

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEES LABOR RELATIONS BOARD**

**AMERICAN FEDERATION of STATE, COUNTY,  
and MUNICIPAL EMPLOYEES, LOCAL 3022,**

**Petitioner,**

**v.**

**PELRB No. 120-22**

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY,**

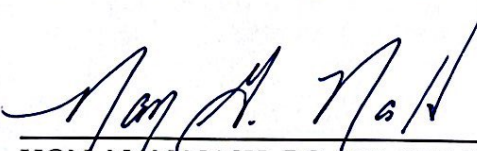
**Respondent.**

**ORDER**

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on January 3, 2023 for review of the Executive Director's Summary Dismissal of the Prohibited Practices Complaint herein. The Board having reviewed the Dismissal and the grounds therefore, there being no request for Board review of the Dismissal filed by either party, and being otherwise sufficiently informed, the Board voted 2-0 to affirm the Executive Director's Dismissal.

**WHEREFORE,** the Dismissal of the PPC is affirmed and staff are directed to close the file.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

  
\_\_\_\_\_  
HON. NAN NASH, BOARD CHAIR

*4 January 2023*  
\_\_\_\_\_  
DATE



STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MICHELLE LUJAN GRISHAM  
Governor

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THOMAS J. GRIEGO  
Executive Director

November 21, 2022

AFSCME, Local 3022  
1202 Pennsylvania St. NE  
Albuquerque, New Mexico 87110  
Attn: Joe Barrios

Stelzner, Winter, Warburton,  
Flores & Dawes, P.A.  
P.O. Box 528  
Albuquerque, New Mexico 87103  
Attn: Jaime Dawes

Re: *AFSCME, Local 3022 v. ABCWUA; PELRB 120-22*

Dear Mr. Barrios and Ms. Dawes:

This letter constitutes my decision denying Complainant's Motion for Summary Judgment and granting Respondent's Motion for Summary Judgment.

#### PROCEDURAL BACKGROUND

AFSCME, Local 3022 filed the instant Prohibited Practices Complaint on September 15, 2022 alleging that a Training Specialist, Aimee Ashton, was deemed by the Albuquerque Bernalillo County Water Utility Authority ("ABCWUA" or "Water Authority") to be ineligible for an equity pay step increase upon her promotion. Ms. Ashton is alleged by the Complainant to be classified as an M-26, Step 22, whereas another Training Specialist, Ms. Beaty is classified as an M-26, Step 23. The Employer's position is that according to a long-standing past practice once an employee is in a position classified above Step 20, such employee is no longer eligible for an "equity pay adjustment". The Union alleges that the failure to adjust Ms. Ashton's pay upward to match that of Ms. Beaty violates NMSA 1978 § 19(F) and (H) (2020) (prohibiting refusal to bargain collectively in good faith with the exclusive representative and refusal or failure to comply with a collective bargaining agreement, respectively).

Both parties filed competing Motions for Summary Judgment on October 28, 2022 pursuant to deadlines set during a pre-hearing Status and Scheduling Conference held October 11, 2022. Responses by both parties to their opponents' Motion were received by the agreed-upon deadline of November 17, 2022.

**AFSCME, Local 3022 Motion for Summary Judgment.** The Union's Motion asserts that the Water Authority follows a "non-negotiated policy to exclude certain incumbent employees from benefiting fully from an existing collective bargaining agreement". The policy referred to provides that employees holding positions classified above Step 19 on the employers wage scale do not receive "equity pay adjustments" upon promotion as would employees promoted into positions at Step 19 or lower. The Union considers application of that policy to be a deviation from the promotional process and is required to give a detailed written justification, review and recommendation from the Division Manager through the Chief Officer to the Human Resources Manager.

In its Response to the Union's Motion for Summary Judgment, ABCWUA argues that the Water Authority adopted a set of criteria to guide the exercise of its discretion for equitable step adjustments for M-Series employees under existing Personnel Rule 705 in 2016 and its actions in this case are consistent with that established criteria. To the extent the Union disagrees with that criteria, any claim that application of that criteria violates Article 2(C) of the parties' CBA, such claim is time barred. The issue of the Water Authority's discretion concerning equitable step adjustments has been previously litigated, referring to a Decision of the Water Authority's now defunct Labor Management Relations Board UMF No. 15. The fact that some employees do not receive step adjustments under the criteria the Water Authority utilizes to exercise its discretion concerning such adjustments is not discrimination or a violation of equal protection. Employees classified at a certain step are not a protected or suspect class. Complainant has not identified any evidence capable of satisfying its burden to demonstrate that the alleged classifications here are clearly arbitrary or unreasonable. Concerning the Complainant's argument that the Water Authority made a unilateral change to terms or conditions of employment without bargaining, there has not been a change to how the Water Authority treats equitable step adjustments for incumbent employees for years prior to filing the PPC. The parties in fact entered into an agreement providing that equitable step increases were within the discretion of the Water Authority are not grievable. See Exhibit 2 to the Water Authority's Motion for Summary Judgment, at Exhibit D. It was for this reason that the Water Authority's Labor Management Relations Board directed the Water Authority to apply a consistent set of criteria to equitable step adjustments now at issue here. See Water Authority UMF No. 14. Complainant does not allege in its PPC or Motion that it ever subsequently sought to renegotiate the agreement or requested to bargain with respect to equitable step adjustments. Furthermore, in 2018, Complainant executed the CBA governing this matter without addressing the subject of equitable step increases and waived the right to require the Water Authority to further bargain on the topic. See CBA, Article 60, Exhibit A to Complainant's Motion.

**ABCWUA Motion for Summary Judgment.** For its Motion the Water Authority argues that following a decision of the Water Authority's Labor Management Relations Board affirming its discretion to make equity pay adjustments while directing it to apply a consistent set of criteria when making such adjustments, the Water Authority applies a method for considering such adjustments that does not permit adjustments for employees already classified at step 20 or higher. Thus, when

the Water Authority considered a discretionary adjustment for the employee at issue in this case, it declined to make an adjustment because she was already classified at step 22. The undisputed evidence shows that that decision did not violate the Public Employee Bargaining Act, the parties' Collective Bargaining Agreement or the Personnel Rules and Regulations. The Water Authority does not discriminate against any protected class of employees in implementing its method for considering step adjustments, and the CBA does not address step adjustments for M-Series incumbents upon promotion of another M-Series employee. Step adjustments are instead governed entirely by Rule 705, which grants the Water Authority the discretion to grant or deny equity pay adjustments applying the equitable criteria applied in this case. To the extent Complainant seeks to challenge the method adopted for considering such adjustments, that claim is time barred because the undisputed evidence is that Complainant has been aware of the method since at least 2016. To the extent Complainant seeks to challenge the specific equitable step adjustment for Ms. Ashton, that claim is also time barred because her promotion without an equity pay adjustment occurred in October 2020, almost a year before the PPC was filed.

In its Response to the Employer's Motion AFSCME, Local 3022 essentially argues that it is "not fair" that Ms. Ashton, who has a larger workload, more experience, and more education is paid less than Ms. Beaty solely because Ms. Ashton is in the top 25% of her pay scale. Because of that the Union argues that she is denied "equal application/protection of the contract, rules, and law".

## **STANDARD OF REVIEW**

When deciding a motion for summary judgment, the PELRB follows the New Mexico Rules of Civil Procedure, Rule 1-056. See *AFSCME Council 18 v. New Mexico Dep't. of Labor*, 01-PELRB-2007 (October 15, 2007). "Summary judgment is appropriate in the absence of any genuine issues of material fact and where the movant is entitled to judgment as a matter of law." *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971. *AFSCME v. State of N.M., Regulation & Licensing Dep't*, 5-PELRB-2013, PELRB No. 124-12, 2013 (Feb. 21, 2013). "The movant has the burden of producing 'such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted.'" *Id.* "If that threshold burden is met by the Movant, the non-moving party then must 'demonstrate the existence of specific evidentiary facts which would require trial on the merits.'" *Id.* Once the movant meets its burden, the non-moving party then must "demonstrate the existence of specific evidentiary facts which would require trial on the merits." *Summers v. Ardent Health Serv.*, 2011 -NMSC- 017 ¶ 10, 150 N.M. 123. "Summary Judgment will be granted only when there are no issues of material fact, with the facts viewed in the light most favorable to the non-moving party."

## **STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Complainant is a labor organization and ABCWUA is a public employer as those terms are defined in the Public Employee Bargaining Act and because the Complainant is the exclusive

bargaining representative for bargaining unit employees in the ABCWUA, this Board has personal and subject matter jurisdiction over this dispute.

2. The Parties negotiated a Collective Bargaining Agreement (CBA) effective July 1, 2018, which expired on June 30, 2022, but which continues in effect pursuant to “evergreen” provisions under the Act.<sup>1</sup> (Exhibit A to Union’s Motion for Summary Judgment).
3. On October 10, 2020, Tamara Beaty, an M-Series employee, was promoted to the position of Training Specialist, (Complaint; Declaration of Erica Jaramillo, Exhibit 1, to ABCWUA Motion for Summary Judgment).
4. At the time Ms. Beaty was promoted, another employee, Aimee Ashton also held the position of Training Specialist. (Complaint; Declaration of Erica Jaramillo, Exhibit 1 to ABCWUA Motion for Summary Judgment).
5. Ms. Ashton’s pay range classification is M-26, step 22 and Ms. Beaty’s is M-26, step 23. (Admitted in Answer to PPC and Response to Motion for Summary Judgment).
6. On April 22, 2022, Union Vice-President Joe Barrios wrote a memo on Training Specialist Aimee Ashton’s behalf, requesting HR Mgr. Erica Jaramillo compare Ms. Ashton’s qualifications to Training Specialist Tamara Beaty’s qualifications to determine if Ms. Ashton was eligible for an equity pay step increase. (Admitted in Answer to PPC and Response to Motion for Summary Judgment).
7. The Water Authority responded to Mr. Barrios’ email on April 22 and April 25, 2022, noting that the Water Authority’s current internal policy is not to provide equity adjustments above step 20. (Admitted in Answer to PPC and Response to Motion for Summary Judgment).
8. In 2012, the Water Authority’s Labor Management Relations Board considered a prohibited practices complaint, Case No. M-2012-001, concerning the same issue of alleged failures to make equity pay adjustments filed by the Complainant herein. (Decision and Order Exhibit 3 to ABCWUA’s Motion for Summary Judgment and admitted in Response to Motion for Summary Judgment.)
9. Equitable adjustments for incumbents following promotion of another employee are governed by Section 705 of the Water Authority’s Personnel Rules and Regulations. (Personnel Rules and Regulations, Exhibit 2 to ABCWUA Motion for Summary Judgment and admitted Response to Motion for Summary Judgment).

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<sup>1</sup> NMSA 1978 § 10-7E-17(D) (2020), provides that in the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement.

10. The Water Authority moved for summary judgment before the Water Authority's Labor Management Relations Board in Case No. M-2016-007, on the basis of the earlier Labor Board decision directing the Water Authority to apply a consistent set of criteria, the method adopted pursuant to that ruling, and management's discretion with respect to equity adjustments. (ABCWUA's Statement of Undisputed Material Fact No. 14, admitted).
11. In support of its Motion for Summary Judgment before the ABCWUA the Water Authority attached the affidavit of then Human Resources Manager, Judy Bentley, concerning the method it had adopted to consider equitable step adjustments, and a copy of the method as exhibits to the Motion. (Exhibit 4 to ABCWUA's Motion for Summary Judgment, Exhibits E and F thereto; ABCWUA's Statement of Undisputed Material Fact No. 15, admitted).
12. The Water Authority's Labor Management Relations Board granted the motion for summary judgment on the basis of its decision in Case No. M-2012-001, and because the Water Authority acted consistently with Rule 705 of the Personnel Rules and Regulations. (Order Granting Motion for Summary Judgment in Case No. M-2016-007, attached as Exhibit 5 to ABCWUA's Motion for Summary Judgment ABCWUA's Statement of Undisputed Material Fact No. 16, admitted).
13. The Water Authority's Labor Management Relations Board Decision and Order, Exhibit 3, held that equity pay adjustments are a matter completely within the discretion of management. However, because such adjustments were not grievable, the Board directed the Water Authority to apply to future equity adjustments a single consistent set of decision criteria, which the Water Authority has done consistently revised over time to allow for more equity adjustments. The method currently does not permit equity adjustments beyond step 20. (Declaration of Erica Jaramillo, Exhibit 1 to ABCWUA Motion for Summary Judgment; Affidavit of Judy Bentley in support of the Water Authority's Motion for Summary Judgment in M-2016-007, attached to ABCWUA's Motion for Summary Judgment herein as Exhibit 4).
14. The Complainant has produced no evidence to show that the Water Authority has not consistently applied the above-referenced method to all M-Series employees notwithstanding its disagreement that extending such pay to those below Step 20 but not to those above Step 20, is equitable.

Any proffered facts not adopted herein are rejected as being either disputed or immaterial though undisputed.

#### **ANALYSIS AND CONCLUSIONS:**

**Complainant's Motion for Summary Judgment.** There is nothing in the parties' CBA concerning equity pay adjustments. The Union has produced no evidence that non-union employees of a particular classification have received such adjustments whereas similarly situated union

employees have been denied them, so that a colorable claim of anti-union discrimination might be made. Neither has the Union alleged or provided evidence for any unilateral changes to wages, hours, or terms and conditions of employment so that a colorable claim of failure to bargain might be made.

The Union devotes a considerable amount of time and attention to ABCWUA's Classification & Compensation Study from 2010 and the need for a compensation plan that is "1) internally equitable; 2) Externally competitive; and 3) appropriate for the Water Authority and the employees." Exhibit C. That study presents fruitful ground for collective bargaining and it is incumbent upon AFSCME, Local 3022, if it believes it is in the best interest of its members to secure a different compensation plan upon promotion than now exists, to bargain for those benefits in the normal course of negotiations. It is not appropriate for this Board to grant a benefit to union members that the union has not attained at the bargaining table.

In that respect, this case differs greatly from our decision in re: *AFSCME, Local 3022 v. Albuquerque-Bernalillo County Water Utility Authority*, PELRB No. 107-21 (aff'd. CV-2012-5866 (June 26, 2013)) in which this Board held that the Water Authority violated the parties' CBA as it related to the continuation of longevity pay when an employee is promoted from the B-Series (represented by AFSCME Local 624) to the M-Series (represented by AFSCME Local 3022). In that case, Article 9 of the parties' CBA concerning longevity pay was construed as requiring its continuation upon promotion to the M-Series. In the instant case there is no CBA provision similar to Article 9 concerning equity pay increases.

Because the Personnel Rules that govern pay equity requires "equity" meaning fair or impartial application of the method, and because the Union has produced no evidence to show that ceasing pay equity adjustments for everyone above Step 20 unduly benefitted one Training Specialist classified as M-26, Step 22, compared with another classified as an M-26, Step 23, there is no merit to the Union's claims that ABCWUA failed to bargain, violated any contract term or the PEBA or violated the 14<sup>th</sup> Amendment of the U.S. Constitution.

If the Union intended to argue that ceasing the equity pay adjustments at Step 20 unfairly benefits employees below that step upon promotion compared with employees at or above that Step upon promotion, the probable remedy would be to cure the disparity by ceasing the equity pay adjustments altogether. It goes without saying that such a result would likely render the Union representative asserting such a claim the most unpopular leader in the Union's history. Fortunately, that is not the question before us now. For the reasons stated above, the Union's Motion for Summary Judgment is **DENIED** as being without support as a matter of both fact and law.

**Respondent's Motion for Summary Judgement.** This PPC is clearly filed more than six months after the October 10, 2020 promotion in question. A credible argument may be raised that the cause of action did not arise until after the alleged disparity was brought to the Union's attention or that the six-month limitation period did not begin to run until the union received the employer's

response to its request to review salaries. However, I do not address the timeliness issues because the Union's Motion is denied on other grounds and other grounds exist to grant the Respondent's Motion. Therefore, for purposes of this Decision I am setting aside the argument that NMAC 11.21.3.9 requires dismissal of this PPC as untimely without deciding whether it was filed within six months after the complainant either discovered or reasonably should have discovered the conduct giving rise to the Complaint.

The Water Authority's Personnel Rules and Regulations Section 705, provide for a discretionary step increase in the event employees are promoted into a position in which there are lower paid incumbent employees. Under the facts of this case, it seems that the Water Authority exercised that discretion in accordance with a method applicable to all M-Series employees equitably. The limitation that the Water Authority does not permit equitable step adjustments beyond step 20, has been applied consistently. There is no evidence to the contrary.

As discussed in the above denial of the Union's Motion for Summary Judgment there is no provision of the CBA applicable to equity adjustments for employees promoted within the M-Series bargaining unit. Complainant has produced no evidence that the Water Authority's discretion to allow such adjustments or its method of applying that discretion, violated any provision of the Public Employees Bargaining Act nor that it discriminatorily applied the method improperly to employees within any protected class. Accordingly, ABCWUA is entitled to judgement as a matter of law with regard to all of Complainant's claims.

In addition, Complainant's Prohibited Practices Complaint is barred by the doctrine of collateral estoppel. The Union previously litigated the issue of the Water Authority's implementation of equitable step adjustments in two prior proceedings:

- 1) The Water Authority's Labor Management Relations Board recognized the Water Authority's discretion with respect to equitable step adjustments, determined that decisions concerning those adjustments were not grievable, and directed the Water Authority to apply a consistent set of criteria when considering step adjustments.
- 2) In the second of those proceedings, the Board granted summary judgment in favor of the Water Authority based on its implementation of the method applying the consistent set of criteria as directed in the earlier Board decision.

Other than the identity of the two employees reference in the instant PPC and the date of the promotion, the facts and issues herein are the same as those litigated before the Water Authority's Labor Management Relations Board as Case No. M-2012-001. The Union cannot relitigate those issues now without pointing to some material change in facts or law. See *Shovelin v. Central N.M. Elec. Coop.*, 1993-NMSC-015, ¶ 10, 850 P.2d 996 ("Before collateral estoppel is applied to preclude litigation of an issue, however, the moving party must demonstrate that (1) the party to be estopped was a party to the prior proceeding, (2) the cause of action in the case presently before the court is different from the cause of action in the prior adjudication, (3) the issue was actually litigated in the prior adjudication, and (4) the issue was necessarily determined in the prior litigation. . . . [T]he trial court must then determine whether the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior litigation.").



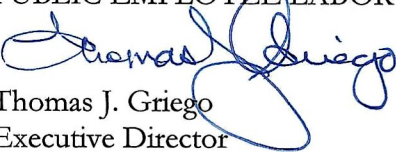
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I conclude that the elements necessary for application of collateral estoppel are present here. The Water Authority has acted in accordance with the prior decisions of its Labor Management Relations Board, and Complainant is bound by those decisions.

**CONCLUSION.** There is no genuine issue of material fact and the ABCWUA is entitled to judgement as a matter of law with regard to Complainant's claims. This Complaint shall be, and is hereby, **DISMISSED** and the Union's requested relief is **DENIED**.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

  
Thomas J. Griego  
Executive Director