

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

CENTRAL CONSOLIDATED  
EDUCATION ASSOCIATION,

Complainant

v.

PELRB No. 127-14

CENTRAL CONSOLIDATED  
SCHOOL DISTRICT,

Respondent

DECISION DENYING PRE-ADJUDICATION INJUNCTION

THIS MATTER comes before Thomas J. Griego, designated as the Hearing Officer for the New Mexico Public Employee Labor Relations Board (PELRB), upon the Complainant's (CCEA), request for a pre-adjudication injunction against the Central Consolidated School District (District). CCEA requests a preliminary injunction ordering the District to cease and desist from requiring that CCEA inform the District's Human Resources Director and request permission of the District before its Uniserve representative comes onto the District's premises and to desist from requiring that CCEA enter into facility use agreements except as historically done Article VI of the parties' CBA, pending adjudication of the underlying pending prohibited practices complaint (PPC). CCEA's request for pre-adjudication injunction was heard by the Hearing Officer on November 10, 2014 when evidence and argument of the parties was received. Based on that evidence and argument I find and conclude as follows:

1. The PELRB has jurisdiction to entertain CCEA's request for pre-adjudication injunction pursuant to Section 10-7E-23(A) (providing that PELRB may request judicial enforcement of its orders, *including* those for appropriate temporary relief and restraining orders). Pre-adjudicative injunctions by the Board *and* its Hearing Officers are within the general grant of authority to the PELRB under Section 10-7E-9 (E) and (F), which grants them the power to issue orders and to

enforce its orders through the imposition of appropriate administrative remedies. I do not recognize the distinction drawn by the District calling injunctive relief an exclusively judicial remedy unavailable in the administrative context. The National Labor Relations Board, under a similar grant has interpreted its authority to include injunctive prohibitory orders such as cease-and-desist orders. See JOHN E. HIGGINS, *THE DEVELOPING LABOR LAW* (6<sup>th</sup> Ed.) at 394-395. This Board has previously issued injunctive Orders such as has been requested here. See *West Las Vegas School District v. National Education Association – West Las Vegas*, *PELRB No. 108-13* (August 19, 2013). Neither is the Hearing Officer (as distinguished from the Board) precluded from issuing pre-adjudication injunctive relief because granting such relief is temporary, not dispositive of the merits and ultimately subject to the Board's review upon request.

Under New Mexico law, to obtain an injunction prior to a hearing on the merits, “a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.” *Id.*, quoting *LaBalbo v. Hymes*, 115 N.M. 314, 318 (Ct App. 1993). *See also*, *Winter v. Natural Resources Defense Council, Inc., et al.* 129 S.Ct. 366, 555 U.S. 7 (2008) (A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.) Granting a pre-adjudicative injunction is an extraordinary remedy and must be justified under the circumstances. *Id.* CCEA bears the burden of establishing each of the four elements outlined above before its requested relief may be granted.

2. The union's witnesses did not establish that it is likely to suffer irreparable harm in the absence of preliminary relief. All of the harm CCEA fears will occur is speculatively prospective. If it

occurs, adequate remedies exist for its redress including a speedy hearing on the merits of the present case. Nor does the balance of equities tip in its favor because of its ability to continue meeting with and representing its members, notwithstanding that the Uniserv representative may be hampered in doing so balanced against the District's legitimate need to ensure security at its facilities. For the same reasons CCEA has not established that an injunction at this time is in the public interest.

3. Accordingly I find that CCEA will not suffer irreparable harm because of the more burdensome conditions placed on the Uniserve Representative, Ewa Karakowska. Neither will the members of CCEA suffer irreparable harm by reason of the more burdensome conditions placed on the Uniserve Representative, Ewa Karakowska.

4. I further find that CCEA has not demonstrated the absence of an adequate and complete remedy at law at this juncture and balancing the equities does not favor granting the CCEA's request for pre-adjudication injunction.

5. Because CCEA has not met its burden of proof as to the foregoing elements I make no finding or conclusion with regard to whether it has demonstrated a substantial likelihood of prevailing on the merits of its PPC.

THEREFORE, CCEA's request for pre-adjudication injunction shall be and hereby is DENIED.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego  
Executive Director