



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

Minutes of Board Meeting held Friday, March 25, 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. The Board's Legal Counsel, Jennifer Salazar, appeared via telephone.
2. **Approval of Agenda.** The Chair mentioned a mistake needing correction on the Amended Agenda brought to his attention by Ms. Holcomb, whereby the date of the read "Wednesday, March 25, 2016" instead of "Friday March 25, 2016". Member Bledsoe moved to approve the Agenda as corrected. Vice-Chair Bartosiewicz seconded the motion. Upon a 3-0 roll call vote the Agenda as corrected was approved.
3. **Approval of February meeting minutes.** Vice-Chair Bartosiewicz moved to approve the draft minutes of the February 23, 2016 meeting without modification. Member Bledsoe seconded the motion. After a roll call vote the motion passed 3-0.
4. **Public Comments.** Shane Youtz requested that in light of recent NLRB rule changes shortening the time between the filing of a representation petition and an election, that the Board re-examine its rules for that purpose. Second, with regard to a recent case in which the Board found that a PPC had been committed but did not provide for the posting of Notice of the violation in its Order, he asked the Board how best to best address that situation. Chair Westbrook suggested that he file a Motion, perhaps a Motion to Reconsider.
5. **Request for Pre-Adjudication Injunctive Relief.** Director Griego informed the Board that in the context of a PPC filed as *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16, AFSCME requested a Pre-Adjudication injunction seeking to enjoin disciplinary proceedings in Luna County pending the outcome of the PPC. Due to the holiday, counsel for the County was unable to attend today's Board meeting and requested that the Hearing be postponed. Because of the emergent nature of the request for injunction he set a Special meeting for 9:30 a.m. on April 1, 2016 to hear the matter.
6. **Request for Interlocutory Appeal.** Although the Agenda called for the Board to hear two requests for permission to file Interlocutory Appeals; one in *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15 and the other in *AFSCME, Council 18 & New Mexico Dep't of Health*; PELRB No. 122-15, Director Griego informed the Board that in PELRB 122-15 the parties had agreed to hold all matters in abeyance, including the Request for Interlocutory Appeal, while settlement discussions were underway. Accordingly, there was no need to hear argument on that case at this time. The Board heard argument on PELRB 309-15. Shane Youtz appeared for AFSCME and Dina Holcomb appeared for the Human Services Department.

Ms. Holcomb argued that an issue arose as to whether the majority support demonstration and subsequent certification of the Union as the exclusive representative of the bargaining unit complied with the PEBA, its rules and the Open Meetings Act when in 2003. Moreover, she argued prior Board request for injunctive relief

decisions have decided that it is inappropriate to file a unit clarification petition in a grandfathered bargaining unit. Ms. Holcomb stated an interlocutory appeal is appropriate as a collateral issue unrelated to the merits of the underlying petition, thereby qualifying as a collateral order appropriate for an interlocutory appeal. In addition, a Motion to Dismiss denial is appropriate for an interlocutory appeal as stated in *In re Doe*. Inasmuch as this is a matter with significant impact, complex case, and a matter of first impression not on the issue of unit clarifications being inappropriate in grandfathered bargaining units, but in the other issues. Ms. Holcomb stated HSD has complied with notice to the Board of a possible violation of the Open Meetings Act. Mr. Westbrook asked exactly what issue is being asked of the Board. Ms. Holcomb stated there is a Motion for Lack of Jurisdiction based upon whether the procedures in 2003 complied with the law. In addition, the subsequent unit clarification petitions involving accretion violated the law. Finally, whether a unit clarification petition can be brought in a grandfathered bargaining unit situation.

Mr. Youtz argued that to avoid delay the request to file an interlocutory appeal should be denied, the hearing should be held and the issues raised by Ms. Holcomb would be heard in the context of the merits hearing anyway. He argued that the request for leave to file an interlocutory appeal presents no substantial dispute as to a controlling question of law; there is no dispute that AFSCME has been recognized as the bargaining representative for at least 13 years. Mr. Youtz argued in a PPC against the State, the State filed on March 9th its Answer admitting Union is the sole collective bargaining agent. Mr. Youtz stated Ms. Holcomb disputes it, but the State does not. He argued that there is no question as to personal or subject matter jurisdiction. Jurisdiction over alleged Open Meetings Act violations lies with the District Court and the State has no standing.

Both counsel responded to questions from Board members concerning their presentations. Ms. Holcomb stated in the PPC and Answer provided from Mr. Youtz, she is not counsel and does not know whether the State raised an affirmative defense in its Answer inasmuch as Mr. Youtz only provided the first page of the Answer. In addition, Ms. Holcomb stated this case involves HSD, not the State of NM. Furthermore, admission does not confer jurisdiction nor can the parties waive the issue of jurisdiction, which must be decided before hearing the merits of the case. Ms. Holcomb stated HSD was not asking the Board to find a violation of the Open Meetings Act, but the law requires such issues be brought to the Board to give it the opportunity to correct the process, as it has done previously. The Board's Legal Counsel asked that the matter be tabled and placed on the agenda for the Special Meeting next week so that she can study the arguments and be present while the Board deliberates. Chair Westbrook moved to table the deliberations until the April 1, 2016 Special meeting and the motion was seconded by Vice-Chair Bartosiewicz. Upon a roll call vote the Motion passed unanimously.

7. **Approval of Consent Election Agreement.** *JPTALE/NEA-Las Cruces & J. Paul Taylor Academy*; PELRB No. 301-16. Director Griego asked the Board to approve a Consent Election Agreement calling for an election on April 20, 2016. Vice Chair Bartosiewicz moved approval. His Motion was seconded by Member Bledsoe. After a roll call vote the Board voted 3-0 to approve the Consent Election Agreement.
8. **Request to Hold Proceedings in Abeyance in AFSCME & Luna Co; PELRB No. 105-16.** Director Griego informed the Board that within his initial letter in this case informing the parties that the Complaint was "facially adequate", he asked the County, pursuant to NMAC 11.21.3.21, to hold in abeyance its proceedings to effectuate termination of employment pending resolution of this complaint. That the County did not accede to the request is reflected in the Union'

being heard on April 1st. Mr. Youtz added that the County had, in fact, terminated the employee at issue. No action was required of the Board and it took no action regarding this agenda item.

9. **Tabbing and Indexing Board Decisions.** Director Griego reminded the Board that at its February 23, 2016 meeting Ms. Holcomb mentioned in public comment that the Board was not maintaining tabbed and indexed decisions as required. In response he asked the Board's Chair to review staff's procedures. Mr. Westbrook reported that all decisions from 2004 forward are tabbed, indexed and maintained in three-ring binder on shelves above Mr. Abousleman's desk. For cases from 2011 forward, those are maintained in .pdf format in the electronic case file and in a database that can be sorted by parties' names, case numbers, dates, etc. Local Board approval decisions are also tabbed and indexed and maintained in separate three-ring binders. All these documents are available to the public and he is satisfied that the procedures being followed meet the requirements of NMAC 11.21.1.30. Ms. Holcomb commented on the report stating she was happy to hear that as she was only provided a listing through 2013 and was told that was all that the office had.
10. **Director's Reports.** Director Griego reported on three settled cases in which the Complaints had been voluntarily withdrawn and the cases dismissed:
 - a. *SCEA v. Silver Consolidated School District*; PELRB No. 126-15;
 - b. *SCEA v. Silver Consolidated School District*; PELRB No. 101-16;
 - c. *CCEA v. Central Consolidated School District*; PELRB No. 113-15.
11. **Re-Authorization of Open Meetings Act Resolution.** Director Griego presented an updated version of the Resolution for the Board's approval. A short recess was needed to ensure that all requested changes in addition to the new effective date had been made. Chair Westbrook moved to recess for five minutes, Member Bledsoe seconded the motion and it passed unanimously. The Board recessed at 10:21 a.m. The Board re-convened at 10:29 a.m. and Mr. Westbrook noted that the resolution in the Board packets did correct the error in paragraph five correcting to read "Public Employee Bargaining Act" and adding a comma in addition to the date changes. He then moved for approval of the Open Meetings Act Resolution as corrected. The Motion was seconded by member Bledsoe Upon a roll call vote the Resolution was adopted 3-0.
12. **FY16 Budget Reduction.** Director Griego reported that since his report at the February meeting that the Board did not suffer a budget reduction all agencies' budgets in the State were cut 2.5%. The Director answered questions regarding the total remaining budget documents shown in the Board's packets.
13. **New Business.** Mr. Youtz requested that the parties in *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15 be instructed to agree to a date for re-scheduling the Merits Hearing while both parties' representative were present at the meeting. Legal Counsel suggested that the parties' wait until the results of the pending motion to permit the filing of an Interlocutory Appeal is heard on April 1st and Chair Westbrook agreed with that advice.
14. **Schedule Next Board Meeting.** Chair Westbrook stated that the next Board meeting is the Special Meeting already scheduled for April 1, 2016. Director Griego asked permission to schedule the following meeting on the first Tuesday in May, May 3, 2016. All three Board members are available for that date and it will be scheduled. At the May meeting the Board will set dates for meetings in June and July.
15. **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 10:37 a.m.