STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO, LOCAL 624,

Appellant,

v. **CV-2011-8899**

NEW MEXICO TRANSPORTATION UNION, CITY OF ALBUQUERQUE, and CITY OF ALBUQUERQUE LABOR MANAGEMENT RELATIONS BOARD

Appellees

MEMORANDUM OPINION AND ORDER

THIS MATTER comes to the Court's attention as a result of Appellant's appeal from the August 1, 2011, order of the Labor Management Relations Board (Board) to proceed with a representative election, and from Appellee New Mexico Transportation Union's (NMTU) motion to dismiss Appellant's appeal. Having reviewed the record proper and the pleadings, this Court REVERSES the Boards' decision to hold an election and DENIES NMTU's appeal as moot.

I. BACKGROUND

Since April 2008, when it prevailed in a representation election, Appellant has been the exclusive bargaining representative for the Transit Drivers employed by the City of Albuquerque. [RP at 22]. But, on March 10, 2011, NMTU challenged Appellant's position by submitting a Request for Recognition as Exclusive Bargaining Representative along with interest cards. [Id., ¶ 3]. The City refused to accept the Request stating that it was defective and that NMTU had to decertify Appellant before a recognition election could take place. [Id., ¶ 5]. NMTU continued to

organize and on June 28, 2011, presented a petition and "a membership list that represented updated cards from members who had preciously signed cards and about 40 new membership applications." Id., ¶ 7. On August 1, 2011, the Labor Board met and in a closed executive session, voted to deny NMTU's June 28 petition as untimely. Id., ¶¶ 11,12. The Board also found that NMTU had demonstrated at least a thirty-percent showing of interest from employees (via interest cards) and that number was sufficient to warrant an election, contingent upon a ten percent showing of interest by Appellant (as the incumbent). [RP, Tr., Aug. 1, CD 5].

Appellant alleges that many of the interest cards did not reflect a recent interest. According to Appellant, the majority of the interest cards submitted on March 10, 2011, were signed in 2009 and were over a year old. [SOI at 2]. NMTU did not respond to Appellant's SOI. The City did and stated that if the interest cards were really that old, then they are indeed stale and not valid for purposes of calling an election. [City's response to SOI at 2]. On August 17, the Board met and scheduled the election for September 17, 2011. It is the order to hold an election, based on what Appellant calls NMTU's "stale" interest cards, to which Appellant objects.

II. STANDARD OF REVIEW

Pursuant to Rule 1-074(R) NMRA, this Court may reverse an agency decision only if the agency acted fraudulently, arbitrarily or capriciously; if the agency decision is not based on substantial evidence; if the agency exceeded its authority; or if the agency's action was not in accordance with the law. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record." Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806. "Substantial evidence is evidence that a reasonable mind would regard as adequate to

support a conclusion." Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236 (citation omitted). A reviewing court may adopt its own factual findings only if the agency's factual findings are not supported by substantial evidence. Id.

"When reviewing findings of fact made by an administrative agency, a reviewing court must apply a whole record standard of review. Duke City Lumber Co. v. New Mexico Envtl. Improvement Bd., 101 N.M. 291, 294, 681 P.2d 717, 720 (1984). This means that the reviewing court looks not only at evidence favorable to the agency's decision, but also at evidence unfavorable to the agency's decision. Trujillo v. Employment Sec. Dep't, 105 N.M. 467, 470, 734 P.2d 245, 248 (Ct. App.1987). Furthermore, a reviewing court may not selectively rely on only a certain portion of the evidence, and disregard other evidence, if it would be unreasonable to do so. Nat'l Council on Comp. Ins. v. N.M. State Corp. Comm'n, 107 N.M. 278, 282, 756 P.2d 558, 562 (1988).

III. DISCUSSION

Appellant contends that the Board should not have relied on interest cards evincing an interest that was not current. The only information found in the LMRO that is even remotely relevant to this issue is the following:

> Any employee organization may file a written request with the Mayor asserting that a majority of the members of a bargaining unit of the city desires to be represented by it for the purpose of collective bargaining and asking to be recognized as the exclusive bargaining representative. The request shall include a demonstration of support of at least 30% of the employees in the bargaining unit and *by means of a dated membership list or signed dated membership cards* of those employees desiring representation. Notice of the request shall be posted on the next

> working day following the filing of the request, by the City Human Resources Department in a place conspicuous to the city employees in the bargaining unit.

LMRO § 3-2-6(A) (emphasis added). The ordinance gives no further explanation. The Board's understanding of the date requirement was that the dated membership list is tied to the dated interest cards. [Tr., 8/9/11, CD 1:27:13]. Or stated differently, the membership list must reflect that the employee was a member of the bargaining union at the time she expressed an interest in a particular union. While logical, this interpretation does not reflect a *current* interest in a particular union and should not be used now to support a petition for a representation election.

This Court believes that Appellant's reliance on the NLRB's findings regarding staleness is more sound. Albquerque's labor ordinance was enacted pursuant to the state's Public Employee Bargaining Act (PEBA) and,

> [a]bsent cogent reasons to the contrary, we should interpret language of the PEBA in the manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted. Such an interpretative approach furthers the legislature's evident intent to incorporate certain federal standards into the PEBA. This approach also promotes administrative efficiency. Rather than litigating every matter from scratch, interested parties can largely rely on the body of law developed under the NLRA to expedite the resolution of disputes under the PEBA. We approve of the position of the state PELRB that interpretations of the NLRA by the National Labor Relations Board (NLRB) and reviewing courts should act as a guide in interpreting similar provisions of the PEBA.

Las Cruces Prof. Fire Fighters v. City of Las Cruces, 1997-NMCA-031, ¶ 15, 123 N.M. 239, 938 P.2d 1384. In the absence of any authority to the contrary, it follows that the LMRO

should also be interpreted pursuant to the NLRB.

Federal labor courts considering the duration of interest cards have found "only signed cards dated within a reasonable time prior to the [event in question], can be accepted . . . as evidence of designation of the [union] by such employees." Surpass Leather Company, 21 NLRB No. 1258, 1273 (1940). In Blade-Tribunal Pub. Co., 161 NLRB No. 137 (1966), the Board stated it would appear from Luckenbach Steamship Co. Inc., 12 NLRB No. 1330 (1939), that one year is a reasonable time period. There is only one exception to the rule and that is where the labor organization campaign was interrupted by the filing and processing of unfair labor practice charges. Blade, 161 NLRB at 1513. That did not occur in this instance.

IV. CONCLUSION

Because NMTU's interest cards are not current, they did not necessitate a representative election. If the election was held, it is null and void – regardless of the result. But, because the ordinance was not clear on this point, NMTU should be given another opportunity to collect interest cards and, if they can again garner thirty percent, another election should be held. Both the collection of interest cards and the possible election should take place within a reasonable amount of time from this order.

WHEREFORE, the Board's order of an election is REVERSED and NMTU's motion to dismiss Appellant's appeal is DENIED.

IT IS SO ORDERED.

NAN NASH
DISTRICT JUDGE

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