



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

**Minutes of Board Meeting held Tuesday, November 1, 2016 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 9:31 a.m. Vice-Chair Bartosiewicz and Member Bledsoe were also present.
2. **Approval of Agenda.** Chair Westbrook moved to approve the agenda amended as suggested by Director Griego. Member Bledsoe seconded the motion and the agenda was approved 3-0 after a roll call vote.
3. **Approval of October 11, 2016 meeting minutes.** Mr. Bartosiewicz moved to approve the draft minutes of the Board's October meeting. Member Bledsoe seconded the motion and upon a 3-0 roll call vote the October 11, 2016 meeting minutes were approved without modification.
4. **Public Comments.** There were no public comments.
5. **Voluntary Dismissal.** In the case of *AFSCME, Council 18 v. State of New Mexico and State Department of Health*; PELRB 122-15 Director Griego reported on settlement of the disputed issues and voluntary dismissal called for upon withdrawal of the complaint as part of the settlement.
6. **Review of Director's Summary Dismissal of PPCs.** There are two cases summarily dismissed by the Director, (1) *AFSCME, Council 18 v. State of New Mexico and State Department of Health*; PELRB 122-16; and, (2) *Giron v. NM Children, Youth and Families Dep't*; PELRB No. 120-16. With regard to PELRB No. 122-16 the case was dismissed for absence of a signature on the complaint. Whereas such an oversight could usually be cured by re-filing the complaint with a proper signature, in this case the six-month statute of limitations had passed and re-filing was not possible. In the second case, PELRB No. 120-16, Mr. Giron has not maintained contact with the Director and notices to his last known address have been returned undelivered. Because the burden of moving forward with the case rests with the complainant and he has not timely responded to the Director's request for further information, the case is being summarily dismissed.
7. **Approval of Consent Election Agreement in *United Mine Workers of America and Socorro County*, PELRB No. 307-16.** Chair Westbrook moved for approval of the Consent Election Agreement reached by the parties in this case. His motion was seconded by Vice-Chair Bartosiewicz and after a 3-0 roll call vote the motion passed unanimously.
8. **Review of Election Results and Certification of Bargaining Representative in *NEA Clayton & Clayton Public Schools*; PELRB No. 302-16.** Director Griego provided the Board with the outcome of the election in this case in which the Union prevailed and requested certification of the results and that certification of the bargaining unit be issued. Ms. Holcomb, on behalf of Clayton Public Schools, stated that, although the election was closer than either party might have desired she supported the Director's request for certification of the unit. Chair Westbrook moved for ratification of the election results and to direct that certification of the

bargaining unit be issued. His motion was seconded by Member Bledsoe and after a 3-0 roll call vote the motion passed unanimously.

9. **Review of Hearing Officer's Reports and Recommended Decisions.**

- a. ***AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15.** With regard to this case, Chair Westbrook stated that the procedure to be followed would be to consider the State's Motion to Strike first, before considering the merits of the appeal. Ms. Holcomb argued that attaching documents to motions briefs in the case is not sufficient to constitute their being "on the record" for purposes of considering them in an appeal from the Hearing Officer's Report and Recommended Decision. The documents submitted in that fashion have not been authenticated. As part of her argument she raised concerns over the timeliness of the Union's submissions. Mr. Youtz responded that the record consists of all documents submitted at "all stages" of the proceeding pursuant to NMAC 11.21.1.27 and the record is therefore not limited to documents introduced at the merits hearing. Member Bledsoe questioned Mr. Youtz concerning the timeliness of his prior filings. He stated that even if he were to concede the issue on supporting documents that would not justify striking the entire Response as the State requests. Chair Westbrook moved that the Board go into executive session pursuant to NMSA 1978 Section 10-15-1(H)(3) of the Open Meetings Act in order to adjudicate the Motion to Strike in this case. The motion was seconded by Member Bledsoe and after passing unanimously upon a roll call vote, the Board recessed in order to go into closed executive session at 9:55 a.m.

The Board returned to open session at 10:07 a.m. upon a motion by Chair Westbrook, seconded by Member Bledsoe and passed 3-0 on a roll call vote. Chair Westbrook also stated that the only matter discussed while the Board was in closed session was the Motion to Strike the Union's Response in PELRB No. 309-15. Mr. Westbrook then moved to deny the motion to strike on the basis that the proffered exhibits 1,2,5,6,7,8,11,12 were attached to a pleading filed prior to the Executive Director's recommended decision, and therefore are part of the "record" pursuant to NMAC 11.21.1.27 but that other proffered exhibits are untimely submitted for the reasons argued by Ms. Holcomb. Before a second of the motion was heard, Ms. Holcomb requested permission, and was allowed, to address the motion. She brought to the Board's attention that in its September Board meeting the Board held in the case of *AFSCME, Council 18 and Chris Verduzco v. Luna County*; PELRB 108-16 that the County's appeal was limited to only those facts heard at the merits hearing. Mr. Youtz responded that the Luna County case is distinguished on the basis that it involved a party that did not show up at the merits hearing based. Ms. Holcomb disagreed. She argued that the term "proceeding" should be defined by the Board's rule regarding the recording of hearings. Further discussion was had regarding the history between the parties as shown in the Board's records and the definition of the term "proceeding".

Mr. Westbrook stated his opinion that, to the extent the Board's Decision in *AFSCME, Council 18 and Chris Verduzco v. Luna County*; PELRB 108-16 is inconsistent with the Board's ruling today it was wrongly decided, given the plain reading of NMAC 11.21.1.27. He withdrew his pending motion, which had not yet received a second, and moved instead to grant the HSD's Motion to Strike except

for the exhibits or evidence in those exhibits that were relied upon in Mr. Griego's Recommended Decision. That motion received a second from Member Bledsoe and after a roll call vote passed 3-0. The Board then considered the Merits of the appeal filed by HSD and set a limit of 15 minutes for each party to make their arguments.

Ms. Holcomb spoke to preserve her objection to Mr. Westbrook not recusing himself from hearing this matter. Both parties argued orally from their briefs. HSD's principal argument is that the Board cannot proceed with a unit clarification proceeding where a grandfathered entity is a party. Secondly she argued that there were no changed circumstances required as a precedent to the Union's petition. She also referred to evidence on the record supporting a conclusion that the employees in question have historically been excluded from bargaining and a waiver by the union based on payroll reports and dues deductions reports regularly sent to the union. Mr. Youtz stated that this is not an accretion petition. Rather, the union seeks clarification that the employees at issue were always part of the bargaining unit, and unit clarification is the proper procedure if there are changed circumstances whether or not the unit is a grandfathered unit. He analogized this case to NLRB decisions that require objections to bargaining unit composition to be filed within six months – not 13 years later – and offered other instances in which the State acknowledged AFSCME's status as the recognized bargaining representative for the unit at issue. He also addressed the question of jurisdiction. Ms. Holcomb replied. In response to a question from Mr. Westbrook she concluded that a petition for representation was the proper procedure for including the employees at issue.

Mr. Westbrook moved that the Board go into executive session pursuant to NMSA 1978 Section 10-15-1(H)(3) of the Open Meetings Act in order to adjudicate the merits of PELRB 309-15 in this case. The motion was seconded by Member Bledsoe and after passing unanimously upon a roll call vote, the Board recessed in order to go into closed executive session at 10:57 a.m. At 11:17 a.m. the Chair moved to return to open session. His motion was seconded by Member Bledsoe and passed 3-0 on a roll call vote. Chair Westbrook stated that the only matter discussed while the Board was in closed session was the merits of the appeal from the Recommended Decision in PELRB No. 309-15. Chair Westbrook stated that the Board had jurisdiction to hear the matter, did not have authority to determine Open Meetings Act issues and that the State was barred from raising collateral attacks based on the NLRB cases cited by Mr. Youtz in his brief as well as the NM Supreme Court case *Local 2238 of AFSCME v. Stratton*, 108 N.M. 163, 769 P.2d 76 (1989). He moved to uphold the hearing officer's Findings except for those finding that there are changed circumstances. Therefore, the Recommended Decision should be modified to reflect that a unit clarification petition is not the appropriate procedure in this case. The union is free to pursue a representation petition. Prior to obtaining a second, a discussion ensued regarding that part of the motion regarding the propriety of a representation petition. Vice-Chair Bartosiewicz seconded the Chair's motion. The motion passed 3-0 after a roll call vote.

b. ***AFSCME, Council 18 and Chris Verduzco v. Luna County, PELRB 108-16.***

Jonlyn Martinez appeared for the County and Mr. Youtz, for the Union and Chris Verduzco. The question before the Board was the reasonableness of the assessment of costs in this case - the merits of the appeal from the Hearing Officer's Recommended Decision having already been determined at an earlier meeting. Mr. Youtz announced that he was withdrawing some of his requested costs, seeking only \$16.00 for the cost of copies. In light of that, Ms. Martinez withdrew her objection to the cost bill and agreed her client would pay the amount claimed for copies. Chair Westbrook moved to assess the amount of \$16.00 against Luna County as the costs of the proceeding. Vice-Chair Bartosiewicz seconded the Chair's motion. The motion passed 3-0 after a roll call vote.

10. **Adjournment.** Chair Westbrook moved to adjourn and Vice-Chair Bart seconded the motion. Before voting to adjourn however, the Board set January 10, 2017 and February 7, 2017 as its next two meeting dates. A roll call vote was then taken on the Chair's motion to adjourn, which unanimously passed and the meeting was adjourned at 11:29 a.m.