



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
Minutes of Board Meeting held Saturday, May 22, 2021
at 9:00 a.m. via web conference. Marianne Bowers, presiding.

1. **Call to Order.** Chair Marianne Bowers called the meeting to order at 9:00 a.m. Vice-Chair Mark Myers and Member Nan Nash were in attendance so that a quorum was present.
2. **Approval of Agenda.** Before calling for approval of the agenda, Chair Bowers disclosed that she is now a resident of California but will continue working in the State of New Mexico. Vice-Chair Myers moved to approve the agenda; his motion was seconded by Member Nash and the motion carried upon a unanimous roll call vote.
3. **Approval of March 2, 2021 Meeting Minutes.** Member Nash moved approval seconded by Vice-Chair Myers. The motion passed unanimously upon a roll call vote.
4. **Public Comments.** There were no requests from those in attendance to make a public comment.
5. ***In re: City of Raton; PELRB 217-20 and In re: Aztec Schools; PELRB 215-20; Local Boards Not Submitting Rules for Approval.*** Chair Bowers took up both *In re: City of Raton* and *In re: Aztec Schools*, together. After stating her understanding that because neither the City of Raton nor Aztec Schools submitted conforming rules to this Board by the April 30, 2021 deadline established by NMSA 1978 Section 10-7E-10(C), that both local boards would go out of existence on July 1, 2021. The Chair called upon the Board's legal counsel, Lori Chavez, and asked whether any action was required of the Board and her opinion was no action was required because the local boards go out of existence by operation of law. No one from either entity was present to address the question. The Chair directed staff to send a letter to each requesting that they transfer to this Board any pending matters before them and to close the cases thereafter.
6. ***In re: City of Albuquerque; PELRB 220-20; Revised Local Ordinance.*** Chair Bowers stated her understanding that after the City's original submission was not approved by this Board, a revised ordinance was submitted on May 18, 2021 accepting staff's recommended changes. No one from the City addressed the issue. Chair Bowers moved to conditionally approve the revised local ordinance on the condition that it is passed by the Albuquerque City Council and submitted to this Board as soon as possible but in no event later than June 30, 2021, when a local board operating under a non-conforming local ordinance shall cease to exist by operation of law. Member Nash seconded the motion. After a roll call vote, the motion passed 3-0.
7. **Local Boards Rules Review.** The Chair called the first seven of the local board rules on the agenda together as a group:
 - a. *In re: CNM; PELRB 206-20*
 - b. *In re: Doña Ana County; PELRB 207-20*
 - c. *In re: Alamogordo Public Schools; PELRB 208-20*
 - d. *In re: City of Hobbs; PELRB 212-20*
 - e. *In re: Albuquerque Public Schools; PELRB 214-20*
 - f. *In re: NMSU; PELRB 216-20*
 - g. *In re: Zuni Consolidated Schools; PELRB 219-20*

The Chair moved for approval of the above-referenced rules as submitted. The Motion was seconded by Member Nash and passed unanimously by a roll call vote.

The Chair then called agenda item 7h, *In re: City of Deming*; PELRB 204-20, stating her understanding that the City sent notice of their intent to revise the rules as requested by staff and had scheduled a meeting of the local board to accomplish that amendment. Accordingly, she moved to conditionally approve the revised local board rules on the condition that staff recommended changes are adopted by the City of Deming's labor board and submitted to this Board as soon as possible but in no event later than June 30, 2021. Mary Jo Valdez, Municipal City Clerk, addressed the Board stating that Deming's local labor board is scheduled to meet on June 10, 2021 and that she "[does] not foresee any issues with then not approving the amendment". Vice-Chair Myers seconded the Chair's motion and it carried 3-0 upon a roll call vote.

The Chair then called agenda item 7i, *In re: San Juan College*; PELRB 205-20, noting that the Executive Director made recommendations for changes to College's rules and that those changes have not yet been made. No one from San Juan College addressed the issue. Member Nash asked whether this matter could be taken up at its July meeting. Director Griego responded that June 30, 2021 is the cutoff date for any corrections to the rules to be made. Nash asked if time should be set aside at the end June to take any necessary action before the June 30 deadline. Chair Bowers moved to table action on San Juan College's rules until its next meeting. The motion received a second from Member Nash and the motion carried 3-0 upon a roll call vote.

The Chair called agenda item 7j, *In re: Silver City*; PELRB 209-20, and stated her understanding that proposed rules have been timely submitted and that the City has agreed to make corrections to its rules based on recommendations by PELRB staff. She made a motion to conditionally approve the revised rules submitted on May 21, 2021 subject to those revised rules being adopted by the Town of Silver City's labor board and submitted to this Board as soon as possible but in no event later than June 30, 2021, after which time a local board operating under non-conforming rules will cease to exist by operation of law. Celia Dominguez, Personnel Officer for Silver City addressed the Board stating that the Silver City labor board is scheduled to meet on June 8, 2021 to approve the recommended changes. Vice-Chair Myers seconded the Chair's motion and following a 3-0 roll call vote, the motion passed.

With regard to agenda item 7k, *In re: Sandoval County*; PELRB 210-20, Chair Bowers stated her understanding that rules have been timely submitted, that changes to those rules were recommended but that staff has not heard back from the County concerning those changes. Director Griego confirmed the Chair's understanding of the status of this case. Absent assurance that the recommended changes would be made Ms. Bowers moved to table the matter until the Board's next meeting. After receiving a second from Board Member Nash, the matter proceeded to a roll call vote and passed 3-0.

The Chair then called agenda item 7l, *In re: City of Roswell*; PELRB 211-20. Chair Bowers stated her understanding that rules were timely submitted, recommended changes were discussed and assurances given that the recommended changes would be made. She moved to conditionally approve the rules based on assurances that the revisions to the April 20, 2021 rules will be adopted by the City's labor board and submitted to this Board as soon as possible but in no event later than June 30, 2021, after which time a local board operating under non-conforming rules will cease to exist by operation of law. Director Griego confirmed that he received communication from Parker Patterson with the City Attorney's Office that the changes suggested by PELRB staff would be taken up by the City's labor board and submitted to this Board as soon as possible. The Chair's motion was seconded by Vice-Chair Myers. The motion carried 3-0 by a roll call vote.

The Chair called the next agenda item, 7m, *In re: City of Las Cruces*; PELRB 218-20, stating her understanding that proposed rules were timely submitted, changes were recommended by staff but no response to those recommended changes had yet been received. The Chair moved to table Director Griego interjected that he received an email message from someone at the City of Las Cruces indicating that the requested changes would be made. Jo Richards, Director of Human Resources for the City of Las Cruces, addressed the Board stating that a meeting was scheduled with the local board for June 21, 2021 and she did not anticipate any problem amending the rules as suggested. The Chair withdrew her earlier motion and moved instead to conditionally approve the City's rules based on assurances that the revisions to the rules will be adopted by the City's labor board and submitted to this Board as soon as possible but in no event later than June 30, 2021, after which time a local board operating under non-conforming rules will cease to exist by operation of law. That motion received a second from Vice-Chair Myers and the motion passed 3-0 upon a roll call vote.

Agenda item 7n was the next agenda item called by the Chair; *In re: City of Albuquerque*; PELRB 220-20. Director Griego reported that on April 23, 2021, the City filed its application for approval of local board rules relying on the minutes of its LMRB meeting held March 3, 2021 when the City's labor board voted to repeal its existing Labor Management Relations Board Rules and Regulations effective the date that the State approves the Board's action in adopting their rules and until such time the Albuquerque board would adopt the State Board's rules. To replace the repealed rules the board also voted to adopt of the State's rules. While this is not optimal, because the City is currently making changes to its ordinance conditionally approved at this meeting, the City has done what it could under the circumstances to meet the minimum requirements of § 10(C). After the Board meeting today, Mr. Griego anticipated that the City would be drafting rules and submitting them before June 30. A representative of the City's Labor-Management Relations Board, Leigh E. Brunner, told the Board that its plan was to draft revised rules now that the Ordinance was conditionally approved and submit them before the June 30, 2021 deadline. Chair Bowers moved to table the City of Albuquerque's rule to a future meeting. Vice-Chair Myers seconded the motion and the Board voted 3-0 on a roll vote to pass the motion.

The Chair called agenda item 7o, *In re: Los Alamos County*; PELRB 213-20. After introductory comments by Director Griego Deputy County Attorney for Los Alamos County, Katie Thwait's addressed the Board arguing that its revised rules as submitted on March 29, 2021 comport with the PELRB's rules and should be approved despite PELRB staff opinion to the contrary. Chair Bowers opined that because the Board did not have before it a set of rules that the Executive Director recommends for approval that the matter should be tabled to a future meeting. Vice-Chair Myers agreed with tabling this agenda item. Member Nan agreed that the matter did not appear to be ready for a decision depending on what Ms. Thwait's comments were. The Chair called upon Ms. Thwait's for further comment. After clarifying that for purposes of this meeting she was representing the County's labor board, not the County of Los Alamos, Ms. Thwait's requested specific findings concerning whether the proposed rules comport with this Board's rules or in the alternative, that this Board conditionally approve the Los Alamos County local board's March 29 rules subject to the staff-recommended changes being made. Director Griego pointed out the incongruity in simultaneously asking for findings as to why the local rules do not comport the PELRB's rule and asking for conditional approval, which requires good faith assurances by the Los Alamos board that it will adopt the changes as recommended by staff and suggested a hearing on the request for a variance so that specific findings may be entered. Chair Bowers called upon legal counsel, Lori Chavez, for her advice. Ms. Chavez agreed that the matter was not ripe for a decision

based on the County labor board's request for specific findings as to why the proposed rules do not meet the conditions set in § 10(C). proposed that Director Griego hold a hearing during the upcoming week so that this Board had sufficient facts upon which to base findings. Chair Bowers moved to table the matter and direct Director Griego to hold a hearing to enable the Board to make specific findings as requested. Vice-Chair Myers seconded the motion. The motion carried 3-0 upon a roll call vote.

8. ***AFSCME Council 18, Local 2499 v. Bernalillo County; PELRB 120-20.*** Director Griego reported that the Hearing Officer's Report and Recommended Decision was entered and as no request for board review was received, the matter may now be closed. Stephen Curtice, on behalf of AFSCME Council 18, Local 2499 confirmed Mr. Griego's statements. No Board action was taken.

9a. ***AFSCME v. Bernalillo County; PELRB 101-21.*** Director Griego reported that no request for Board review of the Summary Judgment issued in this case was received, so that no Board action was required. The matter was placed on the agenda to keep the Board informed about all cases and the file may now be closed. Stephen Curtice, speaking on behalf of AFSCME, clarified that the matter may not yet be closed as the Summary Judgment allowed the matter to proceed to a hearing on the merits and a decision on that hearing is coming. Director Griego confirmed the correction. No Board action was taken.

9b. ***MCFUSE v. Gallup-McKinley Schools; PELRB 102-21.*** After calling this agenda item, Chair Bowers that the request for review of Summary Judgment by Gallup-McKinley Schools included a request that the Board Chair recuse herself. H. Lynn Himes, representing the Schools relied upon his written request for review and had nothing to add by way of oral argument. Mr. Curtice argued that the request for recusal was not properly brought under applicable case precedent and should be denied for that reason. Furthermore, each of the decisions at issue were 3-0 decisions so that the Chair's vote had no bearing on the eventual outcome. Vice-Chair Myers moved to deny the request for recusal. Member Nash asked counsel for the Board whether this was the second such request for recusal in this case, and Ms. Chaves said "Yes, there was one brought earlier this year." After some discussion member Nash asked that Mr. Myers amend his motion to not only deny the motion but if recusal is denied by this Board this time, then it is the law of the case and no similar future motion will be entertained. Mr. Myers amended his motion accordingly. Member Nash seconded the Motion and it passed on a roll call vote 3-0.

Having denied recusal, the Board proceeded to hear argument on the remainder of the requested review. Mr. Himes stated that the only issue for which he sought review concerned the remedy. He argued that the Executive Director overreached his authority by requiring an apology as part of his Report and Recommended Decision and that the Board would also be exceeding its authority if it were to adopt that remedy. He also corrected the Board that the previous request for recusal of the Chair was in an earlier related case, not this one. He argued that the Schools have the right to be critical of the Board's order and the Executive Director's decisions without violating the PEBA. Mr. Curtice, on behalf of the union responded that this Board enjoys a good deal of discretion to fashion an adequate remedy in any case. The 2020 amendments to the Public Employee Bargaining Act make clear that an employer is to remain strictly neutral and thus makes it a prohibited practice for a public employer to use public funds or resources to try to influence employee preferences concerning a union. He argued that the apology requirement is an appropriate attempt to undo the harm caused by the employer's prohibited practice. Myers moved to accept the Director's recommendations. Member Nash agreed that a prohibited practice was committed that needed to be "undone" but stated that an "apology" is different than an "acknowledgement" and requested further argument on that point. Mr. Himes addressed that issue stating that while the Board has the power to direct acknowledgement of the PPC it cannot direct that the employer be sorry for it. Mr.

Curtice responded that whether or not the words “I’m sorry” are used, the only way to undo the harm caused by the employer in this case is to acknowledge that the District lacked authority for its email to employees and an attempt to correct the problem caused by the employer is “entirely appropriate and I think, frankly, required under the Act.” Member Nash commented concerning Mr. Himes’ argument that the employer failed to follow the *Board’s* direction not the union’s direction as argued, but an apology is not an appropriate remedy in contrast with an acknowledgement of wrongdoing, which is appropriate. Director Griego commented that after hearing Mr. Himes’ argument his concept of an “acknowledgement” as contrasted with an “apology” is what he had in mind as a recommended remedy. Member Myers stated that so long as the remedy included an “acknowledgement” instead of an “apology” he would adopt the Director’s recommendations. Nash moved to adopt the Executive Director’s Decision and recommended remedies substituting the word “acknowledgement” instead of “apology”. Vice-Chair Myers seconded the motion and the motion passed upon a 3-0 roll call vote.

10. ***Bernalillo County Court Deputies Association v. Bernalillo County*; PELRB 121-20.** Chair Bowers introduced this agenda item as involving the issuance of a protective order in the case. Director Griego asked that the Board also adopt the order as its own. The Chair so moved. Vice-Chair Myers seconded the motion. Member Nash had no comment the matter proceeded to a roll call vote, where it passed unanimously.

11a. **Settlement After Hearing *in re: MCFUSE v. Gallup-McKinley Schools*; PELRB 122-20.** Director Griego stated that after a merits hearing convened, the parties reached a settlement of all issues. Pursuant to NMAC 11.21.3.15(C) the director or hearing examiner may submit a proposed settlement agreement to the board for its approval before the settlement becomes final and under subsection (D) after commencement of the hearing, the complaint shall not be withdrawn or settled without the approval of the hearing examiner. Mr. Griego gave reasons for Board review under rule 3.15(C) review is desirable in this case and that he saw no reason not to approve the parties’ settlement. Mr. Curtice agreed with Mr. Griego’s assessment and assured the Board that both this settlement and that in agenda item 11b were arm’s length negotiations. Mr. Himes agreed with Mr. Curtice. Chair Bowers moved for approval of the settlement agreement. Vice-Chair Myers seconded the motion and it passed 3-0 on a roll call vote.

11b. **Settlement After Hearing *in re: AFSCME Council 18, Local 3999 v. City of Santa Fe*; PELRB 119-20.** Chair Bowers asked the parties to address the settlement. Mr. Curtice told the Board that this particular settlement was entered into after opening statements in the hearing that it is a fair resolution and the parties have already been acting pursuant to the agreement. Mr. Chris Ryan, attorney for the City in this case was not present to address the matter. Mr. Griego, having already stated his recommendation that the settlement be approved had nothing to add. Chair Bowers moved for approval of the settlement agreement. Vice-Chair Myers seconded the motion and it passed 3-0 on a roll call vote.

12. **Summary Dismissal of *Nogales v. Bernstein*; PELRB 104-21.** Director Griego gave a brief procedural history the initial filing and that it failed to state a claim under the PEBA. Because there was not a timely request for Board review of the Summary Dismissal after an opportunity to amend or supplement the original filing, there was no action for the Board to take. Staff was directed to close the file.

13. ***Goodenough v. CYFD*; PELRB 106-19.** Ms. Chaves shared the District Court’s affirming the Board’s Order accepting the Hearing Officer’s case law, application of the facts to the law and the Board’s ultimate decision. Director Griego stated he would be posting the decision on the Board’s website and referencing the case in the Board’s Practice Manual. Vice-Chair Myers and Member Nash congratulated staff on their work in this matter.

14. **Director’s Reports.** Director Griego reported on the following:

a. He negotiated a one-year extension of the office lease and the lease extension was currently being drafted.

b. *Appeal of AFSCME & City of Las Vegas* PELRB 305-20. Director Griego informed the Board that the record on appeal and the parties' respective statements on appeal have been filed in this appeal in the Fourth Judicial District in. Ms. Chaves had nothing to add.

c. Concerning the Annual Report for calendar year 2020, Mr. Griego asked for questions from the Board. Member Nash noted a typographical error that needed to be corrected on page 8 and the cases re-numbered. She also commended staff on the amount of work done over the past year. Chair Bowers concurred.

d. Director Griego deferred the CFO report re: HB2, SB377; last quarter report and budget reconciliation to the June meeting. He stated that all FY22 Operating Budget submissions, the audit contract are timely and all bills are current.

15. **Adjournment.** After noting that the next scheduled meeting June 1, 2021 is coming up rapidly, Chair Bowers moved to adjourn. Vice-Chair Myers seconded the Motion. The motion carried 3-0 upon a roll call vote and the meeting adjourned at 10:32 a.m.