



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

**Minutes of Board Meeting held Tuesday, August 1, 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 9:30 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 and the agenda was approved 3-0 after a roll call vote.
3. **Approval of June 6, 2017 meeting minutes.** Member Bledsoe moved to approve the minutes of the Board's April 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. **Voluntary Dismissals.**
 - a. *Hall v. Belen Consolidated Schools*; PELRB No. 106-17
 - b. *RRAFF/LAFF Local 4877 v. City of Rio Rancho*; PELRB 111-17
 - c. *LAFF Local 4737 v. City of Sunland Park*; PELRB 109-17

Director Griego explained to the Board that each of these cases had been settled and withdrawn as a condition of the settlements prior to a merits hearing. No Board action was is required.

6. **Review of Election Results.** *AFSCME, Council 18, Local 3103 and San Miguel County*; PELRB 308-16. Director Griego explained to the Board that AFSCME was seeking to accrete Detention Center Lieutenants into the unit. After a valid election held on Friday, June 2, 2017 a majority of eligible voters (a total of 3) cast their ballots in favor of representation by AFSCME. No objection to the conduct of the election was filed. Dina Holcomb, speaking on behalf of San Miguel County, confirmed the Director's presentation.

Chair Westbrook moved to approve the Director's issuance of the Amended Certificate of Representation accreting Lieutenants in to the bargaining unit. Member Bledsoe seconded the motion and upon a 3-0 roll call vote the motion was approved.

7. **Review of Hearing Officer's Report and Recommended Decision.**
 - a. *AFSCME, Council 18 v. NM Dep't of Workforce Solutions*; PELRB No. 102-17. Robert Dale Morrison appeared for the Department of Workforce Solutions (DWS) and James Montalbano appeared for AFSCME, Council 18. Director Griego told the Board that because

the deadline for filing appeals to his Recommended Decision in this case had not yet expired and at least one of the parties had indicated a desire to submit the Recommended Decision to the Board for review, it could not yet take up review of that decision. However, he asked for the Board's guidance on how to deal with DWS's counsel having added a document request to a subpoena after it had been issued by the Director and after denial of the Employer's request to conduct discovery in the case. The Director presented the Board's Rule governing the issuance of subpoenas, NMAC 11.21.1.19, which states:

"A. Any party to a proceeding in which a notice of hearing has issued may file a written request with the director for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. Deadlines for requesting subpoenas shall be established pursuant to the scheduling order agreed to by the parties. A subpoena request shall state the name and number of the case; identify the person(s) or documents sought; and state the general relevance to an issue in the case of the testimony or documents sought. The director may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears to the director that the documents or testimony sought are not relevant to issues in the case. Otherwise, the director shall immediately issue a subpoena to the requesting party.

B. The director, a hearing examiner, or the board may issue subpoenas on the initiative of the director, hearing examiner or board, in which case a showing of relevance is not required, and a notice of hearing need not have been issued."

After hearing argument by both counsel and questioning by Board members Westbrook and Bledsoe, Chair Westbrook admonished the Employer's counsel, saying that he did not follow the Board's rules regarding the issuance of subpoenas. Furthermore, after DWS's Motion to have the Union produce "all of their files and records of any nature regarding the classification study and any action taken as a result of the study" was denied, and the Director instead issued subpoenas directing witnesses to appear at the Merits Hearing without requiring the production of documents as he is authorized to do pursuant to Rule 11.21.1.19, DWS Counsel then altered those issued subpoenas as an "end run" around the Director's denial of his discovery motion. By doing so, DWS Counsel acted improperly. Chair Westbrook cautioned him to refrain from similar conduct and read the Board's Rules more carefully in the future. Also, since Mr. Morrison prevailed on the issue there was no prejudice to his client.

Mr. Morrison denied any "end run" and stated that because of the Board's admonishment it is now his opinion that he specifically, and state agencies in general, are not able to get a fair hearing before the PELRB. Chair Westbrook replied that the Board's record on appeal would suggest otherwise.

8. **Review of Hearing Officer's Letter Decisions.**

- a. *NMCP SO and City of Rio Rancho*; PELRB 303-17 re: Amended Petition for Amendment of Certification.
- b. *Deming Education Association and Deming Public Schools*; PELRB No. 304-17 re: Petition for Recognition of an Incumbent Labor Organization
- c. *Charity Cheung and Deming Public Schools*; PELRB No. 305-17 re: Amendment of Certification.

Director Griego elected to address all three letter decisions together because they were in some ways inter-related with each other. Beginning with *NMCP SO and City of Rio Rancho*; PELRB 303-17 he explained that the Petition sought Amendment of Certification based on a name change. That case involved a very convoluted and complex history with several changes to the bargaining representative's name and affiliations over the years and re-fashioning of the bargaining unit itself after the City changes from a Department of Public Safety system to discreet Fire and Police Departments. Fire Department employees severed themselves from the bargaining representative that had previously served DPS employees, to form a separate bargaining unit. Also, NMCP SO severed its relationship with CWA 7911 in the recent past. After investigating the record of recognized bargaining representatives on file and the submissions by the NMCP SO concerning its relationship with the bargaining unit in question, The Director concluded that there was no "continuity of representation" of the unit by NMCP SO and while it was established that the recognized bargaining representative for part of the bargaining unit in question is an affiliate of NMCP SO, they are not by virtue of affiliation alone, alternative names for the same entity. Therefore, NMCP SO's Petition did not present a simple change in the representative's or the employer's name or affiliation and so was summarily dismissed pursuant to 11.21.2.35 NMAC. No appeal from that letter decision has been taken and consequently no action required of the Board with regard to that case.

Shortly after Letter Decision in *NMCP SO and City of Rio Rancho* was issued, The Director received a Petition by NEA-Deming for Recognition as an Incumbent Bargaining Representative alleging that prior to June 30, 1999 it was recognized as the exclusive representative for a wall-to-wall group of Deming School employees and continues to have sufficient support among those employees, i.e. *Deming Education Association and Deming Public Schools*; PELRB No. 304-17. After investigation of the Petition the Director determined that the interest cards submitted in support of the Petition purport to support "NEA-Deming" a different entity than the incumbent labor organization, "Deming Education Association". Accordingly, NEA-Deming was given 10 days to show cause why its Petition should not be dismissed for lack of adequate support. At about the same time, the Director received the Petition *Charity Cheung and Deming Public Schools*; PELRB No. 305-17 seeking Amendment of Certification originally issued in 1994 recognizing "Deming Education Association" as the exclusive representative based on it changing its name to "NEA-Deming".

Based on the submissions accompanying the Petition in PELRB No. 305-17 it appeared that, as in *NMCP SO and City of Rio Rancho*, PELRB 303-17, there was no "continuity of representation" of the unit in Deming Schools and for the same reason that NMCP SO's Petition was dismissed in PELRB 303-17, so should PELRB No. 305-17. In response to my request for additional information in 304-17, the Petitioner submitted additional documentation sufficient to convince the Director that, unlike the *Rio Rancho* case there is continuity of representation that is not affected by changing its name to "NEA-Deming" and there is a sufficient showing of ongoing majority support for that representative.

The Director then informed the Board that because, in the context of deciding whether there was continuity of representation for the purpose of DEA's Petition for Incumbent Recognition, he found that its affiliation with NEA-NM was present from the beginning, his summary dismissal of its Petition to Amend the certification on June 12, 2017 was improvident and he reversed himself granting the amendment of certification due to a name change.

The School District responded to the Petition for Recognition by objecting to the scope of the bargaining unit because the unit is not established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved as required by NMSA 1978 §10-7E-13 (2003).

In the letter decision granting the amendment of certification, the Director informed both parties that in order to ensure that all parties have notice and an opportunity to present their views, Deming Schools could present its arguments at the Board's August 1, 2017 agenda for review in order that it may hear any opposition to granting both the Petition for Recognition and the Amendment so that an Amended Certification of Recognition may issue designating NEA-Deming as the incumbent representative.

Both parties appeared at the meeting; NEA-Deming being represented by Roxie P. Rawls De Santiago and Jiadai Lin; Deming Schools by Andrew Sanchez and Laura Sanchez-Rivet. After hearing argument of counsel and questioning by Chair Westbrook and Member Bledsoe Chair Westbrook moved to uphold the Director's Letter Decisions in both 304-17 as well as in 305-17 on the basis that there was sufficient non-anecdotal, albeit circumstantial evidence of continuity of representation between the two entities and that the recognition of the wall-to-wall bargaining unit is mandated by NMSA 1978 §10-7E-24(A) which says that bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units. Furthermore, the Board's Rule regarding Unit Clarification, NMAC 11.21.2.37 expressly exempts bargaining units under Section 24(A) of the PEBA, as this unit is.

Vice Chair Bartosiewicz seconded Chair Westbrook's motion and upon a roll call vote, the motion passed 3-0.

9. **Director's Reports - FY19 Agency Strategic and Annual Performance Plans.** Director Griego reminded the Board that as part of the annual budget process, performance measures as well as strategic goals and plans for the agency must be submitted to the Department of Finance and Administration soon and after their approval to the Legislative Finance Committee. Because of current austerity measures in response to recent budget cuts many of the Board's long-term plans for improving the website and updating forms, making them interactive, reviewing and revising rules, updating the posted keyword digest and case summaries are no longer realistic. For example, Director Griego mentioned an estimate of \$15,000.00 from DoIT to accommodate interactive forms and online filing, an amount that would require an additional appropriation for that purpose, which was unlikely given the State's current financial condition and DFA's recent directive to once again submit a flat budget. After discussion the Board reached a consensus to leave the former long-term plans in the measures and to seek additional funds to accomplish them in our budget request with the understanding that it is likely that neither DFA nor LFC is likely to recommend approval of that request.
10. **Set Next Meeting Date and Adjournment.** The Board set Tuesday September 12, at 9:30 a.m. for their next meeting. Vice-Chair Bartosiewicz moved to adjourn. Member Bledsoe seconded the motion and it was approved 3-0 after a roll call vote. The meeting was adjourned at 11:45 a.m.