



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

**Minutes of Board Meeting held Tuesday, February 23, 2016, 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 9:35 a.m. Chair Westbrook, Vice-Chair Bartosiewicz and Member Bledsoe were all present.
2. **Approval of Agenda.** Member Bledsoe moved to approve the Agenda. Chair Westbrook seconded the motion. Upon a 3-0 roll call vote the Agenda was approved.
3. **Approval of January meeting minutes.** Vice-Chair Bartosiewicz moved to approve the draft minutes of the January 6, 2016 meeting without modification. Member Bledsoe seconded the motion. After a roll call vote the motion passed 3-0.
4. **Public Comments.** Dina Holcomb commented on the Board's rule requirement that Board decisions be tabbed and indexed and that she did not believe that was being done. She suggested that a law student intern may be available to help staff with indexing board decisions. She also commented that she noticed the FY17 budget recommendation was on the agenda.
5. **Director's Reports.** Director Griego reported to the Board on FY15 Independent Audit Report. He called the Board's attention to two items: First, an entry on page 34 on which the Board exceeded the amount budgeted in for the payroll category and which had previously been called to the Board's attention as an accounting error. Second, on page 45 the auditor noted that the Board's Procurement Officer, Matthew Abousleman, had not complied with statutory requirements for retraining.

With regard to the agency's FY17 Budget Recommendations Mr. Griego presented the Legislative Finance Committee's cover letter outlining fiscal issues faced by the state followed by a comparison of our request, the Executive's budget recommendation and that by the Legislative Finance Committee. The LFC recommendation was the one approved submitted at the session and the agency did not suffer severe cuts as did some other agencies other than the "across-the-board" 2.5% cut imposed on all state agencies as part of the final state budget approval.

Mr. Griego presented Sections 5-6 of his proposed Procedures Manual setting forth requirements and procedures for producing trial balances reports and budget adjustment requests as well as annual audit functions for approval. Chair Westbrook moved to adopt the proposed Sections 5 and 6 of the procedures manual. His motion was seconded by Vice Chair Bartosiewicz and after a roll call vote the motion passed unanimously.

6. **Review of Hearing Officer's Report and Recommended Decisions.** Director Griego introduced two cases on appeal from the Hearing Officer's Reports and Recommended Decisions; *AFSCME & Santa Fe County*; PELRB 305-15 and *AFSCME, Council 18 v. Santa Fe*

*County*, PELRB No. 107-15. Counsel for both parties were present, Shane Youtz for AFSCME and Rachel Brown for Santa Fe County. The first appeal considered was *AFSCME v. Santa Fe County*; PELRB 305-15. Both the Union and the County appealed aspects of the recommended decision and the Board considered the Union's arguments first.

Mr. Youtz began by summarizing the decision accreting certain Lieutenants positions into the bargaining unit and that the union wanted to appeal the limited issue of the Hearing Officer's denial of the Fire Safety Lieutenant position from the accretion. He outlined the statutory tests for Managerial employees and under PEBA He disagreed with the conclusion that there was insufficient evidence to find that the Lieutenant was not a managerial employee.

Ms. Brown reminded the Board of a prior decision in this case placing the burden of proving the absence of the statutory exceptions on the union. Based on that decision the absence of evidence requires a rejection of the proposition that Lieutenants are not managers.

In reply Mr. Youtz argued that there is no evidence to establish that any of the duties Lieutenants perform, qualify as managerial. Member Bledsoe asked several questions of both parties' representatives. There was further discussion of the policy guidance issue, who participated and the evidence regarding effectuating management policy. That concluded presentation of Mr. Youtz' issues on appeal.

The Board then considered Ms. Brown's appeal from the same decision. She explained that she takes exception from the Hearing Officer's recommended decision including the four shift lieutenants in the bargaining unit. Her first point concerned an earlier motion before the board on the question whether the union must show changed circumstances. She then argued that contrary to the Hearing Officer's decision there is a relevant history of bargaining excluding the Lieutenants from the bargaining unit. She reminded the Board of its duty to perform a whole record review and that any deference to the hearing officer should be limited to witness credibility and not to the Hearing Officer's decisions regarding the significance of the evidence.

She argued the Union's burden of proving that Lieutenants are not confidential employees and that there is insufficient evidence to determine that no Lieutenant is a confidential employee.

On the question of supervisory employees Ms. Brown argued that the evidence should have been weighed differently than the Hearing Officer did. With regard to whether they spend a majority of time on supervisory duties Ms. Brown argued that making rounds should have been counted by the Hearing Officer as a supervisory function. She argued several functions that the Hearing Officer deemed not to be supervisory, should have been.

Mr. Youtz responded by arguing that the legislature intentionally made it difficult to meet the definition a supervisor in Section 4 (U) of the PEBA. He outlined the three pronged test for a supervisor under that subsection stressing that all three of the tests must be met. With regard to

whether the Shift Lieutenants are confidential employees Mr. Youtz argued that there is no evidence to support the proposition that they are confidential employees, but only evidence that they are not.

Regarding the question of whether the Lieutenants spend a majority of work time spent on supervisory duties Mr. Youtz referred the Board to the union's brief outlining the discreet duties performed by the Lieutenants and the amount of time taken to perform those tasks, arguing that the majority of those are not supervisory and argued that the evidence supports a conclusion that the people above Lieutenants have authority to issue discipline.

Ms. Brown reprised her earlier argument that the testimony only testified to what one Lieutenant does, not what all Lieutenants may do and therefore there is insufficient evidence to determine either they are confidential employees. Regarding the supervisory argument, she repeated functions that she considered to be supervisory and her argument regarding oral reprimands. She argued that the count and report writing should be considered supervisory.

Member Bledsoe asked questions regarding who corrects or trains corrections officers, differences in the duties of lieutenants compared to sergeants, about distinctions between oral reprimands and other forms of discipline under the CBA and about recommendations that discipline be imposed as contrasted with a recommendation as to the level of discipline. Mr. Bledsoe asked for and received clarification of Sgt. Solis' discipline report having deviating from standard protocol by recommending a specific level of discipline. Ms. Brown concluded by stressing that Lieutenants run the facility at night, weekends and holidays.

Chair Westbrook moved to recess. The Motion was seconded by Vice-Chair Batosiewicz. A roll call vote was taken and the Board unanimously approved the motion. The Board recessed at 11:07 a.m.

The Board went back on the record at 11:18 a.m. to hear argument in *AFSCME, Council 18 v. Santa Fe County*, PELRB No. 107-15. Mr. Griego gave a brief introductory comment and turned the floor over to Mr. Youtz as the representative of the party seeking review.

Mr. Youtz appeals from the Hearing Officer's conclusion that the PIPs in this case do not constitute discipline and therefore did not violate the Union's contract. Ms. Brown responded that the union did not prove the elements of each alleged violation and that the PPC is untimely among other defenses in her brief.

Chair Westbrook moved to go into closed session pursuant to Section 10-15-1(H)(3) in order to deliberate on the two cases. The Motion was seconded by Vice-Chair Batosiewicz. A roll call vote was taken and the Board unanimously approved the motion. The Board recessed at 11:45 a.m.

At 12:23 p.m. Chair Westbrook moved that the Board reconvene in open session. Member Bledsoe seconded the motion and after a roll call vote the Board unanimously voted to return to open session. The only matters discussed in closed session were *AFSCME & Santa Fe County*; PELRB 305-15 and *AFSCME, Council 18 v. Santa Fe County*, PELRB No. 107-15.

With regard to PELRB 309-15 the Chair moved to adopt the Hearing Officer's Decision. The motion was seconded by Vice Chair Bartosiewicz. Upon a unanimous roll call vote the recommended decision was adopted by the Board without modification. With regard to PELRB No. 107-15 Chair Westbrook moved to reverse the Hearing Officer with regard to Section 19(F) on the ground that the language of the PIP that it was a disciplinary action was determinative. The remedy is to amend the PIP removing that language and to have the County remove such language from PIPs in the future. The Hearing Officer's recommended decision is to be upheld regarding the alleged violations of Section 19(A), (E) and (F). The Chair's motion was seconded by Vice-Chair Bartosiewicz. On a roll call vote the motion passed 3-0.

7. **New Business.** No new business was reported.
8. **Schedule Next Board Meeting.** The next Board meeting is set for Wednesday, March 9, 2016 at 9:30 a.m.
9. **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 12:29 p.m.