d 935 (7th Cir. 2000).

42. This black-letter rule has been equally applied in the public sector as well. *See County of Morris v. Morris Council No. 6*, 852 A.2d 1126, 1135 (Super. Ct. N.J. 2004) ("In this case the record reflects no objections to disclosure by unit members or County employees, no reasonable basis for a fear of harassment or disclosure of the list to third parties or any special confidentiality considerations that would outweigh the unions' fundamental need for the home addresses, a need created by its statutory obligation to represent unit employees."); *County of Los Angeles v. Los Angeles County Employee Relations Comm'n*, 301 P.3d 1102, 1105 (Cal. 2013) ("We conclude that, although the County's employees have a cognizable privacy interest in their home addresses and telephone numbers, the balance of interests strongly favors disclosure of this information to the union that represents them.").

43. In the case before the New Mexico Labor-Management Relations Board, there was given no articulated reason why the *employer* may be privy to this information but the Union may not be. As the *Excelsior* case noted, it cannot be assumed that a union would engage in "harassment and coercion" of eligible employees, and "if it does, we shall provide an appropriate remedy." 156 NLRB at 1244. "We do not, in any event, regard the mere possibility that a union will abuse the opportunity to communicate with employees in their homes as sufficient basis for denying this opportunity altogether." *Id.* (citing *Martin v. Struthers*, 319 U.S. 141 (1943), and *Staub v. City of Baxley*, 355 U.S. 313 (1958)).

44. In this case, the UNM Labor Board may provide an appropriate remedy in response to any instances of harassment or coercion of employees alleged against the Union or against UNM in the use of employees' contact information.

C. New Mexico Courts' Application of Federal Regulations and Case Law

45. This issue has been litigated in New Mexico in the Third Judicial District. *See United Steelworkers of America, Local No. 9424 v. City of Las Cruces*, No. CV-2003-1599 (April 4, 2005, Robles, J.). In that case, the Honorable District Judge Robert Robles found a *Las* Cruces resolution prohibiting the disclosure of the names, addresses and telephone numbers of city employees "void as inconsistent with State law insofar as it forbids the disclosure of the home addresses of bargaining unit employees to the Union." *Id*. ¶ 4. Judge Robles further found that the City violated the duty to bargain collectively in good faith with the union by refusing to provide that information, and was therefore guilty of a prohibited practice under the Las Cruces Municipal Code. *Id.* ¶ 2.

46. A few years later, in *Rio Rancho Pub. Schools v. Rio Rancho School Employees' Union*, D-1329-CV-2010-01987 (August 23, 2010, Eichwald, G.), the Thirteenth Judicial District Court affirmed an order of the Rio Rancho Public Schools Labor Relation Board which required the provision of the names and addresses as part of an *Excelsior* list. The Hon. Judge George P. Eichwald in *Rio Rancho* concluded that the release of the home addresses ensured a fair election, that IPRA was "inapplicable in this matter" and that the "release of home addresses is not contrary to state law." *Id*. at ¶¶ 5-6. The Court concluded: "A public employer's release of employee names and home addresses ensures that certification … elections are fair and public employees have the best

opportunity to listen to all the arguments and decided for themselves whether they desire to be represented by a labor organization." *Id*. ¶ 4.

47. More recently, in the First Judicial District, the Hon. Sarah Singleton acknowledged that "[t]he PELRB has recognized that this requirement, known commonly as the "*Excelsior* Rule," applies in substantially the same fashion under the [PEBA]." *See AFSCME Council 18 v. Board of Cty. Comm'rs of Santa Fe County, et. al.*, No. D-101-CV-2014-01195 (June 11, 2015, Singleton, J.).

48. Judge Singleton drilled down to the core concept behind the rule: "The fear is that one party to an election, typically the employer, will have a substantial advantage with regards to accessing the electorate." *Id*. at § III (citing *Poli-Lite Industries, Ltd.*, 229 NLRB 196, 197 (1997). The rule requires that the union have "sufficient opportunity to communicate with the employees in the unit prior to the election." *Id*. (citing *Commercial Air Conditioning Co.*, 226 NLRB 1044 (1976).

D. No Stated Objections in This Case Have a Basis in Law

49. UNM initially argued before the Labor Board that UNM should not be ordered to produce employee contact information because the Labor Board's own regulations make only one reference to the production of a Voter List, and that regulation does not require the disclosure of employee contact information in a list produced as little as two weeks before the date of the election. *See* Rules and Regs. at §2.16(B).[2]

50. However, the PELRB's own regulations also do not provide for the production of an *Excelsior* list. *See, generally,* Rule 11.21.2 NMAC; Rule 11.21.2.24(C) NMAC. Despite the absence of such a regulation, the PELRB has codified the *Excelsior* rule into its case

[2] The Board's Rules and Regulations are available online at http://hr.unm.edu/docs/labor-relations/unm-lmrb-rules-and-regulations.pdf.

law and requires the production of employee names and contact information in conformity with federal law and regulations.

51. Nor does UNM have a privacy interest in its list of employee contact information.

52. Next, the Labor Board's ruling mentioned privacy concerns expressed by UNM in protecting employees. *See* Exhibit 1 at 2. However, privacy issues do not preclude production of the information in New Mexico.

53. The Labor Board in this case cited no basis in fact or law for overriding federal and state law out concerns for privacy. The Board cited no concrete examples of privacy concerns but only hypothetical concerns expressed by UNM.

54. In fact, privacy concerns – speculative or otherwise – do not trump labor law when it comes to representation elections in the workplace. As *Excelsior* noted, "Such legitimate interest in secrecy as an employer may have is … plainly outweighed by the substantial public interest in favor of disclosure where … disclosure is a key factor in insuring a fair and free electorate." 156 NLRB at 1243.

55. The New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1, *et seq.*, does not apply because this case does not involve a request for information under IPRA but rather under the PEBA. In addition, IPRA contains no provision that would preclude the disclosure of the addresses of the bargaining unit; consequently, there is no conflict between statutes that needs to be resolved. Instead, the duty to provide the information under PEBA must win out.

56. Other states have rejected this privacy argument as well. In *County of Los Angeles v. Los Angeles County Employee Relations Comm'n*, 301 P.3d 1102, 1105 (Cal. 2013), the

California high court required the release of the addresses even in the face of a state constitutional right to privacy.

57. More importantly, this argument has already been implicitly rejected in New Mexico. As noted above, Judge Robles and Judge Eichwald, have both ordered addresses released to the union, either in the *Excelsior* context (Eichwald) or in response to a request for information (Robles). Judge Eichwald specifically found that the "New Mexico Inspection of Public Records Act is inapplicable to th[e] matter" and that the "release of home addresses is not contrary to state law." No. D-1329-CV-2010-01987 at ¶¶ 5-6.

58. Neither is the idea of waiver at issue in this case.

59. It is possible for a Union to waive the right to obtain such information, but Courts have taken a dim view of such waivers and will only enforce such waivers in very limited circumstances. Under black-letter NLRB case law, applied by New Mexico Courts under PEBA, an Employer faces an uphill climb in making this argument. For, while it is true that a union can waive its statutory right to information, such a waiver will only be found in a CBA if the waiver is "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) ("Thus, we will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.' More succinctly, the waiver must be clear and unmistakable."); *see also County of Los Alamos v. Martinez*, 2011-NMCA-027, ¶ 19, 150 N.M. 326, 258 P.3d 1118 ("We recognize that a union can contractually waive its right to mandatory bargaining if the waiver is expressed clearly and unmistakably.").

60. In sum, there is no factual or legal basis available to either the UNM Board of Regents or to the UNM Labor Board to defy state and federal law and deny the Union the information requested.

61. This is a legal issue about which there is no longer any serious legal dispute in New Mexico: Employers must provide the personal contact information of those potential members of the bargaining unit who are deemed eligible to vote in the upcoming certification election, and they must do so within days of the approval of a consent election agreement between the parties.

E. Mandamus Is Appropriate in This Case

62. "The district court has exclusive original jurisdiction in all cases of mandamus, except where such writ is to be directed to a district court or a judge thereof in his official capacity[.] NMSA 1978, § 44-2-3.

63. A writ of mandamus "may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station," although not when discretion is allowed. § 44-2-4.

64. Petitioners ask that this writ issue against both Respondents.

65. Petitioners seek an alternative writ. "The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court out of which the writ issued." § 44-2-6.

66. Petitioners have concisely stated the facts in the above sections and have demonstrated the obligation of Respondents and their failure to perform the acts in question – UNM in failing to produce the full information requested, and the Labor Board in failing to order UNM to produce the information.

67. "No other pleading or written allegation is allowed than the writ and answer." § 44-2-11.

68. "The writ shall not issue in any case where there is a plain, speedy and adequate remedy in the ordinary course of law." § 44-2-5.

69. In this case, Petitioner – a Union seeking to certify a bargaining unit through a representation election on October 16-17, 2019 – does not have any other remedy at law that is plain, speedy and adequate under the circumstances.

70. The only recourse available to Petitioner under the jurisdiction of the Labor Board is await the results of the election and then file an appeal of the Labor Board's August 28th ruling, alleging that "conduct improperly interfered with the results of the election." *See* Board Regulations at § 2.26. That means the Union must risk losing the election by a narrow margin and then asking that the "results of the election … be set aside and a new election ordered." *Id*.

71. Such recourse is neither speedy nor adequate.

72. First, the Labor Board's remedies are not speedy, because they are not available during the next six weeks during the campaign for the election scheduled for October 16th and 17th. Any remedy would be anything other than "speedy" and would necessitate many months starting with a hearing on the merits of the appeal, a favorable ruling from the

Board, the Board ordering a new election, and the scheduling of another election far into the future.

73. It should be noted that, in this case, the logistics of an election are not simple. It will have taken eight months from the filing of the petition of certification to the date of the election, and the election requires assistance from a private election monitor covering five campuses – Albuquerque, Valencia County, Taos, Gallup and Los Alamos.

74. Second, a re-run election is far from an adequate remedy. By the time of the election and after the results are tabulated, the damage to the Union has been done. According to the NLRB's website, as an example, in the fiscal year 2010, only one-third of repeat elections resulted in a reversal of the original election results. *See* Exhibit 2.

75. And while one study found that about 85 percent of NLRB elections that were set aside on appeal for unfair electioneering practices result in a re-run election, it also found that only about one-third of those re-run elections resulted in a flip in the original results. *See* Daniel H. Pollitt, *NLRB Re-Run Elections: A Study*, 41 N.C. L. Rev. 209, 222 (1963). In other words, the offending party has a high likelihood of success if it can taint the results of the original election, with diminishing consequences even if a re-run election is ordered.

76. The Union does not have a plain, speedy or adequate remedy at law before the Labor Board.

77. Indeed, the violation here of both the spirit and letter of the *Excelsior* rule and resulting New Mexico labor law – on the part of both Respondents – does violence to the fundamental idea of a fair and free election among UNM faculty exercising their rights under both PEBA and the UNM Labor Resolution.

78. Such violations prejudice the Union, because UNM, during the next six weeks, will have the means of contacting employees that are unavailable to the Union. UNM will have an unfair advantage in educating voters and presenting its side of the issue before those voters – whether to select the Union as their certified bargaining representative.
79. Every day that passes further prejudices the Union and jeopardizes the Union's ability to educate voters as to the issues at stake in an election 42 days away.
80. UNM refuses to comply with the law and produce the contact information of these voters. The Labor Board refused to comply with the law and order the production of that information.
81. New Mexico Labor law, modeled on the *Excelsior* progeny and resulting federal regulations, provides no discretion to public officials or cover under the law to refuse the production to the Union of personal contact information of eligible voters.
82. As such, a writ of mandamus is appropriate and necessary in this case, and both Respondents shall be called to an emergency hearing to show cause as to why they have failed to carry out their statutory duties.

III. CONCLUSION

WHEREFORE, Petitioner requests the following:

1. That this Court find that it has jurisdiction over the parties and the issues presented.
2. That this Court issue a Writ of Mandamus ordering the UNM Labor-Management Relations Board to (1) comply with its duty under the law and (2) issue an immediate order requiring UNM Board of Regents to produce the information.

3. That this Court issue a Writ of Mandamus ordering UNM Board of Regents to (1) comply with its duty under the law and (2) produce the information immediately upon an order of this Court or the Labor Board.
4. That this Court order both the Labor Board and UNM Board of Regents to appear before the Court in an emergency hearing, at the court's first earliest convenience, to show cause as to why they should not be compelled immediately to comply with their duties under state and federal law.
5. Schedule a hearing on this matter at the Court's earliest convenience due to the emergency nature of this Petition.
6. Issue any such relief to Petitioner or sanctions against Respondents as this Court sees fit.

Dated: September 4, 2019

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.

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STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

SWORN AND SUBSCRIBED TO BEFORE ME this 4th day of September, 2019, by James A. Montalbano.

OFFICIAL SEAL
Allison L. Koelin
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11-15-22

Notary Public

Stephanie Ly

Stephanie Ly, Authorized Representative for Petitioner, United Academics of the University of New Mexico – American Association of University Professors (AAUP)/American Federation of Teachers (AFT), AFL-CIO

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

SWORN AND SUBSCRIBED TO BEFORE ME this 4th day of September, 2019, by Stephanie Ly.

Notary Public

OFFICIAL SEAL
Melissa D. Flores
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires January 25, 2023

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was electronically filed and emailed to the following parties this 4th day of September 2019:

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/s/ James A. Montalbano
James Montalbano

UNIVERSITY OF NEW MEXICO
LABOR MANAGEMENT RELATIONS BOARD

In the Matter of:

United Academics of the University of New Mexico, AAUP/AFT, AFL-CIO
Petitioner or Union,

and

UNM Case No. R 19-01
Petition for Representation

University of New Mexico,
Employer or UNM.

Appearances

For Petitioner: James Montalbano
Youtz & Valdez, P.C.
Katherine Liapis, AFT
Richelle Fiore, AFT

For Employer: Kevin Gick
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Office of the University Counsel, UNM

Loretta Martinez, Chief Legal Counsel, UNM
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DECISION

On February 13, 2019, the Union filed a Petition for Representation with the UNM Labor Management Relations Board ("UNM Labor Board") seeking to represent a bargaining unit comprised of full-time and part-time faculty, researchers and instructors employed at the Main Campus in Albuquerque and at the branch campuses located in Taos, Los Alamos, Gallup and Valencia County.

The parties have discussed and agreed upon aspects of the election process and have been working on revisions to a Consent Election Agreement (the "Agreement"). The parties intended to present a final version of the Agreement to the UNM Labor Board for approval at its meeting on August 28, 2019.

EXHIBIT
1

On August 20, 2019, the Union requested UNM provide personal contact information for each employee included within the proposed bargaining units. The Union requested this information be provided independent of, and in addition to, the list of eligible employees required by UNM Labor Board Rule 2.16. The Union also requested this information be provided by September 4, 2019. UNM responded on August 23, 2019, citing UNM Labor Board Rule 2.16 explaining that it need not provide a list of eligible employees until ten (10) days before the election and that list need include only employee names, positions/titles and job locations. UNM expressed concern with providing employees' personal contact information, such as home address, personal email and personal phone numbers without the employee's consent on grounds of privacy.

At the August 28, 2019, UNM Labor Board meeting, the parties argued their respective positions regarding the scope and timing of the employee information to be provided. After full consideration of the arguments presented, and for purposes of this representation election only, the UNM Labor Board, by unanimous vote, finds and orders:

1. UNM need provide only one (1) list of eligible employees to Petitioner.

2. The employee list should include: employee name, position/title, job location, and the employee's UNM email address and UNM phone number.

3. UNM shall provide this employee list to the Union by Friday, September 13, 2019.

/s/ Hon. Joseph Baca

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Chairperson

/s/ Marianne Bowers

_____
Board Member

/s/ Charlotte Lamont

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Board Member

Date: August 28, 2018

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 2010

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	21	100.0	12	57.1	9	42.9	8	38.1
By type of case:								
RC cases	15	100.0	10	66.7	5	33.3	5	33.3
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	6	100.0	2	33.3	4	66.7	3	50.0
By type of election:								
Consent elections	2	100.0	2	100.0	0	0.0	1	50.0
Stipulated elections	17	100.0	9	52.9	8	47.1	5	29.4
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	2	100.0	1	50.0	1	50.0	2	100.0
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

EXHIBIT 2