



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

**Minutes of Board Meeting held Friday, April 1, 2016, 9:30 a.m. at the PELRB offices, 2929
Coors Blvd. NW, Albuquerque, New Mexico; Chair Duff Westbrook, presiding.**

1. **Call to Order.** Chair Westbrook called the meeting to order at 9:30 a.m. Chair Westbrook, Vice- Chair Bartosiewicz and Member Bledsoe were present.
2. **Approval of Agenda.** Vice–Chair Bartosiewicz moved to approve the Agenda. Member Bledsoe seconded the motion. Upon a 3-0 roll call vote the Agenda was approved.
3. **Request for Pre-Adjudication Injunctive Relief.** In the context of the first agenda item, AFSCME’s request for Pre-Adjudicative Injunctive Relief in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16, Luna County filed a Motion to Disqualify Thomas Griego and Board Chair Duff Westbrook. Argument concerning Disqualification of the Board Chair was heard first. Jonlyn Martinez addressed the issues for Luna County. She pointed out two complaints that had been filed against Luna County and that in one case had taken the deposition of a County designated witness and so because of his previously adverse litigation and because of particular knowledge obtained by the deposition about standard operating procedures at the Luna County Detention Center the Board Chair should be disqualified from hearing this case.

Shane Youtz spoke on behalf of AFSCME explaining why the prior litigation brought by Mr. Westbrook against Luna County had no bearing on the present case.

Member Bledsoe moved to go into executive session pursuant to §10-15-1(H)(3) of the Open Meetings Act in order to deliberate on the question of Mr. Westbrook’s disqualification. The Motion was seconded by Vice-Chair Bartosiewicz. Upon a 3-0 roll call vote the Board went into executive session at 9:50 a.m.

The Board returned to open session at 10:05 a.m. after a motion by Chair Westbrook, seconded by Vice-Chair Bartosiewicz and unanimously approved 3-0. The Chair announced that during the closed session the only matter discussed was the disqualification of the Board Chair. He stated that there was no reason that he could not sit impartially on this matter. Vice-Chair Bartosiewicz moved to deny the Motion to Disqualify Mr. Griego and Mr. Westbrook but after being reminded by the Board’s counsel, Jennifer Salazar that the only matter upon which the Board deliberated was the Disqualification of Chair Westbrook, he amended his motion to be that Duff Westbrook be retained on the Board. Chair Westbrook sated that he understood Mr. Bartosiewicz’ motion to be one to deny the Motion to Disqualify Chair Westbrook and Mr. Bartosiewicz agreed that was a correct interpretation. Mr. Bledsoe seconded the amended Motion and it passed 3-0.

The Board then heard presentations on the request for injunctive relief. Mr. Youtz requested an

injunctive order reinstating Mr. Gilmore to his job pending adjudication of the PPC and informed the Board that the Director had issued a Default against the County on the PPC and that the matter had therefore been adjudicated on its merits in favor of the Union and Mr. Gilmore.

Ms. Martinez stated that she did not receive timely notice of the PPC. She e-mailed her Answer but received default because the Answer was due on the 28th. She had the Answer hand-delivered and claims it was timely filed. So, the default is inappropriate and claimed it was retaliatory for having filed the Motion to Disqualify the Director. The Director opined that the matter as addressed by Ms. Martinez is more appropriately addressed in the May meeting after he has had a chance to more fully respond.

Mr. Youtz addressed the union's request for immediate injunctive relief, based on PEBA's prohibition against retaliating against an employee for providing testimony at a PELRB hearing. He told the Board that three out of four witnesses testifying for the union at the PELRB hearing has suffered adverse employment action. He pointed out that the Post Orders that were used at the PELRB hearing were agreed to by the County in a stipulated Pre-Hearing Order and were discussed without objection in other communications among counsel. He presented Mr. Gilmore's termination notice as evidence that he was terminated for providing the Post Orders. He introduced the policy claimed to have been violated and argued that it was not violated.

Andrew Gilmore was sworn in and gave testimony about his testimony at the prior PELRB hearing and about his termination. Mr. Gilmore was cross-examined by Ms. Martinez and examined again on redirect about his understanding of questions asked by Ms. Martinez.

Ms. Martinez then presented policies and procedures for the Board to review. After some confusion over whether documents being submitted were current or relevant, the Board determined to accept 2016 policies as proffered as there was no material difference between them the 2015 rules relied upon by the Union. She explained why it is important to keep Post Orders confidential and what actions by Mr. Gilmore constituted violations of procedures.

Mr. Bledsoe asked about the layout of the facility and whether copies can be made in master control and whether policies requiring logging out procedures from Master control. Mr. Youtz argued that there is no evidence that the documents were released to an "unauthorized" person as required for a breach of the procedure because the union was authorized to receive them in the course of the PELRB proceeding.

Ms. Martinez referred to a portion of Mr. Gilmore's testimony at the PELRB hearing in which he agreed they were confidential. Mr. Bledsoe asked Ms. Martinez more questions about the Post Orders and whether the definition of "authorized" and "unauthorized" persons exists. In response to Mr. Westbrook's question what the basis is for the County's position that the Union is not "authorized" she responded they are unauthorized because they have "no need" for the Post Orders. Mr. Youtz objected to testimony from the County's witness regarding other disciplinary action of other employees. There was further argument over Ms. Martinez' proffered testimony and exhibit offered for the proposition that Mr. Gilmore's testimony at the PELRB hearing was inconsistent with his statement in an Internal Affairs investigation. Mr. Youtz challenged whether inconsistency had been demonstrated; arguing to the contrary that the exhibit demonstrated consistency.

The Board determined that it would not benefit from hearing testimony regarding other employee discipline and evidence regarding Mr. Gilmore's e-mail "sent" file but accepted Ms. Martinez' offer of proof.

After conclusion of the parties' presentations, Ms. Dina Holcomb was granted permission to address the Board concerning matters she learned at the hearing today concerning disqualifying Chair Westbrook from serving on the Board. Ms. Holcomb made a Motion asking Chair Westbrook be disqualified from deliberating on the matter of PELRB No. 309-15. Mr. Westbrook opined that the Board had previously addressed the same objection from Ms. Holcomb but she stated that she wanted to make a record of her objection. Mr. Westbrook reiterated that in his legal career he has represented a number of public employees in a variety of issues but has never represented a public employee in labor related issues. Ms. Holcomb stated she did not believe PEBA differentiates between what type of representation of public employees, but simply states a Board members shall not be an employee of an organization that represents public employees without qualifiers.

Mr. Youtz opined that the statute referenced by Ms. Holcomb refers to employment by unions recognized under PEBA. Ms. Holcomb stated PEBA states a Board member cannot be an employee of a labor organization, which is not being alleged with regard to Chair Westbrook, but also states cannot be representing public employees or public employers. She stated we must use the plain language of the statute. Mr. Youtz also asked that the Board require HSD to comply with Director Griego's order directing the parties to agree on a hearing date. He stated he contacted Ms. Holcomb several times and she refused to comply with the Order. Mr. Youtz stated on March 9th the Director Ordered the parties to select a new hearing date and proposed March 30th, and if Ms. Holcomb had cooperated the hearing would have already occurred. Mr. Youtz stated the State did not comply with the Order. Ms. Holcomb stated Mr. Youtz has misrepresented what the letter states to the Board. The letter does not contain an order or directive, but asks counsel for Petitioner to do something. The letter actually states not March 30th inasmuch as the Director was not available on March 30th for a hearing, so a hearing would not be completed. Ms. Holcomb states the emails show HSD did not refuse to set a date, but informed Petitioner that it was filing a request for an interlocutory appeal in *AFSCME, Council 18 and New Mexico Human Services Dep't*; PELRB No. 309-15.

Mr. Westbrook moved to go into executive session pursuant to §10-15-1(H)(3) of the Open Meetings Act in order to deliberate on the question of AFSCME's request for Pre-Adjudication injunctive relief in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16 and the Request for Interlocutory Appeal in *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15, in which argument had been heard during the preceding meeting in March. The Motion was seconded by Vice-Chair Bartosiewicz. Upon a 3-0 roll call vote the Board went into executive session at 11:25 a.m.

The Board returned to open session at 11:48 a.m. upon a Motion by Chair Westbrook, seconded by Vice-Chair Bartosiewicz approved unanimously. The chair stated that during the closed session the only matters discussed were the request for pre-adjudication injunctive relief in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16 and the request for Interlocutory Appeal in *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15. With regard to the request for pre-adjudication injunctive relief in *Gilmore v. Luna County*, PELRB No. 105-16 Chair Westbrook moved that the request be denied for failure to establish sufficient basis for such relief. His motion was seconded by Vice-Chair Bartosiewicz and passed upon a 3-0 roll call vote. With regard to the request for Interlocutory Appeal in

AFSCME, Council 18 & New Mexico Human Services Dep't, PELRB No. 309-15, the Chair moved to deny the request stating that interlocutory appeals are disfavored and there will be an opportunity to appeal at the end of the case. His motion was seconded by Member Bledsoe and passed upon a 3-0 roll call vote. With regard to the scheduling in PELRB No. 309-15 Chair Westbrook asked the parties' to confer in good faith on a hearing date quickly and that any appeal could be taken up thereafter.

4. **Adjournment.** Vice-Chair Bartosiewicz moved to adjourn the meeting. Member Bledsoe seconded the motion. After a roll call vote the motion passed 3-0 and the meeting was adjourned at 11:48 a.m.