



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

Duff Westbrook, Board Chair

Minutes of Board Meeting held Wednesday, October 7, 2015 at the PELRB offices, 2929 Coors Blvd. NW, Albuquerque, New Mexico; Chair Duff Westbrook, presiding.

1. Chair Westbrook called the meeting to order at 9:30 a.m.
2. **Introduction of New Member, General John Bledsoe.** Chair Westbrook introduced the Board's new member, Mr. John Bledsoe replacing Jim Shaffner as the management recommended appointee.
3. **Approval of Agenda.** The first item of business was approval of the meeting agenda. Vice-Chair Bartosiewicz moved and Member Bledsoe seconded a motion to approve the agenda. After a 3-0 roll call vote the agenda was approved without modification.
4. **Approval of September 16, 2015 meeting minutes.** Chair Westbrook moved to approve the September 16, 2015 meeting minutes. Member Bledsoe seconded the motion and after a 3-0 roll call vote the minutes were approved without modification.
5. **Public Comments.** There were none.
6. **Report on Denial of Motion to Dismiss and Appeal of Denial of Request for Injunctive Relief in *AFSCME, Council 18 v. New Mexico Department of Workforce Solutions*; PELRB 114-15.** Director Griego gave the Board a brief background on the issue of pre-adjudicative injunctive relief as presented in the case before them, as well as how the Board has dealt with the issue in the past. Present for the Department of Workforce Solutions was Richard Branch and for the Union, James Montalbano.

Mr. Montalbano, who appealed the Director's letter ruling dismissing his client's request for pre-adjudicative injunctive relief argued that the Board has statutory authority to grant such injunctions under sections 8 and 23 of PEBA and that in the past this Board and its Hearing Officers have decided that they do have pre-adjudicative injunctive authority, citing to PELRB cases in which that had been done. He also distinguished the NLRB precedent relied upon by the Director in his letter decision. With regard to the timeliness of the filing he proposed that the Department may want to withdraw that objection since his appeal was clearly filed within 10 business days.

Mr. Branch argued that the appeal was untimely as it was not filed within 10 calendar days. He cited to cases construing how time of service is calculated under the rules of civil procedure. Chair Westbrook interjected, asking whether the Board didn't have a rule establishing business days as the applicable standard. Director Griego referred the Board to Rule 11.21.1.8, a copy of which was before the Board.

Mr. Branch continued, stating that the Board lacks statutory authority to issue any sort of pre-adjudicative injunctive relief as that term is not among the Board's listed powers. He also claimed that the case law does not support the issuance of pre-adjudicative injunctive relief by administrative bodies, and he cited a case wherein a district court ruled that a workers' compensation judge does not have the authority to issue pre-adjudicative injunctive relief and should instead apply to the district court for that type of relief.

Chair Westbrook asked Mr. Branch how he would reconcile his argument with the language in PEBA 10-7(E)-23(A) "...[the] board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders." taking note that a restraining order is a form of pre adjudicative injunctive relief. Mr. Branch responded the he reads Section 23(A) to mean that the Board may apply to a district court for that sort of relief.

Member Bledsoe asked Mr. Branch to differentiate between the legislative intent of this Board's authority and that of a Workers Compensation Judge. Mr. Branch responded that in the context of needing to enforce rulings regarding emergency and temporary relief, there is no difference between the legislative intent granted to this Board versus that of a Workers Compensation Judge. The legislature intended both forums to apply to the District Court for pre-adjudicative injunctive relief.

Chair Westbrook then asked Mr. Branch how the Department intended to address the possibility of the Union prevailing on its PPC. More specifically, if the Union triumphs, the positions at issue will have already been filled by non-bargaining unit members; how is that not irreparable harm? Mr. Branch responded that the Department was maintaining the *status quo* with regard to these employees but then made a disclosure that three of the positions at issue had already been filled by non-bargaining unit members, because it was management's belief that the positions were confidential in nature. He went on to explain that none of the bargaining unit members who had applied for the position had met the updated United States Department of Labor requirements for the position but, should the Board rule in the Union's favor, compensatory damages would be sufficient to make the aggrieved parties whole.

Member Bledsoe moved that the Board go into executive session pursuant to 10-15-1(H)(3) of the Open Meetings Act to adjudicate the issues. Chair Westbrook seconded the motion. After a 3-0 roll call vote the motion was approved and the Board went into executive session at 10:32 a.m.

The Board reconvened in open session at 10:55 a.m. Chair Westbrook stated that the matters discussed in closed session were limited to the issues outlined in the motion to go into closed session. He then moved that the Board find that the appeal was timely filed under the Board's rules and that the Board over rule the Executive Director's decision regarding not having

sufficient authority to award pre-adjudicative injunctive relief and remand the case back to the Executive Director for further proceedings on whether an injunction should or should not be issued. Vice-Chair Bartosiewicz seconded the motion. Upon a roll call vote Chair Westbrook and Vice-Chair Bartosiewicz voted in favor of the motion; Member Bledsoe dissented, voting “No”. The Motion therefore, passed 2-1.

7. **Director’s Reports.** Director Griego presented the following several cases that had been withdrawn or voluntarily dismissed. There was no Board action required and the cases were presented for the Board’s information with the exception of item *a.* below.
 - a. *Central Consolidated School District v. Central Consolidated Education Association*; PELRB 109-15. Review of Voluntary Dismissals. Director Griego explained to the Board that at the Board’s September 2015 meeting they had reviewed a dismissal but had not issued a Default Order or Notice of Violation of PEBA. He has since prepared those documents and routed them to the parties for comment. After several e-mail communications the parties have agreed to the form of both documents. The parties were represented at the meeting. Dina Holcomb was present for the District and Roxie De Santiago, appeared by telephone for the Association.

Ms. Holcomb verified that the Notice of Violation prepared by the Director for today’s meeting contained the parties’ requested language. Ms. De Santiago added that the requested language clarified that the judgement was by default.
 - b. *AFSCME, Local 2499 v. County of Bernalillo*; PELRB 117-15. Review of Inadequate Letter. No Board action required.
 - c. *AFSCME, Local 1536 v. County of Bernalillo*; PELRB 118-15. Review of Inadequate Letter. No Board action required.
 - d. *AFSCME, Local 2499 v. County of Bernalillo*; PELRB 119-15. Review of Inadequate Letter. No Board action required.
 - e. *AFSCME, Council 18 v. County of Bernalillo*; PELRB 308-15. Review of Dismissal. No Board action required.
8. **New Business.** The Board presented Mr. Jim Shaffner with a certificate of appreciation and thanked him for his extended service to the Board as well as the people of the State of New Mexico.
9. **Schedule Next Board Meeting.** The next Board meeting was scheduled for Monday, November 2, 2015, 9:30 a.m.
10. **Adjournment.** Vice-Chair Bartosiewicz moved to adjourn. The motion was seconded by Member Bledsoe. After a roll call vote the motion passed unanimously and the Board adjourned at 11:12 a.m.