

BEFORE THE PUBLIC EMPLOYEE LABOR
RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES COUNCIL 18,
AFL-CIO,

Petitioner

1-PELRB-2010

v.

Docket no. 139-09

STATE OF NEW MEXICO REGULATION AND
LICENSING DEPARTMENT,

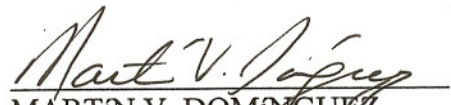
Respondent

DECISION AND ORDER

This matter having come before the Public Employee Labor Relations Board ("Board") upon Respondent's Appeal of the Hearing Officer's recommended decision, and the Board having heard argument and being otherwise fully advised:

IT IS HEREBY ORDERED that the Hearing Officer's decision dated January 21, 2010 is hereby overruled. The Board further finds that the employee, Raymond Armenta, had waived his rights to union representation when he retained an attorney; Mr. Armenta continued to waive such rights, when he was provided with a written statement from his legal counsel allowing him to continue discussion of issues with his employer.

IT IS SO ORDERED.


MARTIN V. DOMINGUEZ
Chairman
Public Employee Labor Relations
Board

Date: 06/25/10



BILL RICHARDSON
GOVERNOR

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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MARTIN DOMINGUEZ, BOARD CHAIR
DUFF H. WESTBROOK, BOARD VICE-CHAIR
JOHN W. BOYD, BOARD MEMBER
PELRB BOARD

January 21, 2010

Julie Ann Meade
Deputy Superintendent, Regulation and Licensing
2550 Cerrillos Rd.
Santa Fe, New Mexico 87505

Shane Youtz
Youtz & Valdez, P.C.
900 Gold Ave. SW
Albuquerque, New Mexico 87102

RE: Prohibited Practice Complaint, AFSCME Council 18 vs. New Mexico Regulation and Licensing
Department **PELRB Case Number 139-09**

Dear Ms. Meade and Mr. Youtz:

Except for the Status and Scheduling Conference no other hearings were held in the above referenced matter. The New Mexico Regulation and Licensing Department (Department) filed a motion for judgment on the pleadings, said motion was granted. Scheduling orders were issued on December 3, 1009. Having reviewed all of the pleadings filed, I find that the Department has committed a prohibited practice by violating 10-7E-19 (B), (C), (F), (G) and (H) of PEBA.

Findings of Fact:

Mr. Raymond Armenta, a Department employee, was served with a notice of final action of a thirty (30) day suspension.

Mr. Rob Trombley, an AFSCME Council 18 representative filed an appeal of the final action contemplated against Mr. Armenta.

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Mr. Randall Cherry, a lawyer for the Department, refused to discuss the appeal with Mr. Rob Trombley the AFSCME Council 18 representative.

Mr. Randall Cherry, a lawyer for the Department, contacted Mr. Armenta directly to discuss the appeal and again to settle the dispute.

Discussion:

The New Mexico State Supreme Court in Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Association of University Professors, Gallup Campus, 125 N.M. 401, 962 P2d 1236, 1998 directed this agency to interpret the Public Employee Bargaining Act (PEBA) in the manner the National Labor Relations Board (NLRB) has interpreted it's Act, where the language in both Acts is similar and the decisions are of long standing.

Section 8 of the NLRA and section 19 of the PEBA are for our intents and purposes identical. This is true in the area of negotiating in good faith and interference with the Union's duty and responsibility. In 1964 the NLRB stated that once a Union is certified as the exclusive representative, it "is the one with whom the employer must deal in conducting bargaining negotiations," the employer "can no longer bargain directly or indirectly with the employees." General Electric Co., 150 NLRB 192, 194 (1964). In 1997 the NLRB said direct dealing constitutes a per se violation of the duty to bargain in good faith because "direct dealing, by its very nature, improperly affects the bargaining relationship." Americare Pine Lodge Nursing & Rehab. Ctr., 325 NLRB 98, 99 (1997). The prohibition against direct dealing also extends to direct dealing concerning the discussion or settlement of grievances. See AFSCME Council 18 v. New Mexico Department of Corrections, 04-PELRB-2007 (Dec.13, 2007).

Conclusions of Law:

The New Mexico Regulation and Licensing Department through its agent, Mr. Randall Cherry, violated 10-7E-19 (B), (C), (F), (G) and (H) of PEBA by refusing to engage in collective bargaining with the Union through its representative Mr. Rob Trombley.

The New Mexico Regulation and Licensing Department through its agent, Mr. Randall Cherry, violated 10-7E-19 (B), (C), (F), (G) and (H) of PEBA by engaging in direct dealing with an employee represented by the AFSCME, the employees exclusive bargaining agent.

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Order:

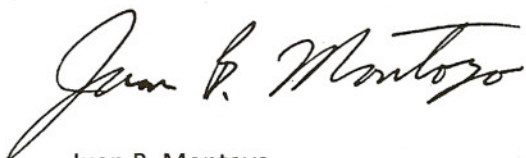
The New Mexico Regulation and Licensing Department is hereby ordered to cease and desist from refusing to bargain with the exclusive bargaining agent for the Department's employees.

The New Mexico Regulation and Licensing Department is hereby ordered to cease and desist from dealing directly with employees represented by an exclusive bargaining agent, the Union.

This letter order is to be posted fifteen (15) days after the date of this order unless one or both of the parties properly appeals this matter to the Public Employee Labor Relation Board (PELRB). This Letter Order is to be posted on all Department bulletin boards or wherever information is posted as employee information and to remain posted for an uninterrupted period of forty-five (45) days.

Either party may appeal this hearing officer's decision by filing a notice of appeal with the PELRB staff at 2929 Coors Blvd. NW in Albuquerque New Mexico 87120. The provisions for appeal are found at NMAC 11.21.3.19. An appeal must be filed within 10 days and otherwise comply with NMAC 11.21.3.19.

Sincerely yours,

A handwritten signature in cursive script that reads "Juan B. Montoya". The signature is written in black ink and is positioned above the printed name.

Juan B. Montoya