



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
Minutes of Board Meeting held Wednesday, December 23, 2020
at 10:00 a.m. via web conference. Marianne Bowers, presiding.

1. **Call to Order.** Chair Marianne Bowers called the meeting to order at 10:10 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. **Temporary Restraining Order and Preliminary Injunction and Motion for Judicial Enforcement.** The Executive Director provided the Board with a procedural history of PELRB 122-20, *MCFUSE v. Gallup-McKinley School District* and summarized the issues before the Board at this special meeting as being the Union's request for a Temporary Restraining Order and Preliminary Injunction as well as its Motion for Judicial Enforcement of injunctive relief issued by the Director following an earlier hearing held before him. After counsel delivered their opening statements, Shane Youtz, as counsel for the party with the burden of moving forward with the evidence presented the Complainant's case. Mr. Youtz first called Mark Hyatt, the Superintendent of Gallup-McKinley Schools, who, after being sworn-in by the Chair, testified about the negotiations surrounding the observation of teachers teaching remotely, the way the District observes teachers in the classroom and online, and the forms that the District had the teachers sign if they were teaching remotely. Mr. Youtz moved to admit into evidence 130 forms signed after the issuance of the Director's injunction and the Chair admitted them. After cross-examination by A. Lynn Himes, attorney for the District, Mr. Youtz declined re-direct examination and the witness was excused.

Mr. Youtz next called Ophelia Sanchez, Principal of an elementary school in the District.. Ms. Sanchez testified about District administrators when observing both in-person and remote teaching and how teachers are made aware that they are being observed. Mr. Youtz moved to admit an email from Ms. Sanchez to the teachers at her school regarding what is required of teachers in order that the administration can observe them when working remotely, which was admitted without objection. On cross-examination by Mr. Himes, she stated that the group learning software always indicates when she has joined a remote learning session and that when she uses the software to meet with teachers for purposes other than observation, the teachers are aware that she is in attendance. On re-direct examination by Mr. Youtz, she stated that administrators can observe the remote teaching at any time and teachers are not given independent notice when observation begins.

Mr. Youtz called Joel Copley next, another elementary school Principal. Mr. Copley provided testimony regarding the observation of remote learning. Mr. Youtz moved to admit an email from Mr. Copley to teachers regarding an "Internet Assurance Form" which was admitted

without objection. Mr. Copley also provided testimony regarding that form. Mr. Himes cross-examined him regarding various versions of the form that had been used. Mr. Youtz declined re-direct examination.

The next witness was Gerald Horacek, the administrator responsible for the District's Information Technology. Mr. Horacek testified about the hardware and software used by the District for remote learning and observation of the District's remote learning teachers. After direct examination by Mr. Youtz, the Chair questioned Mr. Horacek about what sort of data the software collected about the teachers. Mr. Himes sought to establish on cross-examination that there was little practical difference between the remote learning observation and the in-person observation. On re-direct examination, Mr. Youtz questioned Mr. Horacek about the remote learning sessions in "Microsoft Teams" software not being recorded by the District. Mr. Youtz then rested the union's case.

The Board recessed for 10 minutes and resumed the hearing at 12:36 p.m. After confirming that both versions of the "Internet Assurance Form" were admitted into evidence, Mr. Himes rested the School District's case without calling any witnesses.

Mr. Youtz delivered his closing argument, followed by Mr. Himes. After questioning Mr. Youtz about the relief sought, the Chair moved to go into closed executive session pursuant to NMSA 1978 § 10-15-1(H)(3). Member Nash seconded the motion and the motion carried unanimously on a roll call vote. At 1:30 p.m. Chair Bowers moved to resume open session under NMSA 1978 § 10-15-1(I)(1) and (J) stating the only matter discussed was the consideration of the motions in PELRB 122-20. Member Nash seconded the motion and the motion carried unanimously on a roll call vote.

Chair Bowers then moved to:

- 1) adopt the findings of fact in the November 25, 2020 Temporary Restraining Order issued by the Executive Director,
- 2) affirm the decision of the Executive Director to issue a Temporary restraining Order with the following amendments:
 - a. The School shall announce its presence whenever any District staff is observing any teacher through any software. The presence of District's observing staff must be acknowledged by the teacher. District observing staff shall also inform the teacher when the observing staff departs the session and the departure shall also be acknowledged by the teacher.
 - b. The District shall immediately notify employees that the Remote Instruction Assurances for Quarter 1 of the 2020-21 School Year signed by teachers working remotely and any variation thereof, is unenforceable, and
- 3) deny Complainant's request for judicial enforcement at this time. Vice-Chair Myers seconded the motion and the motion carried unanimously by roll call vote with member Nash voting via

the chat function due to a malfunction of her audio device. The time was 1:35 p.m. Mr. Himes requested to add to the record, which request was denied by the Chair.

4. **Adjournment.** Chair Bowers moved to adjourn; Vice-Chair Myers seconded the motion and the motion carried 2-0 on a roll call vote at 1:36 p.m., notwithstanding Board member Nash being unable to participate in the vote due to technical difficulties.