



**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
Minutes of Board Meeting held Tuesday, December 1, 2020
at 9:30 a.m. via web conference. Marianne Bowers, presiding.**

1. **Call to Order.** Chair Marianne Bowers called the meeting to order at 9:31 a.m. Members Mark Myers and Nan Nash were also present, so that a quorum was established.
2. **Approval of Agenda.** Member Nash moved to approve the agenda. Vice-Chair Myers seconded the motion, and the agenda was unanimously approved upon a roll call vote.
3. **Approval of October 6, 2020 meeting minutes.** Member Nash moved to approve the minutes of the Board's August 13, 2020 meeting. Vice-Chair Myers seconded the motion, and the minutes were unanimously approved without modification.
4. **Public Comments.** There were twenty-three members of the public present. Stephen Curtice, representing AFSCME commented that the time had not yet passed for seeking and responding to Board review of agenda item 9(d) concerning *PFUSE Local 4285 v. Peñasco ISD*; PELRB 108-20. Mr. Griego stated that he had intended to let the Board know that prior to approval of the agenda so that it might be removed from consideration but forgot to do so and thanked Mr. Curtice for the reminder. Chair Bowers stated that would be addressed as it came up on the agenda.
5. **Review of Board Statement Re: NMSA § 10-7E-4(Q).** Chair Bowers reminded those present that at its October meeting a discussion ensued concerning the proper construction the definition of "public employee" in NMSA § 10-7E-4(Q). She then read the statement prepared by staff into the record as follows:

"PELRB Statement on the Definition of "Public Employee" in the PEBA

The New Mexico Public Employee Labor Relations Board (PELRB), in approving the Model Ordinance and Resolution for use in complying with the recent amendments to Section 10 of the PEBA, has taken the position that in Section 4(Q) of the PEBA, the phrase "and includes those employees whose work is funded in whole or in part by grants or other third-party sources" applies to all regular non-probationary employees of any public employer, whether or not the employer is a public school."

A Motion to approve the statement was made by Vice-Chair Myers and seconded by Member Nash. The Motion passed 3-0 upon a roll call vote. The Board postponed discussion of the Statement to later in the agenda in order to give interested parties time to read and consider the draft statement.

6. **Discussion of Virtual Bargaining in view of § 10-7E-17.** Chair Bowers reminded the Board that this was an agenda item continued from the October agenda in order to give the public time to read and consider the points raised in a letter on the subject submitted by the Jones firm on

virtual bargaining . She asked for discussion by members of the public. Ms. Holcomb expressed the opinion that these concerns be left to agreement by the parties in their ground rules. She also expressed an opinion that issuing a “Practice Advisory” would not be appropriate. Mr. Youtz said he thought guidance from the Board would be appropriate keeping in mind that across the state there are many bargaining agents that are not represented by legal counsel and such guidance is particularly useful to them and recognizing the wisdom of avoiding advisory opinions some sort of guidance is useful. Vice-Chair Myers stated he was in favor of posting some sort of guidance. Member Nash suggested that it was possible to offer guidance without issuing an advisory opinion. Chair Bowers asked staff to draft a more succinct statement incorporating some of the ideas in The Jones Firm’s letter providing guidance on avoiding delays in bargaining, and stating a preference for in-person bargaining, the specifics of which are to be taken up on a case-by case basis, to be considered at the next Board meeting. Director Griego was asked to draft a position statement short of a practice advisory be considered by Board at next meeting. Myers asked that any statement make clear that face-to face bargaining is preferred as long as proper Department of Health restrictions are met.

7. **Results of Card Check in Lieu of Election.** The Executive Director presented the results of a card check conducted in *CWA & Office of African American Affairs*; PELRB 304-20. The union presented interest cards from 80% of the bargaining unit employees indicating support for union representation. The Executive Director asked the Board to certify the union as the exclusive representative of the bargaining unit. Chair Bowers moved to certify the Communication Workers of America as the exclusive representative of the bargaining unit, member Nash seconded the motion and the motion carried by unanimous approval on a roll call vote.
8. **Approval of Consent Election Agreement.** The Executive Director informed the Board that the parties in *NMPRLEA & NMEMNRD*, PELRB 301-20 entered into a Consent Election Agreement, a copy of which was in their packet of information and the ballot tally was scheduled to take place on December 3, 2020. He asked the Board to approve the agreement. Chair Bowers moved to approve the Consent Election Agreement, member Nash seconded the motion and the motion carried by unanimous approval on a roll call vote.
9. **Review of Hearing Officer’s Reports and Recommended Decisions.** The Board decided to hear argument on all pending appeals and recess to closed session thereafter to deliberate on all appeals in a single closed executive session. The cases were taken up in the following order:
 - a. ***AFSCME v. Santa Fe*; PELRB 106-20.** Director Griego told the Board that he received a timely Request for Board Review of his Report and Recommended Decision in this case from the Complainant and a timely response from the Respondent all of which were included in their packets of information for the meeting. Chair Bowers invited Stephen Curtice, counsel for the Complainant, to address the Board and he presented his arguments urging the Board to modify the Recommended Decision to award make-whole relief pointing out where on the record evidence could be found to support an award of damages. Because the City’s representative was not present, staff contacted him by telephone. The Executive Director reported to the Board that under the circumstances the Respondent was relying on its written response and would not be making an oral argument at that time.
 - b. ***AFSCME & City of Las Vegas*; PELRB 305-20.** The Executive Director informed the Board that he received a timely Request for Board Review from the Respondent and a timely response to said request from the Petitioner from his Report and Recommended Decision in this case of which were in their pre-meeting information packets. Chair Bowers invited Dina Holcomb, counsel for the Respondent, to address the Board. She presented her arguments urging the Board to reject the Recommended Decision. A discussion ensued among Board members and counsel concerning the scope of the remand

and whether a new hearing after remand would be advisable or required. James Montalbano spoke on behalf of the Petitioner and presented arguments in favor of adopting the Recommended Decision without modification. The Board permitted Ms. Holcomb to respond to the points made by Mr. Montalbano in his argument. Chair Bowers thanks counsel for their presentations and moved to the next agenda item.

c. ***Mesa Vista Fed. of Teachers v. Mesa Vista Schools; PELRB 109-20.*** Chair Bowers asked that the parties limit their argument to 10 minutes per side. Shane Youtz argued for the union presenting a brief history of the Union Presidents “tumultuous” relationship with management and that after confronting management about its treatment of another employee she was threatened with disciplinary action. After the AFT-NM President wrote to management concerning the law on union activities, the threatened discipline was withdrawn, but thereafter, she was transferred to a different position. He argued that all elements of a *prima facie* case under the test established under the *Wright Line* case. He requested that the Hearing Officer’s Directed Verdict be set aside and that under the burden shifting standard in *Wright Line* the employer be required to put on its defense to the that the transfer of the employee at issue was a pretext for discrimination. Dina Holcomb for the School District argued that the directed verdict was appropriate because there was no *prima facie* case made for the violations of the PEBA alleged. There was no evidence that the transfer at issue was done in a manner any differently than the several other transfers made in response to the District’s fiscal crisis. The employee in question did not dispute the factual basis for stated reasons for her transfer. She asked that the Board uphold the directed verdict. Mr. Youtz made a brief reply highlighting that evidence on the record supported his argument that the stated financial emergency reason was a pretext. The Board had no questions for either counsel.

d. ***PFUSE Local 4285 v. Peñasco ISD; PELRB 108-20.*** As mentioned during public comment earlier in the meeting the Chair announced that because the time for filing Notice of Appeal and filing a Response to any such Notice had not yet passed, this matter would be postponed to the next meeting agenda and considered at that time.

Chair Bowers then moved to go into executive session pursuant to section 10-15-1(H)(3) of the Open Meetings Act, to consider the three cases on appeal; PELRB No’s. 106-20, 305-20 and 109-20. Member Nash seconded the Motion. The Motion passed unanimously upon a roll call vote and the Board recessed to Executive Session at 11:41 a.m.

At 12:19 p.m. Chair Bowers moved that the Board return to open session pursuant to sections 10-15-1(I)(l) and 10-15-1(J) and pronounced that the only matters discussed in the closed executive session were PELRB No’s. 106-20, 305-20 and 109-20. The Motion was seconded by Mr. Myers and passed unanimously upon a roll call vote.

With respect to *AFSCME v. Santa Fe*; PELRB 106-20, Chair Bowers moved to modify the Hearing Officer’s Report And Recommended Decision to find that the City’s failure to provide the length of Notice called for in the parties’ CBA constituted a prohibited labor practice and to find sufficient evidence existed to calculate the relief requested by the Complainant. Her Motion further directed the parties to confer in an attempt to reach agreement on the amount of damages to be paid and remanded that calculation to the Hearing Officer in the event the parties were unable to agree. Member Nash seconded the Motion. Board members declined further discussion. After re-stating the Motion, a roll call vote was conducted and all three Board Members voted “yes” in support of the Motion.

With respect to *AFSCME & City of Las Vegas*; PELRB 305-20, Chair Bowers stated that because the Las Vegas Labor Board ceased to exist, the PELRB “step[s] into the shoes” of the local board for purposes of the District Court’s remand Order and that it is free to make its own findings of fact and conclusions of law on the record before it. Based on that, Chair Bowers moved to modify the Hearing Officer’s Report and recommended decision to correct any errors in his citations to the record and once those are corrected the Board will review the Recommended Decision again at its next meeting. Vice-Chair Myers seconded the Motion and it passed unanimously upon a roll call vote. Ms. Holcomb asked for clarification as to whether review of the corrected decision at the Board’s next meeting presented an opportunity for a second appeal and after discussion the Board and its counsel confirmed that the Board’s discussion did not presume that another appeal would be available.

The Chair called for a Motion concerning PELRB No. 109-20. Member Nash moved that the Board adopt the Hearing Officer’s Report and Recommended Decision. Her Motion was seconded by Vice-Chair Myers. During discussion of the Motion Chair Bowers expressed her opinion that the Union made a *prima facie* case and the matter should have proceeded to a full hearing. A roll call vote was taken with Chair Bowers voting “no”; Vice Chair Myers and Member Nash both voted “yes” and the Motion carried 2-1.

10. **Voluntary Dismissals of *AFSCME v. SPO & NMCD*; PELRB 104-20, *AFSCME v. Santa Fe County*; PELRB 112-20, *PFUSE Local 4285 v. Peñasco ISD*; PELRB 118-20.** Director Griego presented all three Voluntary Dismissal as a group stating that the matters were being reported on for the Board’s information as settlement of disputes prior to convening a hearing. Consequently, there was no action to be taken by the Board.
11. **Procedural Dismissal of *AFSCME & Sandoval County*; PELRB 306-20.** Director Griego informed the Board that this case concerned a Petition for Decertification of a Bargaining unit filed without the requisite 30% showing of support. The defect was not cured within the time allowed and so was summarily dismissed. No action by the Board was required.
12. **Director’s Reports.** Director Griego and the Board’s Legal Counsel reported on the status of the pending Appeal to District Court in re: Goodenough v. CYFD; PELRB 106-19, including its supplementation of the record at the Appellant’s request. The Board’s CFO, Tanya Ramirez presented her Monthly Financial Report including budget balance projections and that the Board’s FY20 Financial Audit was timely completed and submitted to the State Auditor’s Office for approval with no findings against the Board. Hereafter the CFO Financial Report will be presented on a quarterly basis. The Director reported that after attending the Legislative Finance Sub-Committee meeting on November 16, 2020 it is clear that in order to meet the budget cuts requested by the Legislature, the only budget item that can be cut without impacting personnel is to eliminate approximately \$11,000.00 from the amount budgeted for our leased office space. The LFC encouraged the Board to continue effort to renegotiate the exiting lease, to consolidate office space with the Administrative Office of the District Attorneys, located across the lobby from the PELRB’s present location, or to relocate to other State-owned office space in Santa Fe or Albuquerque.
13. **Personnel Evaluation.** Chair Bowers moved to go into executive session pursuant to section 10-15-1(H)(2) of the Open Meetings Act, to discuss the annual evaluation of the Administrative Assistant, Matthew Huchmala. Member Nash seconded the Motion. The Motion passed unanimously upon a roll call vote and the Board recessed to Executive Session at 1:05 p.m. At 1:13 p.m. Chair Bowers moved that the Board return to open session pursuant to sections 10-

15-1(I)(l) and 10-15-1(J) and pronounced that the only matters discussed in the closed executive session were the personnel evaluation of the Administrative Assistant. The Motion was approved 3-0 upon a roll call vote.

14. **Scheduling the Next Meeting Date.** After some discussion, the next meeting was set for January 6, 2021 at 9:00 a.m.

15. **Discussion of Board Statement Re: NMSA § 10-7E-4(Q), Cont'd.** The Board resumed discussion of agenda item 5. Ms. Holcomb stated that she had no additional comment to offer after reading the draft statement. A discussion ensued as to what the Board wanted the Director to do to communicate the Statement to the public. Vice-Chair Myers suggested a separate posting on the website apart from the minutes and that the statement be added to the Practice Manual; member Nash agreed. The Board directed staff to post the statement on the website and add similar language to the definitions section of the Practice Manual.

16. **Adjournment.** Vice-Chair Myers moved to adjourn; member Nash seconded the motion and the motion carried unanimously by roll call vote at 1:21 p.m.