



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

**Minutes of Board Meeting held Tuesday, April 25, 2017 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. Vice-Chair Bartosiewicz appeared by phone and Member Bledsoe was present.
2. **Approval of Agenda.** Member Bledsoe moved to approve the agenda. Vice-Chair Bartosiewicz seconded the motion and the agenda was approved 3-0 after a roll call vote.
3. **Approval of February 7, 2017 meeting minutes.** Member Bledsoe moved to approve the minutes of the Board's February meeting. Vice-Chair Bartosiewicz seconded the motion and upon a 3-0 roll call vote the minutes were approved without modification.
4. **Public Comments.** There were no public comments.
5. **Review and Certification of Election Results – Appeal of Recommended Decision.** *Santa Fe Community College-American Association of University Professors and Santa Fe Community College; PELRB 311-16.*

Director Griego presented the results of the election held March 29, 2017: Out of 48 eligible voters, 42 cast votes. Therefore the 40% threshold for a valid election was met. The total number of votes in favor of representation by AAUP was 39 and 3 voted for "no representation". There were 24 challenged ballots, 10 of which are excluded without objection. 14 of the challenged ballots were cast by Department Directors or Chairs of Departments that are at issue because the union appeals from the Executive Director's decision that they are excluded from bargaining as "management employees" under the PEBA §4 (O).

Shane Youtz and Keith Mier were present for the Union and the College, respectively. Mr. Youtz began by arguing that the positions at issue were primarily educators and only secondarily took on administrative duties. Because it was those secondary administrative duties that Director Griego determined qualified those positions for supervisory status, he erred in his decision.

Mr. Youtz claimed that the facts found by Director Griego support the conclusion that over half of the positions at issue did in fact spend more than 50% of their time in the classroom as opposed to tending to supervisory or managerial duties. Director Griego found that "While all Department Chairs and Directors may not be *primarily* engaging in management functions compared to their teaching load, some are." That finding is inconsistent with a conclusion that all of the Directors and Chairs are excluded as managers.

Chair Westbrook asked whether the Board could allow those Department Chairs and Directors who are primarily in the classroom into the bargaining unit and exclude others. Mr. Youtz responded that the Board could take that action, but it was his fear that dividing the group of Department Chairs and Directors would pose logistical problems for the College.

Mr. Mier summarized the standard of review and that argued that that Director Griego had appropriately applied the law by recommending that Department Chairs and Directors remain out of the unit. Mr. Meir argued that Department Chairs and Directors do not share a community of interest with a unit composed of full time professors without any administrative duties.

Chair Westbrook asked how the College reconciles the language in the Hearing Officer's Finding 14, that "While all Department Chairs and Directors may not be primarily engaging in management functions compared to their teaching load, some are..." Mr. Meir stated that in some Departments there are only two or three faculty and so Department Chairs and Directors in those Departments have no choice but to carry a heavier teaching load, otherwise the department would not exist. He argued that whether or not they are in the classroom more often is not the question. They must nevertheless perform all of the managerial function the hearing Officer found are performed by other Chairs and Directors in addition to the higher teaching load. Chair Westbrook opined that the question of whether they are *primarily* involved in management activities is the controlling question. Mr. Meir argued that the term "primarily involved" should not relate to the amount of time spent in those activities but to the purpose for which the position exists.

Member Bledsoe asked for further explanation of the case law cited by the College as it relates to effectuating policy of the employer. Mr. Meir further explained his view that the division of management employees should be drawn as the Hearing Officer has done, without reference to the amount of time spent in the classroom. He asked that if the term "primarily involved in management duties" is construed by the Board to refer to the amount of time spent in those duties, that the matter of whether the Department Chairs and Directors share a community of interest with the rest of the faculty be remanded to the Hearing Officer for further findings.

Chair Westbrook asked whether the record before them was sufficient to make a determination as to which Department Chairs and Directors are not primarily engaged in management function. Mr. Mier opined that they could only if the Board determined that "primarily engaged in management" refers to the amount of time.

Mr. Youtz offered rebuttal to Mr. Meir's points and argued that the Board cannot exclude Chairs and Directors that the Hearing Officers found are not primarily engaged in management activities. He proposed that the Hearing Officer determine community of interest on remand. Member Bledsoe asked a question about whether a hypothetical faculty member spending 75% of his time teaching and 25% on management duties had authority to discipline a subordinate who was not performing to standard. Mr. Youtz reminded him that the hypothetical employee's "supervisory" status is not an issue but that the level of disciplinary authority may have some bearing on the "community of interest" question. Mr. Mier disagreed with Mr. Youtz' rendition of the level of disciplinary authority but not with the point that discipline is a supervisory attribute and not related to the determination that the Chairs and Directors are managers.

Director Griego informed the Board that the outcome of the election would not be changed by inclusion or exclusion of the Chairs and Directors because of the margin of support after the ballot tally.

Chair Westbrook moved that that Board go into executive session pursuant to NMSA 10-15-1(H)1, to discuss PERLB 311-16. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote. The Board went into executive session at 10:45.

Chair Westbrook moved that the Board go back into regular session pursuant to NMSA 10-15-1(I)1 and 10-15-1(J). He also stated that the only item discussed was item number 5, PERLB 311-16. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

Chair Westbrook then moved to certify the election results, remand this item back to Director Griego for further findings to determine which Department Chairs and Directors are primarily engaged in managerial or supervisory duties and to determine whether a community of interest exists between the Professors and the Department Chairs and Directors. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

6. **Review and Certification of Card Count Results.** *NMCP SO & Colfax County*; PELRB 301-17. Director Griego reported to the Board that New Mexico Coalition of Public Safety Officers (NMCP SO) filed a Petition for Recognition in Colfax County and that the County had opted for a card count instead of holding an election. The card count was held on March 15, 2017. After excluding three invalid cards, five valid interest cards representing 71% of the putative bargaining unit were counted. Chair Westbrook moved to ratify the election results in PELRB 301-17 and the Director's certification of the bargaining unit. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

7. **Stipulation of Partial Withdrawal and Stipulation of Accretion.** *Santa Fe County Firefighters Association and Santa Fe County*; PELRB No. 309-16. Director Griego reported that in this case the Union filed a petition to amend an existing firefighters bargaining unit to include various Captains positions. Before a unit composition hearing was held, the parties agreed on an appropriate unit. Mr. Griego agreed that the unit agreed to by the parties was an appropriate unit. Present for the County was Rachel Brown. The Union did not have a representative present.

Ms. Brown affirmed the Director's report and added that the parties had agreed to the inclusion of the Training Captains into the unit but that the other three types of Captains would remain excluded.

Chair Westbrook moved to ratify the Director's issuance of an Amended Certification of Representation in PELRB 309-16. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

8. **Voluntary Dismissal.** *NEA-Clayton v. Clayton Schools*; PELRB No's. 114, 115 & 116-16. Director Griego reported that the Union had withdrawn the three cases in favor of a new filing, PELRB No. 117-16. No Board action is required at this time.

9. **Summary Dismissals.**

- a. *NMCPSO v. City of Rio Rancho and Rio Rancho Police Department*; PELRB 103-17
- b. *AFSCME Council 18, Locals 923 and 1188 v. City of Española*; PELRB 107-16

Director Griego reported to the Board that these cases were summarily dismissed for failure to abide by deadlines imposed by the Board's rules. They are presented for informational purposes only and no Board action was required. After comment by Mr. Adrian Terry, a representative of NMCPSO, Mr. Griego clarified that the Union withdrew PELRB 103-17 prior to summary dismissal and that case would better be characterized as a voluntary dismissal.

10. **Withdrawal as Exclusive Representative and Disclaimer of Interest.** *Fraternal Order of Police and New Mexico Motor Transportation Employee Ass'n*; PELRB 302-17. Director Griego reported to the Board that as a result of a reorganization of the New Mexico Department of Public Safety several years ago, the Motor Transportation Department Officers, who were part of a bargaining unit, were brought into the State Police Department, which does not engage in collective bargaining, leaving a few clerical and administrative staff positions in the former bargaining unit. In order to clarify FOP's role regarding enforcement of rights under the expired contract and negotiation of a successor contract FOP decided to disclaim its interest continuing representation of the bargaining unit.

Director Griego reported that Notice of the Union's intent to disclaim interest was posted for a period of 10 days and that not comments or objections were received from past or present members of the bargaining unit.

Chair Westbrook then moved to ratify the Disclaimer of Interest in PELRB 302-17. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

11. **Rulemaking Hearing.** Director Griego reported that, of the five rules listed on the Board's Agenda, two, NMAC 11.21.1.26 Form of Papers and NMAC 11.21.2.8 Commencement of Case were not intended to be revised at this time and so, were not part of the published notice of rulemaking activities. Accordingly, those two rules are not before the Board for action. Mr. Griego confirmed that rule-making notice had been properly published as to the remaining items, NMAC 11.21.1.10 Filing with the Director or the Board, NMAC 11.21.1.24 Service and NMAC 11.21.1.7 Definitions. Director Griego stated that the purpose for amending the rules was to permit electronic submissions for filing with the Board and for service of pleadings. The proposed rule changes before the Board are the result of several meetings with an *ad hoc* committee formed for the purpose of drafting the requested changes. A public hearing was held to allow comment on the proposed rule changes and no additional comments from the public were received.

Chair Westbrook moved to adopt the amendments to the rules as proposed and to direct the Executive Director to proceed to the next step of the rulemaking process, publication in the

New Mexico Register. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

12. **Executive Session 10-15-1-H(2) – Personnel Matters.** Chair Westbrook moved that that Board go into executive session pursuant to NMSA 10-15-1(H)2 to discuss personnel matters. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote. The Board went into executive session at 11:03.

Chair Westbrook moved that the Board go back into regular session at 11:30 a.m., pursuant to NMSA 10-15-1(I)1 and 10-15-1(J). He also stated that the only item discussed was agenda item 12, personnel matters. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote.

13. **Director's Reports.** Director Griego reported having received a ruling from the Second Judicial District Court, Judge Butkus, on the pending appeal of the Board's Order and Decision in PELRB 122-14 (D-202-CV-2015-03814). A copy of that decision was sent to the Board for review prior to the meeting. Judge Butkus' decision found inconsistencies and remanded the case back to the Board for further proceedings consistent with his Order. Before taking action on the remand, however, Director Griego informed the Board that one of the parties, Communication Workers of America, petitioned for review of Judge Butkus' Order to the New Mexico Court of Appeals. Therefore, it would be appropriate to delay any action on the remand until appellate review has been exhausted. The Board agreed and will monitor the progress of the matter before the Court of Appeals.
14. **Set Next Meeting Date and Adjournment.** The Board set Tuesday June 6, at 9:30 a.m. for their next meeting. Chair Westbrook moved to adjourn. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote. The meeting was adjourned at 11:34 a.m.