



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

**Minutes of Board Meeting held Tuesday, October 11, 2016 9:30 a.m. at the PELRB offices,
2929 Coors Blvd. NW, Albuquerque, New Mexico; Chair Westbrook, presiding.**

1. **Call to Order.** Chair Westbrook called the meeting to order at 9:34 a.m. Vice-Chair Bartosiewicz and Member Bledsoe were also present.
2. **Approval of Agenda.** Before moving for approval of the Agenda Director Griego suggested that agenda items 5a and 5b might better be addressed at the end of the meeting before new business. Chair Westbrook moved to approve the agenda amended as suggested by Director Griego. Vice-Chair Bartosiewicz seconded the motion and the amended agenda was approved 3-0 after a roll call vote.
3. **Approval of September Minutes.** Member Bledsoe moved to approve the draft minutes of the Board's September meeting. Mr. Bartosiewicz seconded the motion and upon a 3-0 roll call vote the September 13, 2016 meeting minutes were approved.
4. There were no public comments.
5. **Request for Approval of Local Ordinance *In re: Luna County Ordinance No. 54*; PELRB No. 201-16.** Mr. Griego reminded the Board that this matter was carried over from the September meeting in order to allow him to review the amended ordinance submitted without the previously requested variances. Mr. Griego told the Board that he had completed his review, that the proposed ordinance conformed to the Board-approved templates and that he recommended approval of the ordinance as amended. Dina Holcomb, representing Luna County, expressed her desire for its approval and Shane Youtz, on behalf of AFSCME, Council 18 stated that it does not object to the revised ordinance because it no longer sought a variance. Chair Westbrook moved to approve the revised ordinance; Member Bledsoe seconded the motion and upon a 3-0 roll call vote the motion passed.
6. **Review of the Director's Designation of Appropriate Bargaining Units in re: *United Mine Workers of America and Socorro County*, PELRB No. 307-16.** Mr. Griego informed the Board that, at a hearing on the scope of appropriate bargaining units the parties reached an agreement to recognize three units: 1) Detention Center Officers; 2) Sheriff's Department Officers, and; 3) all remaining white collar and blue collar employees. Consent Election Agreements had not yet been drafted but the parties were scheduled to meet next week to enter into those agreements. Chair Westbrook moved to certify as appropriate the bargaining units as recommended by the Director. Vice-chair Bartosiewicz seconded the motion and upon a 3-0 roll call vote the three bargaining units were certified as appropriate.
7. **Review of Board Order in *AFSCME, Council 18 and Chris Verduzco v. Luna County*, PELRB 108-16.** Before considering this agenda item Director Griego informed the Board that counsel for Luna County was not available to present argument because of a scheduling conflict. Because hearing argument is optional, Mr. Griego told the Board that he thought it best to leave the decision whether to postpone the hearing or to decide it now without argument to the Board's discretion. He said that if the Board decided to table the agenda item until the

November meeting it would still be within the its 60-days deadline in which to render a decision on appeal. Member Bledsoe moved to table this agenda item until the November meeting in order that oral argument may be heard. Chair Westbrook seconded the motion and upon a 3-0 roll call vote the motion passed.

8. Director Griego presented three cases in which Voluntary Dismissals had been entered: 1) *New Mexico Coalition of Public Safety Officers on Behalf of Adrienne Ames v. Santa Fe County*, PELRB No. 110-16; 2) *New Mexico Coalition of Public Safety Officers on Behalf of Josh David v. Santa Fe County*, PELRB No. 111-16, and; 3) *New Mexico Coalition of Public Safety Officers v. City of Rio Rancho*, PELRB No. 113-16. No Board action was required. The cases were placed on the agenda for informational purposes only.
9. With regard to the next agenda item, Director Griego told the Board that he summarily dismissed a decertification petition filed by Antoine Whitfield, involving AFSCME, Council 18; PELRB No. 303-16 because, after he informed the Petitioner of certain deficiencies with the petition, he received no response from Mr. Whitfield. Dina Holcomb, speaking on behalf of the employer in this case, San Miguel County stated that she agreed with the dismissal because the petition was filed during the term of an existing Collective Bargaining Agreement and not within 30 days of its expiration. The case will be closed and no further action taken.
10. The Board next heard argument in *AFSCME Council 18 v. Bd. of Co. Comm'rs of Santa Fe County*; PELRB No. 128-15. Beginning with Motion to dismiss the appeal filed by the union. Shane Youtz addressed the Board on behalf of AFSCME Council 18 and Rachel Brown represented Santa Fe County. A discussion ensued regarding whether the Board's rules allow the union's issues to be raised by cross appeal when it elected not to file an appeal in the first instance and whether the County may appeal from a recommended decision in which it prevailed. Ms. Brown clarified that the Board rule permits an appeal from "findings" and that some of the findings entered by the Hearing Officer did not support the conclusions reached.

Chair Westbrook asked Mr. Youtz to address the questions of whether the Board's rules permit a cross-appeal and if they do, whether the cross-appeal in this case was timely filed. Mr. Youtz responded that the Board's rules don't *preclude* a cross-appeal and that such a cross-appeal is advisable in this case because an appellate Court should hear the underlying question of whether damages may be awarded in addition to any of the County's procedural issues on appeal. With regard to timeliness, Mr. Youtz argued that filing a cross-appeal within ten days of receiving an appeal would be considered "reasonable". Ms. Brown countered that the express deadline in our rules for filing an appeal was not met and it is that deadline that should control. Member Bledsoe asked the County to comment on any important distinction between damages for back wages compared to damages for unpaid dues. Ms. Brown described the latter as "tangential" and not contemplated by the PEBA.

Mr. Westbrook asked Mr. Youtz whether he thought the Union might still be able to appeal to the District Court if the Board was to strike the Hearing Officer's findings from his Recommended Decision. Mr. Youtz' opinion was that while there might be some additional procedural intricacies, an appeal could still be brought absent the findings at issue. Both parties argued the impact of *Callahan v. NMFT, et al.*

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 case. Ms. Brown asked as a point of clarification whether the Board would be considering only the procedural argument because she had not yet fully addressed the merits of the appeal. Mr. Westbrook opined that it would be

better to consider both and withdrew his motion. Each party then argued from their submitted briefs on the merits of the appeal at the conclusion of which, Chair Westbrook again 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 case. The motion was seconded by Member Bledsoe and passed after a roll call vote 3-0. The Board recessed for an executive session at 10:58 a.m.

The Board returned to open session at 11:11 a.m. and Chair Westbrook stated that the only matter discussed was *AFSCME Council 18 v. Bd. of Co. Comm'rs of Santa Fe County*; PELRB No. 128-15. Chair Westbrook moved to find that Board's rules as written would permit the filing of a cross-appeal within 10 days of an appeal. His motion also proposed to strike the Hearing Officer's findings while adopting his conclusions of law. The motion further proposed to decline entering any additional findings. Mr. Westbrook expressed his opinion that the Board and parties would benefit from a decision of the district court on the extent of the Board's authority to award damages. Mr. Bledsoe seconded the motion and after a 3-0 roll call vote the motion passed.

Mr. Youtz then raised a point of clarification concerning the impact of striking the findings from the damages Report and Recommended Decision. Mr. Westbrook clarified that it was not rejecting the findings of fact in so far as they are already established in a prior Board Order in this case.

11. The next agenda item called was *AFSCME, Council 18 & New Mexico Human Services Dep't*; PELRB No. 309-15. Dina Holcomb appeared on behalf of the New Mexico Human Services Department. Shane Youtz appeared on behalf of the union. Ms. Holcomb raised two preliminary issues; First, she renewed a prior request that Mr. Westbrook recuse himself for having previously represented public employees, adding as an additional reason, his announced intention (subsequently disclaimed) that he would be entering into a business relationship with Mr. Youtz' law firm. Mr. Westbrook restated his reasons for declining to recuse himself and stressed that the contemplated business relationship never entered into. Second, Ms. Holcomb made an oral motion to strike the Union's Response to the Department's appeal because it relied upon documents not submitted into evidence on the record below. Mr. Youtz responded that the documents to which Ms. Holcomb objects are subject to administrative notice and that he needed additional time to research whether, in fact, the documents were not in the record at the merits hearing. Chair Westbrook asked Ms. Holcomb whether her client would be prejudiced by the Board hearing argument on the merits at this meeting, reserving a ruling on the motion to strike until after research and briefing. Director Griego interjected that there was sufficient time within the period before the next scheduled meeting to permit research and briefing without exceeding the Board's 60-day decision deadline. Mr. Youtz expressed his opinion that he would prefer that Ms. Holcomb submit her motion in writing and that he be allowed to respond in writing after researching the facts. Ms. Holcomb's first preference was that the Board rule on her oral motion immediately. In the alternative, she requested briefing on the motion before considering the merits. She also reminded the Board that, if necessary, the Board may extend its 60-days decision deadline by another 20 days. Mr. Westbrook moved to table this matter to allow the parties to brief the motion. In response to a question from Mr. Youtz about the scope of the motion Mr. Westbrook clarified his understanding that the scope of the motion was to strike exhibits that were not part of the record below and any argument that is based on those exhibits. Mr. Griego asked if the Chair also intended to set a briefing schedule. After a brief discussion a briefing schedule was agreed to as follows: Ms. Holcomb would submit her motion

and brief-in-Chief by October 21, 2016 and Mr. Youtz would submit his Response by October 27, 2016. Mr. Westbrook's amended motion to include the briefing schedule was seconded by Vice-Chair Bartosiewicz and after a roll call vote, passed unanimously.

12. Director Griego reported to the Board that a FY 15 Findings Report issued by the Office of the State Auditor Government Accountability Office did not include our agency as one with significant findings of concern. With regard to the agenda item regarding the LFC Subcommittee Meeting on September 29, 2016 on the agency's FY17 Appropriations Request, Mr. Griego reported that the meeting, along with many of the other smaller state agency's was cancelled and therefore, there was nothing to report.
13. Vice Chair Bartosiewicz moved to adjourn at 11:39 a.m. Member Bledsoe seconded the motion and after a roll call vote the motion to adjourn was unanimously approved.