



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

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

1. **Call to Order.** Chair Westbrook called the meeting to order at 9:32 a.m. Vice-Chair Bartosiewicz and Member Bledsoe were also present.
2. **Approval of Agenda.** Member Bledsoe moved to approve the Agenda. Vice-Chair Bartosiewicz seconded the motion. On a 3-0 roll call vote the motion passed.
3. **Approval of July 13, 2016 meeting minutes.** Member Bledsoe moved to approve the Minutes of the Board's July 13, 2016 meeting. Vice-Chair Bartosiewicz seconded the motion. Upon a 3-0 roll call vote the Minutes were approved.
4. **Public Comments.** There were none.
5. **Approval of Consent Election Agreements. *NEA Clayton & Clayton Public Schools; PELRB 302-16.*** Present for the Union was Roxie De Santiago. No representative was present for the Clayton Public Schools. Ms. De Santiago reported to the Board that there was an oversight in the parties' last CEA which required correction. However, Dina Holcomb, counsel for the Clayton Public Schools, was unavailable to concur on the changes made by Ms. De Santiago. For this reason Ms. De Santiago asked the Board to table the approval of the CEA until Ms. Holcomb is able to offer her concurrence. There was a discussion about whether there was sufficient time after the next meeting to accommodate notice posting and Ms. De Santiago represented that the deadline was September 14, one day after the Board's next meeting on September 13, 2016.

Chair Westbrook moved to table the CEA. Vice-Chair Bartosiewicz seconded the motion. On a 3-0 roll call vote the motion passed.

6. **Certification of Election Results. *AFSCME and Rio Arriba County; PELRB No. 306-16.*** Director Griego reported to the Board that during an election held on July 25 & 26 in Rio Arriba County, AFSCME prevailed with a total of 14 votes cast out of 18 eligible voters with 12 being in favor of union representation and 2 being in favor of no representation. There were no objections to the conduct of the election filed.

Chair Westbrook moved to approve the Election Results and issue certification in *AFSCME and Rio Arriba County; PELRB 306-16.* Vice-Chair Bartosiewicz seconded the motion. On a 3-0 roll call vote the motion passed.

7. **Summary Dismissal. *Benjamin C. Wolfe v. APS and Karen Rudys; PELRB No. 119-16.*** Director Griego reported to the Board that he received a PPC from an Albuquerque Public School employee but because APS has its own grandfathered local board he found the PPC to be inadequate and as required by our rules, issued a letter allowing the complainant 5 days to amend the PPC or it would be dismissed. Mr. Wolfe did file an amended PPC within the required timeframe, but that amendment did not alter the conclusion previously reached and Director Griego dismissed the PPC.

Mr. Wolfe was present and explained to the Board that he attempted to file “labor charges” against APS regarding collusion, individual bargaining and failure to follow the CBA, but was unsuccessful. Mr. Wolfe went on to discuss the impropriety and lack of appellate remedies in allowing the superintendent authority to decide which claims went to the APS Labor Board and which did not. He then claimed that the Union’s (American Federation of Teachers in this case) CBA ratification process was flawed and that the APS Board had modified their policy since attaining grandfathered status and should thus be subject to the PELRB’s jurisdiction.

Chair Westbrook asked Director Griego whether the APS Board had in fact changed its policy since attaining grandfathered status. Mr. Griego replied that in order ascertain those facts he would have to hold a hearing which he cannot conduct if he has no jurisdiction. He reminded that Board that the last time the PELRB took a case relating to the City of Albuquerque’s local board, which was alleged to be non-functional, the District Court ruled that the PELRB did not have jurisdiction.

Chair Westbrook clarified that Mr. Wolfe’s only remedy at this point would be to file in District Court. Director Griego concurred. Member Bledsoe moved to ratify the Summary Dismissal. Vice-Chair Bartosiewicz seconded the motion. On a 3-0 roll call vote the motion passed.

8. **Voluntary Dismissals.**

- a. *AFSCME, Council 18 v. City of Santa Fe; PELRB No. 117-16.*
- b. *Valencia County Sheriff’s Officers Association v. Valencia County Sheriff’s Office; PELRB 119-16.* Director Griego reported to the Board that the parties in 117-16 had completely settled their dispute and that the parties in 119-16 had almost fully settled. The only remaining issue was to be presented to and ratified by the Valencia County Commission on Wednesday August 10, the following day. All parties involved were confident that the Commission would accept the terms of the settlement.

9. **Appeals from Recommended Decision of Hearing Officer.**

- a. *AFSCME, Council 18 v. City of Española; PELRB No. 124-15.* Counsel present was Wayne Bingham and Shane Youtz for the City and the Union, respectively. Mr. Youtz began by arguing union animus and discrimination based on the elimination and substitution of a written detective’s exam for an oral one when three union members had the highest scores on the written exams. Mr. Youtz then claimed that one union member was terminated because he wrote a strongly worded and potentially offensive letter to his Chief of Police. It was Mr. Youtz’s claim that due to that employees’ position as president of the local within the union, his speech was protected under the NLRA and should thus be protected under the PEBA. He stressed that the Hearing Officer erred by analyzing the case under First Amendment protected speech standards.

Mr. Bingham began by arguing that the speech contained in the letter went above and beyond anything contemplated by the NLRA and was not protected by PEBA or the NLRA. He then argued against the anti-union animus claim by noting that the other unions active in the City of Española were not having any similar issues. Mr. Bingham claimed that the termination of the employee in question was for a legitimate business reason and had resulted from an accumulation of incidents ending with the letter in question.

Chair Westbrook moved that the Board go into executive session pursuant to 10-15-1-H(3) of the OMA to discuss agenda item 9a, *AFSCME, Council 18 v. City of Española*, PELRB No. 124-15. Member Bledsoe seconded the motion. On a 3-0 roll call vote the motion passed. The Board went into executive session at 10:58.

The Board came back into session and Chair Westbrook affirmed that the only matters discussed in the executive session were related to *AFSCME, Council 18 v. City of Española*, PELRB No. 124-15.

Chair Westbrook moved to affirm the Hearing Officer's Report and Recommended Decision, including its Findings, Conclusions and rationale, except with regard to the Hearing Officer's reliance on the U.S. Supreme Court case of *Connick v. Meyers*. Instead, by application of the factors set forth by the NLRB in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979), the Board obtained the same result as that reached by the Hearing Officer in his Recommended Decision. Member Bledsoe seconded the motion. On a 3-0 roll call vote the motion passed.

- b. **AFSCME, Council 18 and Andrew Gilmore v. Luna County; PELRB 105-16.** Director Griego provided the Board with a brief history of the case before them and Chair Westbrook recused himself from this section of the meeting as counsel for Luna County had requested his recusal at the previous meeting. Mr. Griego then informed the Board that the day prior to the meeting he had received a request for a continuance from Luna County based on insufficient notice. Director Griego felt compelled to deny that motion because NMAC 11.21.3.19 makes the taking of oral argument during a board appeal optional and at the Board's discretion. However, he made it clear in his denial that he was passing no judgment regarding the necessity for oral arguments at a board appeal and that he was leaving it up to the Board whether they wanted to hear further argument or whether they would rule on the pleadings alone. Present for AFSCME was Shane Youtz. Luna County did not have a representative present.

Mr. Youtz asked to address the Board on the limited matter of the continuance alone and without addressing the merits of the appeal. Mr. Youtz reminded the Board that this was not the first proceeding with Luna County where counsel for Luna County, Jonlyn Martinez, chose not to appear before them and suggested the motion to continue was interposed for delay. He then reminded the Board that the notice to parties regarding items on the Board's agenda for its regularly scheduled meetings is a courtesy extended by Director Griego and his staff. There is nothing in the rules or regulations requiring that notice be given to parties prior to the meeting, other than the 72 hour posting requirement for the Agenda. Mr. Youtz argued that it would be special treatment for the County and set a precedent of requiring individualized notice be given to all parties appearing before the Board at a certain time prior to the meeting. Mr. Youtz concluded that special treatment is inappropriate and the Board

should deny the Request for a Continuance.

Without taking oral argument Vice-Chair Bartosiewicz moved that the Board go into executive session pursuant to 10-15-1-H(3) of the OMA to discuss item 9b, *AFSCME, Council 18 and Andrew Gilmore v. Luna County*, PELRB 105-16. Member Bledsoe seconded the motion. On a 2-0 roll call vote with Chair Westbrook abstaining, the motion passed. The Board went into executive session at 11:21 a.m.

The Board came back into session at 11:37 a.m. and Vice-Chair Bartosiewicz affirmed that the only matters discussed in the executive session were related to *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16.

Vice-Chair Bartosiewicz moved to affirm the Hearing Officer's Denial of the Motion for Continuance. Member Bledsoe seconded the motion. On a 2-0 roll call vote with Chair Westbrook abstaining, the motion passed.

Vice-Chair Bartosiewicz moved to affirm the Hearing Officer's Recommended Decision and adopt it as its Order. Member Bledsoe seconded the motion. On a 2-0 roll call vote with Chair Westbrook abstaining, the motion passed.

10. **New Business**

- a. **Amendment to Lease Agreement.** Director Griego reported to that Board that at the end of this calendar year the PELRB Office lease was set to expire. The General Services Department – Risk Management Department handled negotiation of the 5 year amendment with the landlord and managed to get rates well under area market value for the duration of the contract. There is a yearly escalator clause which will add \$.20 per square foot per year. This is a very reasonable increase rate.

11. **Next Board Meeting.** At its July meeting, the Board chose Tuesday, September 13, at 9:30 a.m. for their next meeting.

12. **Adjournment.** Chair Westbrook moved to adjourn. Vice-Chair Bartosiewicz seconded the motion and upon a 3-0 roll call vote the meeting adjourned at 11:40 a.m.