



**STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**Minutes of Board Meeting held Tuesday, September 18, 2018 9:30 a.m. at the PELRB offices,  
2929 Coors Blvd. NW, Albuquerque, New Mexico; Duff Westbrook, presiding.**

1. **Call to Order.** Chair Westbrook called the meeting to order at 9:35 a.m. Member Bledsoe and was in attendance so that a quorum was present; however Vice-Chair R.E. Bartosiewicz was still *en route* to the meeting and so was not present at the time the meeting started.
2. **Approval of Agenda.** Chair Westbrook moved to amend the agenda by moving agenda item 9(a), *AFSCME, Local 3277 v. City of Rio Rancho*; PELRB No. 113-18, to the first item of business after Public Comment, at the request of AFSCME's counsel. Council for the City concurred as long as Member Bartosiewicz was present by the time the matter is heard and so, after a second by Member Bledsoe, the Agenda was approved as amended upon a 2-0 roll call vote.
3. **Approval of July 10, 2018 meeting minutes.** Member Bledsoe moved to approve the draft July 10, 2018 meeting minutes without amendment, Chair Westbrook seconded the motion and the minutes were approved after a 3-0 roll call vote. Shortly after approval of the minutes Vice-Chair Bartosiewicz arrived at the meeting
4. **Public Comments.** There were 12 members of the public in attendance but no comments were offered.
5. **Hearing re: Motion to Stay Preliminary Injunction.** In accordance with the amendment to the agenda Chair Westbrook called *AFSCME, Local 3277 v. City of Rio Rancho*; PELRB No. 113-18. After a brief introduction by Director Griego, Dina Holcomb, representing the City of Rio Rancho gave a procedural history and outlined the points in her motion that the Board lacks jurisdiction to issue preliminary injunctions and that even if such jurisdiction existed, the Board has not delegated that authority to its Hearing Officer. Also, an appeal of the decision has been filed but the time has not yet passed for the Union to respond, so the City asks that the injunction be stayed until the appeal is heard at the Board's next meeting. She outlined the practical problems with the effects of the injunction in light of the current status of former Bargaining Unit members now having expressed a desire to no longer have dues deducted. She outlined the elements that must be shown before an injunction may issue and argued that application of those elements in light of specific facts she presented, weigh against granting an injunction and in favor of granting the stay, particularly in light of the faulty audio record in the hearing below. In response to a question by Chair Westbrook Ms. Holcomb addressed the process surrounding terminating dues in accordance with the parties' CBA.

Mr. Youtz addressed first the legal foundation for the injunction dividing his argument into two prongs: First, whether it has authority to issue injunctions 2) whether the grant was appropriate.

He argued from petitions by Ms. Holcomb in other local Board cases in which she asked for similar injunctive relief on behalf of her clients. PEBA Section 23(A) expressly grants authority for issuance of injunctions and restraining orders.

Mr. Youtz gave a history of the legal changes beginning with *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), in which the United States Supreme Court which held that where there is a union security agreement, unions are authorized by statute to collect from non-members but only those fees necessary to perform its duties as a collective bargaining representative, and culminating with the recent case of *Janus v. AFSCME, Council 31* in which the U.S. Supreme Court held that withholding agency fees from nonconsenting public-sector employees' wages violates the First Amendment. Mr. Youtz argued that the *Janus* decision affected only non-dues paying member and because the city ceased not only Fair Share deductions from non-members but also those from dues paying members, soliciting re-authorization of dues deductions which he argued violated both substantive law and the parties CBA provisions for how union deduction are to be terminated.

Mr. Youtz relied on guidance letters and opinions of 12 states' Attorneys General, including the New Mexico Attorney General and presented a new opinion from Alaska's Attorney General not issued at the time of the hearing below, to the effect that only agency fees by non-union members are affected by the *Janus* decision - dues paying members are not required by *Janus* to do anything. Because the PEBA Section 17 (C) requires Rio Rancho to honor deductions until revoked in accordance with the CBA, the actions by the City violated the law and the parties CBA. Mr. Youtz presented a decision of the New Jersey Labor Relations Board which issued an injunction on similar facts.

He then argued the elements for a TRO and Preliminary Injunction as sufficient for the Board to confirm and if the City disagreed it should go to the District Court to seek relief from the Board's injunction. He further argued that the City had no standing to assert First Amendment rights on behalf of individuals who are not parties and that there can be no first amendment violation because all that was enforced were administrative prerequisites to proper exercise of the First Amendment.

Ms. Holcomb distinguished the New Mexico Attorney General advisory guidance letter and questioned whether there was similarity between the facts in the New Jersey case and those in the instant case. Mr. Westbrook asked where the *Janus* decision required union members to reauthorize deduction of dues. Ms. Holcomb replied that clear and affirmative consent for deduction is required by *Janus* and that the consent required is not limited to fair share payers and under the facts of this case it is unclear whether the original consents were valid. Member Bledsoe inquired about the form used by the union for termination of dues under the CBA and Ms. Holcomb raised issue connected to that new form. Mr. Youtz argued contrary to Ms. Holcomb's points concerning the propriety of employees' consents.

At 10:21 a.m. Chair Westbrook moved to go into executive Session pursuant to pursuant to section 10-15-1(H)(3) of the Open Meetings Act in order to deliberate over the parties' arguments. Member Bledsoe seconded the motion and upon a 3-0 roll call vote, the motion passed.

The Chair moved to resume open session at approximately 10:31 a.m. and stated that and pursuant to sections 10-15-1(I)(l) and 10-15-1(J), the only matters discussed in the closed executive session was the Motion to Stay Preliminary Injunction in *AFSCME, Local 3277 v. City of Rio Rancho*; PELRB No. 113-18. His motion was seconded by Member Bledsoe and the Board passed the motion after a roll call vote 3-0. Chair Westbrook then moved to uphold the Director's preliminary injunction and opined that the City's actions exceeded what was required by the *Janus* decision justifying preliminary injunction. While he believes the Board and its Director have authority to issue such preliminary injunctions, it would be good for the District Court in a case properly before it to either affirm that position or not. His motion to ratify the preliminary injunction was seconded by Vice-Chair Bartosiewicz. A roll call vote was taken with Chair Westbrook and Vice-Chair Bartosiewicz voting "aye" and Member Bledsoe voting "nay". Member Bledsoe explained his vote stating that he agreed with the Chair that the City's actions exceeded what was required by the *Janus* decision, he did not agree that Section 23(A) of the PEBA was a sufficient grant of authority for the Board or its Director to issue pre-adjudication injunctions. Therefore the preliminary injunction was ratified 2-1.

6. **CWA v. Third Judicial District Attorney's Office; PELRB No.'s 105-18, 106-18, 107-18 Consolidated.** Director Griego explained that while the Agenda showed this matter as a "Voluntary Dismissal", in fact, the consolidated cases were not yet being dismissed; merely held in abeyance while the parties continued negotiations. Instead, the parties were seeking the Board's approval of their provisional partial settlement agreement so that a date certain (the date of the Board's approval) could be referred to in a posting of notice to employees of their rights under the Public Employee Bargaining Act. CWA was reserving its right to continue to a hearing on the consolidated cases with regard to those issues not yet settled but still being negotiated. With that understanding the Board voted 3-0 upon a roll call vote to approve the settlement agreement to the extent the Board has authority to approve a provisional settlement agreement.
7. **Petition for Severance.** Director Griego informed the Board that in *AFSCME, Local 2911 & Taos County*; PELRB No. 309-18, the union and the County together filed a Joint Petition to sever County Sheriff's Department Officers from an existing "wall to wall" unit and that that the severed units were appropriate under Section 10-7E-13 of the Public Employee Bargaining Act. An AFSCME representative, Chris Armijo, addressed the Board to clarify that the existing local is AFSCME 1193 representing white and blue collar workers and that AFSCME Local 2911 would be representing the Deputies. Samuel De Filippo representing Taos County agreed with the severance as stated and said there were no issues. Member Bledsoe moved to approve the issuance of amended certifications reflecting the two units as stated. The Chair seconded the motion and the motion passed after a 3-0 roll call vote.
8. **Certification of Decertification Election Results.** Director Griego presented the results of a decertification election held in *Jennifer Poling and National Education Association – Clayton & Clayton Municipal Schools*; PELRB No. 307-18. Of the 28 eligible voters, 24 cast ballots so that there was a valid election. 16 ballots were cast in favor of decertification of the union and 8 were cast opposing decertification. Accordingly, a majority of votes were for decertification. The Director, serving as the election supervisor in this case served copies of his certification of the election results on both parties on August 30, 2018 and there were no objections to the conduct of the

election received prior to the meeting. Attorney Jiadai Lin on behalf of NEA-Clayton and Robby Beck on behalf of the Petitioner, Jennifer Poling and Laura Castille representing the Clayton Schools were present and each addressed the Board. There were no objections or impediments to approval of the Election Supervisor's certification of the elections results that would cause the Board to not authorize the Director to issue a certificate decertifying the bargaining unit.

Chair Westbrook moved to accept the election results and decertify the bargaining unit. Vice-Chair Bartosiewicz seconded the motion and the motion passed after a roll call vote, 3-0.

9. **Review of Recommended Decisions.** Director Griego told the Board that after a hearing on the merits of a claimed Prohibited Practices Complaint in *AFSCME Council 18 and Tony Vigil v. San Miguel County*; PELRB No. 103-18, he dismissed the Complainants' claims that the County failed to bargain in good faith; that the County discriminated against Tony Vigil with regard to terms and conditions of employment because of his membership in a labor organization; that the County interfered with, restrained or coerced him in the exercise of a right guaranteed by the Act; or that it otherwise discriminated against him or the Union because of anti-union bias. No appeal of that decision has been filed and he asked that the Board ratify and adopt his recommended decision.

Chair Westbrook moved to accept the election results and decertify the bargaining unit. Vice-Chair Bartosiewicz seconded the motion and the motion passed after a roll call vote, 3-0.

The Director then presented his decision in *AFSCME v. NM Human Services Department*; PELRB No. 123-17, in which he found that AFSCME did not meet its burden of proof with regard to its claims that the New Mexico Human Services Department committed Prohibited Labor Practices pursuant to § 19(F) of the PEBA (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/or § 19(H) (refuse or fail to comply with a collective bargaining agreement) by implementing productivity measures in the Fall of 2017. The Union timely appealed the recommended decision to the Board. James Montalbano appeared on behalf of the Union and Van Snow addressed the Board on behalf of HSD. Mr. Montalbano outlined the various exceptions to the Hearing Officer's finding arguing how other evidence refuted those finds so that his conclusions were without sufficient evidence. As part of its argument the union asserted that the evidence proved HSD unilaterally imposed a quota system that had never before existed and imposed changes to its discipline system without bargaining as required.

Mr. Snow responded that the Hearing Officer was in the best position to judge the credibility of the witnesses and the Board does not review the evidence de novo. See 11.21.1.27 NMAC. He argued that the preponderance of the evidence supports the Hearing Officer's conclusion that HSD did not have breach a duty to bargain because any change to conditions of employment were insignificant and he distinguished the cases cited by the Union dealing with breach of the

duty to bargain. Furthermore, he argued, the evidence supports a conclusion that a new discipline system was not created so as to require bargaining – the difficulty in working with HSD’s ASPEN computer system is irrelevant.

Chair Westbrook moved that the Board go into executive session pursuant to Section 10-15-1(H)(3) of the Open Meetings Act in order to deliberate over the parties’ arguments. Member Bledsoe seconded the motion and upon a 3-0 roll call vote, the motion passed and the Board went into executive session at 11:34 a.m.

At 11:41 a.m. Chair Westbrook moved to resume open session and stated that and pursuant to sections 10-15-1(I)(l) and 10-15-1(J), the only matters discussed in the closed executive session was the recommended Decision in *AFSCME v. NM Human Services Department*; PELRB No. 123-17. His motion was seconded by Member Bledsoe and the Board passed the motion after a roll call vote 3-0. Vice-Chair Bartosiewicz moved to uphold the decision of the Hearing Officer. The motion was seconded by member Bledsoe. A roll call vote was taken in which Chair Westbrook voted “aye” but stated that it was a “close call”. Vice Chair Bartosiewicz and member Bledsoe both voted “aye” so the motion passed unanimously.

10. **Approval of Amended Certification.** In *Rio Rancho Police and Dispatchers Association & City of Rio Rancho*; PELRB 306-18 & 309-17 Consolidated, the parties have agreed to a change to the name of the recognized collective bargaining representative pursuant to NMAC 11.21.2.35. Dina Holcomb addressed the Board on behalf of the City giving a brief synopsis of the history of this bargaining unit’s recognition and the necessity of amending certification to reflect the proper name of the recognized representative. She explained that the parties also agreed to change the unit description to reflect current job titles and to add four additional positions to the unit description: (1) Crime Analyst; (2) Property and Evidence Tech; (3) Lead Property and Evidence Tech; and, (4) Public Safety Aide. Director Griego told the Board that the union’s counsel, John D’Amato spoke to him yesterday to say that while he could not be at the Board meeting he favored granting the Petitions in the consolidated cases.

After review of the proposed Amended Certification Ms. Holcomb requested addition of the position “Communications Shift Supervisor” that had inadvertently been left out. With that correction Chair Westbrook moved to approve the Amended Certification. His Motion was seconded by Member Bledsoe and upon a 3-0 roll call vote, the motion passed.

11. **Approval of Rule Changes.** Discussion was held with regard to changes to the proposed rules discussed at the Board’s meeting on September 4, 2017. Member Bledsoe moved to recess in order to allow the Executive Director time to review the suggested changes to the proposed rules and his motion was seconded by Chair Westbrook. The motion to recess in order to give the Director time to review the proposed changes to NMAC 11.21.1.7, 11.21.1.10 and 11.21.1.24 passed unanimously after a roll call vote and the Board recessed at 11:55 a.m.

At 12:20 p.m. the Board reconvened upon a motion by Chair Westbrook, seconded by Member Bledsoe and a unanimous roll call vote. The Chair moved to approve the proposed rules NMAC 11.21.1.7, 11.21.1.10 and 11.21.1.24 with the following changes:

- (1) the word “transmission” will be changed to “submission” throughout.
- (2) Subsection 10 of NMAC 11.21.1.7 will read: “Electronic submission’ means the filing of a pleading or other document with the Board using the electronic system established by the PELRB, service by the parties, or email communications.”.
- (3) Subsection 11 of NMAC 11.21.1.7 will be deleted in its entirety.
- (4) In NMAC 11.21.1.10, subsection A, the sentence “Documents sent to the board via facsimile (“fax”) transmission will be accepted for filing as of the date of transmission only if an original is filed by personal delivery or deposited in the mail no later than the first work day after the facsimile is sent.” Will be deleted in its entirety.

Member Bledsoe seconded the motion, which passed unanimously after a roll call vote.

12. There was no need to address agenda item 11, Director’s Reports concerning FY20 Appropriations and Independent Auditor Contract as those matters had been address at the Board’s July meeting.
13. **Next Meeting Date and Adjournment.** After discussion the Board agreed to hold its next meeting on Tuesday, October 2, 2018 at 9:30 a.m. So moved by member Bledsoe and seconded by Chair Westbrook. That motion was unanimously approved 3-0. Chair Westbrook then moved to adjourn. His motion was seconded by member Bledsoe and unanimously approved 3-0. The Board adjourned at 12:15 p.m.