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THE SUPREME COURT OF THE STATE OF NEW MEXICO
September 6, 2011

NO. 33,141

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, et al.,**

Petitioners,

v.

HON. SUSANA MARTINEZ,
Governor of the State of New Mexico,

Respondent,

and

STATE OF NEW MEXICO,

Real Party in Interest.

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ORDER

WHEREAS, this matter came on for consideration by the Court on
Petition for Writ of Mandamus or Prohibition, the court having considered said
petition and the Governor's response thereto, Justice Patricio M. Serna, Justice
Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and
Chief Judge Celia Foy Castillo concur that the petition should be denied.

The issue which is the subject of the petition follows this courts opinion

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in *AFSCME, et. al. v. Martinez*, 2011-NMSC-018 prohibiting Governor Martinez from removing John Boyd from the Public Employee Labor Relations Board (PELRB) and ordering his immediate reinstatement. Governor Martinez complied with the court's writ. Subsequent to his reinstatement the term of John Boyd expired on July 1, 2011. Under the provisions of NMSA 1978 § 10-7E-8 (2003) the Governor was required to appoint a member to PERLB that was "recommended by organized labor representatives actively involved in representing public employees." The vast majority of organized labor representatives recommended the appointment of John Boyd. However, Eric Muller, President of the Clovis Police Officer Association recommended the appointment of Roger E. Bartosiewicz on July 1, 2011. Governor Martinez appointed Mr. Bartosiewicz on July 22, 2011.

Petitioners do not contend that the Clovis Police Officer Association is not an organized labor representative actively involved in representing public employees. Instead Petitioners contend that the recommendation of Mr. Bartosiewicz was against the recommendation of the vast majority of organized labor representatives, was not authorized, and in any event was withdrawn by President Muller. The affidavit of President Muller stating that he is withdrawing his recommendation of Mr. Bartosiewicz is dated after the Governor appointed Mr. Bartosiewicz and therefore it is not clear whether

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President Muller withdrew the recommendation before the Governor appointed Mr. Bartosiewicz.

Whether the recommendation was withdrawn before the Governor's appointment is a fact issue that cannot be resolved in a proceeding for a writ of mandamus or prohibition. In addition, whether the Clovis Police Officer Association was or was not authorized to make such a recommendation because of bylaws, agreements or otherwise appears to be a dispute among the unions and not a dispute involving Governor Martinez. The factual issues arising from the latter dispute are not properly before this court until such factual issues are resolved in an appropriate district court action.

NOW, THEREFORE, IT IS ORDERED that the petition for writ of mandamus and prohibition is hereby DENIED.

WITNESS, The Hon. Charles W. Daniels, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said court this 6th day of September, 2011

Kathleen Jo Gibson

(SEAL)

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

ATTEST A TRUE COPY

Kathleen Jo Gibson
Clerk of the Supreme Court of the State of New Mexico