



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

Minutes of Board Meeting held Tuesday, May 3, 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. **Approval of April 1, 2016 and March 25, 2016 meeting minutes.** Director Griego informed the Board that he had received, via e-mail, suggested changes offered by Dina Holcomb and provided copies the changes to the Board. The suggested changes dealt primarily with the Request for Interlocutory Appeal in *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15, taken up on March 25, 2016 and a Motion brought by Luna County to Disqualify the Executive Director and the Board's Chair in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16. Ms. Holcomb explained that due to the "complexity and impact of these issues" it is important to include the additional information she suggested as well as some "minor" corrections. Mr. Griego stated that he had no objection to the proposed changes and there were no objections from anyone in attendance. Member Bledsoe moved to approve the minutes of both meetings with the additional language suggested by Ms. Holcomb. Vice-Chair Bartosiewicz seconded the motion. After a roll call vote the motion to approve the minutes from both meetings with corrections passed 3-0.
4. **Public Comments.** There were no comments from members of the public attending. Chair Westbrook disclosed that his law firm has entered into an agreement with the firm of Youtz & Valdez to act as co-counsel on a lawsuit yet to be filed. The lawsuit does not involve State employees or any issues involving State employees or any issues or labor-management disputes that could be subject to PELRB jurisdiction. He believes the co-counsel agreement will not affect his ability to serve impartially on the Board but recognizes that others may disagree and so, made his disclosure.
5. **Motion to Disqualify the Executive Director.** The Director reminded the Board that at the April Special Meeting it heard argument from counsel for Luna County in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB No. 105-16 to disqualify both the Executive Director and the Board Chair from further participation in the case. While the Board heard argument at that meeting it decided only the motion to disqualify the Board Chair, tabling the decision on disqualify the Director to this meeting in order to give him time to more fully respond. Mr. Griego referred to the written response in the file and included in the Board's information packet and asked that the Motion be Denied for the reasons set forth therein.

Jonlyn Martinez, counsel for Luna County, presented her motion and repeated her arguments from the April 1 meeting with a few additional comments regarding the timing of the Director's response. Mr. Griego replied to her response to explain standard board procedures that account

for the procedures at issue without attributing bias to any of his actions as claimed by Luna County.

Shane Youtz, on behalf of AFSCME Council 18, reminded the Board that his client had been defaulted in the past for missing deadlines and it did not consider that fact to be the basis for the kind of personal attack as has been levied against the Director by counsel for Luna County in this case. He reminded the Board that because counsel received the accommodation she requested there was no basis for her claimed of religious-based discrimination. The Board should not ignore that Ms. Martinez did not follow the rules of the Board and instead of accepting responsibility “launched into a vicious personal attack” on Director Griego. Notice was properly given to the party in the case. The Board is not required to give notice to who it thinks might be the lawyer for the party. Finally, he stated that he was disturbed by levying an accusation of “conspiracy” against the Director without evidence and voiced his “hope that the Board doesn’t encourage behavior like this”. Ms. Martinez replied to Mr. Youtz’ argument. Mr. Griego further replied informing the Board that in addition to the failure to follow the Board’s rules in this case she has also fax-filed her own PPC against the union but has not yet submitted a hard copy of the complaint in that case and that she may want to take this opportunity to correct that faulty filing as well. Ms. Martinez said she believed a hard copy was subsequently filed but Mr. Griego said that was not so and that her subsequent filings on March 31, 2016 raised the further issue of whether the Board can accept copies of pleadings without original signature because none of her pleadings filed on March 31, 2016 bore original signatures. He said he is still waiting for a hard copy of the County’s PPC to be filed before he can conduct his initial review of the case.

Chair Westbrook suggested that the Board hear the County’s Motion to Set Aside the Default, which is the next agenda item, before going into executive session to deliberate on the Motion to Disqualify and the other Board members agreed to do so.

6. **Request to Set Aside Determination by Default.** The Board heard argument on Luna County’s Motion to Set Aside the default Determination in *AFSCME, Council 18 and Andrew Gilmore v. Luna County*; PELRB 105-16, referred to by Ms. Martinez in arguing her Motion to Disqualify the Executive Director. Ms. Martinez argued that her answer was timely based upon the date she received notice of facial adequacy and that upon receiving notice of default she immediately hand-delivered a copy of her answer. There was no prejudice to either the Board or to the union and that default judgments are not favored under the law.

Mr. Youtz argued that the Board had set “bright lines” with regard to deadlines for filing, Luna County missed its answer deadline and the Board has applied default against his client in the past for missed deadlines. With regard to harm to the union, he reminded the Board that there is a terminated employee who has been harmed by the County’s actions in this case.

Mr. Westbrook moved to go into executive session pursuant to §10-15-1(H)(3) of the Open Meetings Act in order to deliberate over Luna County’s Motion to Disqualify the Executive Director as well as its Motion to Set Aside Default in PELRB No. 105-16. Member Bledsoe seconded the Motion and the motion passed after a 3-0 roll call vote. The Board went into executive session at 10:05 a.m.

At 10:35 a.m. the Board returned to open session. The chair stated that during the closed session

the only matters discussed were Luna County's Motion to Disqualify the Executive Director and its Motion to Set Aside Default in PELRB No. 105-16. With regard to the Disqualification Motion Chair Westbrook moved to deny the Motion stating there was no evidence to support the allegations. Vice-Chair Bartosiewicz seconded the Motion as it passed unanimously upon a roll call vote.

With regard to the County's request to set aside the determination of default, Chair Westbrook stated that the Board found no evidence for setting aside the default within her written motion but did hear her state in oral argument that default may be set aside for excusable neglect. Because Ms. Martinez is unfamiliar with the Board's rules there is ground to set aside default for excusable neglect. Vice-Chair Bartosiewicz seconded the Motion and the motion passed 3-0 after a roll call vote.

Mr. Westbrook also said that while he recognizes that the Board has held the union to a strict interpretation of the rules in the past, counsel for AFSCME Council 18 has been before the Board many times, is familiar with its rules and this is the first time for Ms. Martinez. Mr. Youtz asked that in light of the Board's ruling that the Board enter an order directing the County to pay Mr. Gilmore six weeks back wages due to its "excusable neglect" and that the Board order the parties to remain after conclusion of the meeting to set a merits hearing. The issue is important to the upcoming election as well as to Mr. Gilmore personally. Ms. Martinez pointed out that Mr. Gilmore has availed himself of the grievance procedure under the CBA and that he has delayed a hearing in that proceeding and for that reason and others it would be inappropriate to require the County to pay him any money.

Chair Westbrook stated his support for the idea that the parties remain after the meeting to schedule a hearing. He is not sure that the Board has authority to grant the request for six weeks back wages and so he did not favor granting that request. Mr. Youtz argued that back wages is an appropriate award in such circumstances.

Mr. Griego requested direction with regard to whether he should accept copies of pleadings for filing in lieu of original signed documents and the Board asked that the question be placed on the agenda for the next meeting.

7. **Appeal of Hearing Officer's Decision in AFSCME, Council 18 v. Luna County; PELRB 310-15.** Luna County argued that the Hearing Officer's recommended decision is based on false testimony by one of the Union's witnesses in addition to the argument heard at the April meeting and submitted in the written appeal. When asked for her evidence that the Director committed error in evaluating the union's witnesses as credible while finding the County's witnesses not to be so the only example she gave was that he waited until a break in Mr. Gilmore's testimony before asking him to remove chewing tobacco from his mouth so that his lack of professionalism in testifying with chewing tobacco in his mouth was not reflected on the record. Mr. Youtz asked the Board to consider that it should not allow counsel to accuse witnesses and counsel of committing crimes without supporting evidence.

Mr. Youtz responded by asking the Board to "re-orient" itself to an examination of the evidence found by the Hearing Officer instead of Ms. Martinez' accusations against the Director, opposing counsel and witnesses.

Ms. Martinez replied that if the witnesses' testimony is not credible then the findings based on that testimony is not well-founded. She read aloud those portions of the Mr. Gilmore's testimony that she believed demonstrated that he lied under oath. Mr. Youtz replied by referring to prior testimony on April 1, 2016 by Mr. Gilmore. A discussion ensued about the testimony when Ms. Martinez denied that he testified, calling the argument that Mr. Gilmore lied a diversion from the factual findings regarding whether or not Lieutenants are supervisors under the Act.

Mr. Westbrook suggested that the Board hear the other matter on the agenda that must be adjudicated before recessing to a closed session for deliberations and the other Board members agreed. He then called the next agenda item:

8. **Appeal of Hearing Officer's Summary Judgment Decision in AFSCME, Council 18 v. Santa Fe County; PELRB 128-15.** Rachel Brown asked that Mr. Westbrook recuse himself from deliberating on her case in light of his disclosure earlier in the meeting concerning his association with the firm of Youtz & Valdez or that the matter be delayed for a month to give her time to research whether she should move to excuse the Chair. Mr. Youtz deferred to the Chair on the question. Mr. Westbrook voluntarily recused himself in order to avoid any delay. A discussion ensued concerning whether, given the anticipated length of her argument, the Board would prefer to deliberate in closed session on PELRB 310-15 so that the parties waiting to hear the decision in that case could be excused. Counsel for the Board, Jennifer Salazar, offered that the Board may want to hear the rest of the agenda items before hearing argument in PELRB 128-15 and deliberating on that case and PELRB 310-15. With permission of the parties the Board agreed to do so, then hear argument and go into closed session thereafter.
9. **Certification of Representation; J. Paul Taylor Academy Licensed Employees/NEA-Las Cruces and J. Paul Taylor Academy PELRB 301-16.** Mr. Griego presented the results of a secret ballot election on April 20, 2016 in which the eligible employees voted unanimously to elect J. Paul Taylor Academy Licensed Employees/NEA-Las Cruces. Member Bledsoe moved to approve the certification of the bargaining unit, Vice Chair Bartosiewicz seconded it and the motion passed on a 3-0 roll call vote.
10. **Approval of Consent Election Agreements.** Mr. Griego asked that the pending Agreements in both *AFSCME, Council 18 v. Luna County*; PELRB Case No. 310-15 and *AFSCME, Council 18 and Luna County Sheriff's Department*; PELRB Case No. 304-16, be considered together because they involve the same parties and will be held on the same day, simultaneously for the Corrections and Sheriffs' Department units. Member Bledsoe moved for approval of the Consent Election Agreements in both cases. Vice Chair Bartosiewicz seconded the motion and after a roll call vote the motion passed 3-0.
11. **Voluntary Dismissals.** Mr. Griego reported to the Board that the parties in the following three cases had successfully settled all claims, that the Complainants had withdrawn their complaints and voluntary dismissals entered:
 - a. *AFSCME, Council 18 v. Santa Fe County*; PELRB No. 104-16
 - b. *CWA Local 7076 v. N.M. Environment Dep't*; PELRB No. 115-15
 - c. *NEA-Las Vegas v. Las Vegas City Schools*; PELRB 102-16.

No action on the above cases was required nor was any taken by the Board.

12. **Director's Reports.** Director Griego informed the Board that he received a letter from the State Auditor's Office that it would not consider extending the Board's current contract for independent auditor services for another year because the OSA wanted a shorter rotation cycle than that currently allowed under its rules. He introduced the Board's Operations Manager, Matt Abousleman who outlined staff plans and timeline for obtaining bids for audit services and contracting with a new firm.
13. **New Business.** Director Griego submitted a proposed amendment to NMAC 11.21.1.8 concerning computation of time to allow an additional three days for service by mail. He emphasized that this was not a request for approval of the rule but only that he sought comment before finalizing the draft rule for public comment and subsequent presentation for adoption by the Board. There was some discussion among the Board and members of the public about the efficacy of the rule. Member Bledsoe suggested that the matter be tabled until the next meeting and all agreed to do so.
14. **Schedule Next Board Meeting.** Director Griego asked that the Board schedule the next two Board meetings. After conferring, the Board set the next meeting for Tuesday, June 7, 2016 followed by Wednesday July 13, 2016 for the meeting thereafter.

Chair Westbrook moved that the Board go into executive session pursuant to §10-15-1(H)(3) of the Open Meetings Act in order to deliberate over the County's Appeal of the Hearing Officer's Recommended Decision in *AFSCME, Council 18 v. Luna County*; PELRB Case No. 310-15. Member Bledsoe seconded the motion and after a 3-0 roll call vote the Board recessed into executive session at 11:24 a.m.

15. **Appeal of the Hearing Officer's Recommended Decision in *AFSCME, Council 18 v. Luna County*; PELRB Case No. 310-15.** The Board returned to open session at 11:52 a.m. and the Chair stated that the only matter discussed while in closed session was the appeal of the Hearing Officer's Recommended Decision in *AFSCME, Council 18 v. Luna County*; PELRB Case No. 310-15. Member Bledsoe moved that the Board consider advising practitioners to "eschew" personal attacks "with little or no evidence" when presenting arguments before the Board. He stated that such attacks "waste our time, waste the parties' time and creates an unnecessarily contentious atmosphere. If the evidence is out there for such ... we need to hear the evidence or it needs to be brought up in a disciplinary fashion through the legal system..." There was no second of the motion and Chair Westbrook moved to adopt the findings and conclusions of the hearing Officer and to ratify the Recommended Decision of the Hearing Officer in *AFSCME, Council 18 v. Luna County*; PELRB Case No. 310-15. Vice-Chair Bartosiewicz seconded the motion and it was unanimously passed after a roll call vote.

At this point in the meeting Chair Westbrook excused himself from the meeting and Vice-Chair Bartosiewicz presided over the appeal from Hearing Officer's Summary Judgment Decision in *AFSCME, Council 18 v. Santa Fe County*; PELRB 128-15.

16. **Appeal of Hearing Officer’s Summary Judgment Decision in AFSCME, Council 18 v. Santa Fe County; PELRB 128-15.** Ms. Brown, on behalf of Santa Fe County, gave the Board synopsis of the case: AFSCME filed a PPC after the County declined to provide the home addresses and telephone numbers of employees within the bargaining unit because the parties’ CBA contains language that the County interprets to preclude providing the employees’ home addresses. The parties agreed to submit the matter to the Hearing Examiner on competing motions for summary judgment. She noted that although there are three bargaining units in Santa Fe County no one objects to the Hearing Examiner’s finding that this case pertains only to the correctional facility officers, represented by Local 1413. By letter decision issued on March 22, 2016 the Hearing Examiner granted Petitioner’s Motion for Summary Judgment and denied Respondent’s Motion for Summary Judgment. The Decision required that Respondent immediately release the home addresses and telephone numbers of employees within the bargaining unit, that Respondent post a notice of violation for sixty days, and that an evidentiary hearing be scheduled to consider the question of damages. In summary, Ms. Brown argued:
- a. This case was best deferred to arbitration under the parties’ grievance process;
 - b. the union waived any right it may have had to the home addresses and telephone numbers of its members under the parties’ CBA because the only information the contract requires to be provided is “public information” and under the IPRA, employee home addresses are not public information;
 - c. the County is not required by any law outside of the CBA to provide the home addresses and telephone numbers of bargaining unit members;
 - d. public employees in New Mexico have a privacy interest in their home addresses and telephone numbers which prevents Respondent from releasing that information to Petitioner absent consent by the employee;
 - e. Respondent’s conduct does not constitute a refusal to bargain under PEBA; and,
 - f. Petitioner failed to provide notice of dues increases to its membership, thereby inhibiting Respondent from implementing a dues increase.
 - g. A hearing on damages is untimely because all matters were to be resolved by the Summary Judgment Motions and is otherwise improper because the Board has no authority to award monetary damages.

Member Bledsoe asked about those instances in which the County provides home addresses to the union in other bargaining units under other contract provisions and Ms. Brown responded to those questions. He asked about “opt out” provisions and Ms. Brown responded to those questions.

Shane Youtz, on behalf of AFSCME, Local 1413, argued that the fact that the County provides employee addresses to AFSCME under other contracts negates its argument that there is a privacy interest that prohibits such disclosure to Local 1413 in this case. Referring to a prior 2005 PELRB decision in *NUHCE v. UNM*, the Board has already ruled that the union is entitled to employee home addresses so that what the County is asking the Board to do is to overturn existing law. The County’s argument concentrated on one of two ways in which the union may obtain home addresses; that being pursuant to a CBA. However, the Hearing Officer’s Decision was based on the second way, that is, as a matter of “bedrock” labor law, because the Union has a statutory duty to represent all members of its bargaining unit, regardless of whether they are dues-paying members. He argued that there may be no “implied” waiver as argued by the County; any waiver must be

“clear and unmistakable”. With regard to the question of damages, Mr. Youtz argued that if the Board affirms the decision a hearing will be held as to whether damages are appropriate – none have yet been awarded and the question is premature. The only question before the Board is whether the ruling on summary judgment is correct.

Ms. Brown replied that there is only one, not two, groups for whom the County provides home addresses. She argued that the CBA is an express waiver, not an implied waiver. She argued that the County is not the only source of home addresses for employees citing to *Grinnell Fire Protection Systems, Co. v. NLRB*. If the issue of waiver is not clear it needs to be deferred to arbitration.

Mr. Bledsoe asked about the extent bargaining unit members bear responsibility for informing the union of its updated address and about assurances regarding confidentiality of the requested information. Mr. Youtz responded regarding the union’s statutory obligation to represent non-dues-paying members who may not want to provide such information and the union’s exposure to lawsuit for misuse of the requested information. Mr. Bledsoe asked about the union’s access to other bargaining units’ home address information, he deferred to his client on that question but Ms. Brown objected on the basis that no new evidence may be heard upon appellate review. The Board’s counsel agreed that the Board should not hear new evidence and Mr. Bledsoe withdrew his question.

Mr. Youtz argued the waiver issue from the express language of the CBA. Ms. Brown further replied that once a topic has been bargained the contract is the “universe” to which you are entitled and that the bargaining representative has operated since 2014 years without requiring employees’ home addresses and that it should continue to do so until it bargains a contract that entitles it to more.

Mr. Bledsoe moves that the Board go into executive session pursuant to §10-15-1(H)(3) of the Open Meetings Act in order to deliberate over Santa Fe County’s Appeal of Hearing Officer’s Summary Judgment Decision *AFSCME, Council 18 v. Santa Fe County*; PELRB 128-15. The motion was seconded by Vice-Chair and passed upon a roll call vote 2-0, Chair Westbrook having recused himself earlier. The Board went into executive session at 1:05 p.m.

The Board returned to open session at 1:30 p.m. Vice-Chair Bartosiewicz presiding stated that during the closed session the only matter discussed was Santa Fe County’s Appeal of Hearing Officer’s Summary Judgment Decision *AFSCME, Council 18 v. Santa Fe County*; PELRB 128-15. Vice-Chair Bartosiewicz moved to affirm the Hearing Officers’ Decision on Summary Judgment. Member Bledsoe seconded the Motion and it passed 2-0 upon a roll call vote.

Ms. Brown asked for a point of clarification with regard to whether today’s decision is appealable to District Court or whether the damages hearing must first be heard. Legal Counsel for the Board opined that appeal to District Court must await the hearing on damages. Ms. Brown asked that the determination that further appeal must await the Hearing Officer’s decision on damages be reflected in the Board’s Order and the Board agreed to do so.

17. **Adjournment.** Member Bledsoe moved to adjourn. Vice-Chair Bartosiewicz seconded the motion and upon a 2-0 roll call vote the meeting adjourned at 1:32 p.m.