

**STATE OF NEW MEXICO, Plaintiff-Petitioner,**  
**v.**  
**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 18, AFL-CIO, CLC, and COMMUNICATION WORKERS OF AMERICA, AFL-CIO, CLC,**  
**Defendants-Respondents.**

**NO. 33,792**

**SUPREME COURT OF THE STATE OF NEW MEXICO**

**Filing Date: May 30, 2013**

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**ORIGINAL PROCEEDING ON CERTIORARI**

**Alan M. Malott, District Judge**

Rodey, Dickason, Sloan, Akin & Robb, P.A.  
Thomas L. Stahl  
Edward R. Ricco  
Albuquerque, NM

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for Petitioner

Youtz & Valdez, P.C.  
Shane Youtz  
Stephen Curtice  
Albuquerque, NM

for Respondent

**DISPOSITIONAL ORDER OF AFFIRMANCE**

{1} This certiorari petition having come before the full Court, and each member of the Court having studied the briefs, engaged in oral argument, and being otherwise fully informed on the issues and applicable law; and

{2} The Court of Appeals having issued a formal Opinion in this matter, *State v. American Federation of State, County, and Mun. Employees Council 18*, 2012-NMCA-114, \_P3.d\_, with which we agree and which sufficiently analyzes and resolves the principal issues in this case; and

{3} The members of the Court having concurred that it would better serve the public interest to file this Order of Affirmance now, rather than subject the parties and the public to the inevitable delay that accompanies a formal Opinion; and

{4} The members of the Court having concluded that there is no reasonable likelihood that a Decision or Opinion from this Court would materially advance the law of this State; and

{5} The members of the Court having agreed to invoke this Court's discretion under

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Rule 12-405(B)(3) NMRA to dispose of a case by order, decision or memorandum opinion rather than formal opinion;

**IT IS THEREFORE ADJUDGED THAT:**

{6} Having enacted the Public Employees Bargaining Act (the Act), NMSA 1978, Section 10-7E-1 to -26 (2003, as amended 2005), the New Mexico Legislature authorized the State, acting by and through representatives of its Executive branch, to negotiate and enter into binding contracts with representatives of organized labor, acting on behalf of those state employees choosing to become union members, and thereby to obligate the State,



subject to legislative appropriation, to pay wages at the negotiated level to those state employees covered by contract.

{7} As set forth more fully in the Court of Appeals' majority opinion, in 2005 the State entered into contracts with organized labor pursuant to the Act and thereby committed to future wages at specified levels for those state employees covered by those contracts. Those contracts create binding obligations on the State and enforceable rights in those state employees covered by contract, conditioned on legislative appropriation.

{8} In 2008 the New Mexico Legislature appropriated sufficient funds to honor those contracts for Fiscal Year 2009, covering the period July 1, 2008 through June 30, 2009. Following the 2008 legislative session and notwithstanding that

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appropriation, the State Personnel Board took actions to allocate a portion of those appropriated funds to purposes other than fulfillment of the State's contractual obligations. The effect of this action was to deprive those state employees covered by contract of sufficient funds to honor those contracts. Instead, the State chose to provide increased wages to those employees *not* covered by contract who had no contractual rights at the expense of those state employees who had enforceable contractual rights.

{9} In doing so, the 2008 State Personnel Board, acting on behalf of the Executive branch, breached the State's contractual obligations, and acted contrary to legislative appropriation and to the Act. The rulings of both the district court and the Court of Appeals correctly enforce the rights of those state employees covered by contract. Accordingly those rulings are hereby **AFFIRMED** and these cases are remanded for further action consistent with this Order.

**{10} IT IS SO ORDERED.**

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**PETRA JIMENEZ MAES, Chief Justice**

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**RICHARD C. BOSSON, Justice**

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**EDWARD L. CHÁVEZ, Justice**

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**CHARLES W. DANIELS, Justice**

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**BARBARA J. VIGIL, Justice**