



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

Duff Westbrook, Board Chair

**Minutes of Board Meeting held Wednesday, September 16, 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. **Approval of Agenda.** The first item of business was approval of the meeting agenda. Vice-Chair Bartosiewicz moved and Member Shaffner seconded the motion to approve the agenda. After a 3-0 roll call vote the agenda was approved without modification.
3. **Approval of July 16, 2015 meeting minutes.** Member Shaffner moved to approve the July 16, 2015 meeting minutes. Vice-Chair Bartosiewicz seconded the motion and after a 3-0 roll call vote the minutes were approved without modification.
4. **Public Comments.** James Montalbano of Youtz and Valdez, P.C., appearing on behalf of AFSCME, noted for the Board's information that in its pending case against the Department of Workforce Solutions, PELRB No. 114-15, it is seeking injunctive relief. There has been briefing on the issue already and a Merits hearing before the Board's Hearing Officer is scheduled for November 9th and 10th. Mr. Montalbano wanted to communicate a "sense of urgency" regarding the injunction sought. Executive Director Griego stated that, depending on when the Board schedules its meeting for October, there should be sufficient time before the Merits Hearing for the Board to review his denial of the injunctive relief.
5. **Interlocutory Appeal of Executive Director's Letter Decision Regarding Burden of Proof in AFSCME, Council 18 v. Santa Fe County Board of County Commissioners; PELRB Case No. 305-15.** Rachel Brown appeared for the County. James Montalbano appeared for AFSCME, Council 18. Ms. Brown addressed the Board setting forth the history of the existing bargaining unit and the procedural history of the filing of this petition for accretion of Lieutenants into the existing unit. The County received the Director's letter Decision stating that the burden of proof of proof set forth in the Board's rule governing accretion rule was applicable and to be borne by the Union. There is no dispute over the application of that burden; rather, the dispute is over whether the burden to prove "changed circumstances" set forth in the unit clarification rule also applies and should be attributable to the Union. Five points were addressed: historic application, contents of the Board's Practice Manual, history of NLRB treatment of the issue, rules of statutory construction and who bears the burden on whether Lieutenants are supervisory managerial or confidential employees. The County also requested that the scheduled Hearing on the Merits of this case be stayed pending resolution of any further appeals.

AFSCME responded by pointed out the differences between Unit Clarifications and Accretion petitions and that in this case the language of the NLRA and the Board's rules may be read together as consistent only if one reads them as the Hearing Officer did, to exclude the "extra burden of proof" in an accretion situation and apply the Unit Clarification rule for its procedures alone. An exception to the Unit Clarification rule exists for those cases in which the employees are less than 10 percent of the bargaining unit. The one case relied on by the County saying that the burden of showing a change in circumstances, PELRB 325-06, issued May 30, 20017, is an "outlier"; all other PELRB cases support the union position. In PELRB 311-11, Lieutenants in the State Corrections Dep't were allowed to be accreted without reference to any changed circumstances. The Union pointed to 3 PELRB 2005; 78 PELRB 2012 where changed circumstances were not required to be shown. Mr. Montalbano also pointed out that disclaimer language in the Practice manual states that it is not to be cited as precedent.

The issue of whether the positions are supervisors or not, that is an affirmative defense to be proven by the party asserting the defense under "settled principles of New Mexico law".

The County responded to questions by the Board. After which the Union replied that the County's position would impair the rights of collective bargaining guaranteed by the PEBA of for the nine lieutenants (corrected by the County to be six lieutenants) involved in this case. The County responded that if the rules as written do not protect the bargaining rights of employees, they can be changed but one cannot "read around" the requirement of "changed circumstances" unless and until they are changed. Because the Petitioner is required to show that the accretion would not render the unit inappropriate it would be required to show that the positions are not "supervisors" as part of that burden. The Union concluded with comments responsive to the County's arguments.

Chair Westbrook moved to go into closed session pursuant to Section 10-15-1(H)(3) in order to deliberate on the case. The Motion was seconded by Vice-Chair Batosiewicz. A roll call vote was taken and the Board unanimously approved the motion. The Board recessed at 10:19 a.m.

The Board was called back into open session at 10:42 a.m. and Chair Westbrook announced that during the closed session the only matter discussed was the interlocutory appeal in *AFSCME, Council 18 v. Santa Fe County Board of County Commissioners*; PELRB Case No. 305-15. With regard to the question whether a petitioner seeking to accrete a position into an existing bargaining unit under NMAC 11.21.38(A) and 11.21.37(A) is required to show that the circumstances have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented by the same labor organization, Chair Westbrook moved that the Board decide that NMAC 11.21.38(A) governing accretions does not require a petitioner to show changed circumstances. With regard to who bears the burden of proof on the question of whether the employees sought to be accreted are excepted from collective under one or several of the enumerated exceptions in the PEBA. That burden is best allocated to the Petitioner as part of the third element outlined NMAC 11.21.38(A), that inclusion of the position(s) sought to be accreted must not render that unit inappropriate. Finally, Chair Westbrook moved to deny the County's request that the Hearing on the Merits in this matter be stayed stating that the matter of a stay was best left to the District Court. His Motion was seconded by member Shaffner and after a roll call vote the Motion was approved 3-

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6. **Motion To Set Aside Default Judgment in *Central Consolidated School District v. Central Consolidated Education Association*, PELRB No. 109-15.** Director Griego informed the Board that he received an e-mail message from the Union Representative the previous day withdrawing its Request for Review of his Default Judgment. A representative of the Union was not present but Dina Holcomb, representing the School District, was present. Ms. Holcomb addressed the Board outlining the procedural history of the case. The only thing before the Board now is upholding the Director's entry of default. The Withdrawal itself has not yet been received and the Director suggested that the matter be placed on the next agenda and by then he should have the actual filed withdrawal.
 7. **Director's Report.** Director Griego presented the following several cases that had been withdrawn and voluntarily dismissed. There was no Board action required and the cases were presented for the Board's information:
 - a. *NEA-Santa Fe v. Santa Fe Public Schools*, PELRB No. 104-15 and *Santa Fe Public Schools v. NEA-Santa Fe*, PELRB No. 110-15.
 - b. *AFSCME, Council 18 v. N.M. Dept. of Health*; PELRB 105-15.
 - c. *Central Consolidated Education Association, v. Central Consolidated School District*, PELRB No. 106-15.
 - d. *AFSCME Council 18 v. MVRDA*; PELRB 108-15.
 - e. *NMMTEA and the FOP v. State of New Mexico, and NM Dep't of Public Safety*, PELRB No. 112-15.
 - f. *Central Consolidated Education Association, v. Central Consolidated School District*, PELRB No. 113-15.
 - g. *New Mexico Children, Youth and Families Department v. Robert Gallegos*, PELRB No. 124-14; First Judicial District Court No. D-101-CV-2015-1157.
 - h. *Highlands Faculty Association & NMHU*; PELRB 307-15.
 8. **FY17 PELRB Appropriation Request.** Director Griego presented the Board's budget request for FY17, which not a flat request because of the following circumstances:
 - a. The agency expended more than anticipated in four categories. Although we were able to absorb those costs with savings in other categories, we are requesting an additional \$2,200 to more accurately reflect actual expenditures.
 - b. The Agency recently acquired second-hand audio-visual equipment from State Surplus that will enable us to webcast meetings and hearings. \$4,200 is requested to maintain a webcasting service.
 - c. An additional \$3,500 represents compensation increases and scheduled rate increases not reflected in the FY16 OPBUD.

The Director pointed out an over-expenditure in the salaries category that was most likely the result of a failure to properly project the budget in that category in a prior fiscal year that was carried forward into FY15. He did not yet have an adequate explanation for the error but would be meeting with the Department of Finance and the Legislative Finance Committee representatives to get more information and develop an approach for the future.

9. **New Business.** There was no new business but Rachel Brown requested that she be permitted a “Public Comment” that she had forgotten to make earlier. She suggested that “many” of the Board Decisions posted on the Board’s website do not have the Hearing Officer’s Decision attached. The Director stated it will be done. The Chair also suggested that the Director consider amendment of the rules and the Practice Manual pertaining to Unit Clarification and Accretion in light of today’s Board Decision in *AFSCME, Council 18 v. Santa Fe County Board of County Commissioners*; PELRB Case No. 305-15.
10. **Schedule Next Board Meeting.** After discussion the next Board meeting was scheduled for Wednesday, October 7, 2015, 9:30 a.m.
11. **Adjournment.** Chair Westbrook moved to adjourn. His Motion was seconded by Mr. Bartosiewicz. After a roll call vote the motion passed unanimously and the Board adjourned at 10:58 a.m.