

PELRB CASES ON APPEAL

as of November 24, 2021

1. D-820-CV-2021-00029 - PEÑASCO FEDERATION OF UNITED SCHOOL EMPLOYEES LOCAL 4285, AFT-NM and Miguelanjel Burns, Marissa Sandoval, Brandon Gurule, Valerie Bemis, and Deborah Anglada v. PEÑASCO INDEPENDENT SCHOOL DISTRICT

Location: N.M. Eighth Judicial District, Taos County
Date Filed: 02/15/2021
Case Description: This case involves union employees/officers who spoke in opposition to the Superintendent at a School Board meeting and subsequently experienced disciplinary action and the non-renewal of their teaching contracts or contracts for additional extra-curricular compensation. After a hearing on the merits, the Hearing Officer found that two of the employees proved that the School District discriminated against them regarding terms and conditions of employment because of their membership in a labor organization in a manner prohibited by NMSA 1978 §§ 10-7E-19(A), (D), (E) and (G) as well as § 5 of the Act when their contracts were not renewed in May of 2020 and that animus against PFUSE, Local 4285 was a substantial motivating factor for the adverse action taken. However, the hearing officer decided that two other employees had not met their burden to establish a violation of the Act so that their claims were dismissed. The Board adopted the decision of the Hearing Officer without modification by Order 5-PELRB-21. The School District appealed to District Court under SCRA Rule 1-074 on February 17, 2021. On September 14, 2021, the District Court affirmed the Board for the most part, reversing the Board only insofar as it retroactively applied the 2020 amendment to the Act concerning “concerted activity” (which the Board did not do). The School District sought a Writ of Certiorari asking the NM Court of Appeals to reverse the District Court on October 11, 2021. This matter remains on appeal as NMCOA No. A-1-CA-39990.

Assigned to Judge: N/A
Counsel of record: Shane Youtz shane@youtzvaldez.com
Lori Chavez lchavez@nmag.gov
Dina Holcomb dholcomb@mgt-assoc.com

X-reference: PELRB No. 108-20

2. D-412-CV-2015-00369 - American Federation of State, County and Municipal Employees, Local 2851 v. City of Las Vegas

Location N.M. Eighth Judicial District Court, San Miguel County
Date Filed 03/03/2021
Assigned to Judge: Abigail Aragon
Case Description: In January of 2015 AFSCME filed an accretion petition with the City of Las Vegas labor Management Relations Board seeking to accrete six positions into the existing bargaining unit. The local board issued a decision in September of 2015 denying the petition on the grounds that the positions were either supervisory or management position exempt from bargaining, but without issuing required findings of fact. AFSCME appealed the decision to the District Court which upheld the local board's decision in August of 2016. The union appealed the decision of the District Court to the NMAC, which reversed the District Court in February of 2019 and remanded the case to the District Court with instructions to have the local board enter Findings of Fact and Conclusions of Law as required. Before the Las Vegas LMRB could act on the remand, it ceased to exist and jurisdiction transferred to the PELRB. After a review of the record, the Hearing Officer issued a Report and Recommended Decision on October 7, 2020, including Findings of Fact and Conclusions of Law, and an Amended Report and Recommended Decision on December 30, 2020 concluding that the positions to be accreted were neither management nor supervisory positions so that the accretion petition should proceed. The PELRB adopted the amended decision by Order 4-PELRB-2021 on January 15, 2021. The City appealed that Order to the District Court, arguing that the Hearing Officer was required to find facts supporting the original decision of the local board and that substantial evidence did not support the Board's decision. The District Court held that the PELRB could revise the previous decision of the local board and affirmed the PELRB decision by written order on November 22, 2021. As of this writing, the deadline to request a writ of certiorari from the Court of Appeals, December 22, 2021, has not yet passed.

Counsel of record: Shane Youtz shane@youtzvaldez.com
Lori Chavez lchavez@nmag.gov
Dina Holcomb dholcomb@mgt-assoc.com

X-reference: PELRB No. 305-20

3. D-202-CV-202106572 - American Federation of State, County and Municipal Employees, Local 3022 v. Albuquerque Bernalillo County Water Utility Authority

Location: Second Judicial District Court, Bernalillo County
Date Filed: 11/17/2021
Case Description: The Complainant alleged the Respondent violated the Act when longevity pay to which employees were entitled under the CBA for one bargaining unit ceased upon an employee's promotion to a position in a different bargaining unit covered by a different CBA that did not contain a longevity clause. The issue proceeded to final and binding arbitration pursuant to the parties' CBAs. The arbitrator held that longevity pay for those receiving it prior to 1991 must be maintained upon promotion. That award was affirmed by the Second Judicial District Court in case number CV-2012-5866 (June 26, 2013) at which point it became a judgment of the Court pursuant to the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-24 (A) and (C) (2001). The Union contended that since that time, the Water Authority continued to deny longevity pay upon promotion despite the District Court decision and the arbitrator's decision. After the Water Authority's Labor Board ceased to exist by operation of the Public Employee Bargaining Act, § 10, on December 31, 2020, this Board assumed jurisdiction. The Hearing Officer found the prior decisions to be binding in favor of the Complainant because any ambiguity as to whether longevity pay must continue once an employee is promoted from the B-Series to the M-Series bargaining unit was resolved through a final and binding determination of an arbitrator affirmed by the District Court. The PELRB adopted the Hearing Officer's recommended decision by Order 68-PELRB-2021 on October 8, 2021. The ABCWUA appealed to District Court pursuant to SCRA Rule 1-074 on November 17, 2021.

Assigned to Judge: Erin O-Connell
Counsel of record: Jaimie Dawes jd@stelznerlaw.com
Shane Youtz shane@youtzvaldez.com
Lori Chavez lchavez@nmag.gov
X-reference: PELRB No's. 107-21 and 109-21 consolidated under PELRB 107-21.