

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 18, AFL-CIO,

Petitioner,

vs.


PELRB Case No. 142-09

STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT,

Respondent.

DECISION AND ORDER

THIS MATTER having come before the Public Employee Labor Relations Board upon appeal by AFSCME of Hearing Officer Juan Montoya's Recommended Decision dated May 27, 2010, and the Board, having reviewed the pleadings and briefs and having heard oral argument of counsel for the parties, hereby upholds the Recommended Decision of the Hearing Officer. Pursuant to Rule 11.21.3.19 NMAC, the Board adopts and incorporates herein Hearing Officer Montoya's Recommended Decision and the Findings of Fact, Discussion and Conclusion of Law.


MARTÍN V. DOMÍNGUEZ
Chairman
Public Employee Labor Relations
Board

Date: 10/12/10

Recused: Member John Boyd



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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May 27, 2010

Randall J. Cherry
Chief General Council
Regulation and Licensing Dept.
2550 Cerrillos Rd.
Santa Fe, New Mexico 87505

Rob Trombley/ Rosemary Ulibarri
AFSCME Council 18
1202 Pennsylvania St. NE
Albuquerque, New Mexico 87110

Shane Youtz
Attorney at Law
900 Gold Ave. SW
Albuquerque, New Mexico 87102

RE: Prohibited Practice Complaints, AFSCME Council 18 vs. New
Mexico Regulation and Licensing Department

PELRB Case Number 142-09

Dear Mr. Youtz, Mr. Cherry and Mr. Trombley and Ms. Ulibarri:

I have reviewed your pleadings and listened to the recording of the April 1, 2010 status conference record whereby it was agreed that this case would be decided on the pleadings. I am of the opinion that the New Mexico Regulation and Licensing Department did not violate the Public Employee Bargaining Act by placing a Global Positioning System (GPS) in the Regulation and Licensing Department's (Department) trucks without first negotiation the installation of the GPS with the Union. The complaint is therefore dismissed.

FINDINGS OF FACT:

By May 18th, 2009 the Union knew about the installation of the GPS system on the trucks used by the inspectors of the Department's manufactured homes.

The Department did not request input or otherwise advise the Union that the GPS was being installed on the Department's vehicles.

The Union expressed concern that the GPS was going to be used in disciplinary actions against the Department's manufactured homes inspectors.

A Department's Deputy Director, Land Clark, assured the Union that it was not the Department's intent to use the GPS to discipline employees.

In mid September, 2009 William Lucier an inspector working for the Department was placed on an Employee Development Plan.

The basis of the discipline was, at least in part, the information acquired from the GPS records.

The State of New Mexico and AFSCME entered into a new contract on December 23, 2009.

The new contract made no mention of the GPS installation on the Department's trucks.

The installation of the GPS on the inspector's trucks did not require any new duties nor disallow any prior duties or privileges.

DISCUSSION:

The parties agreed that the sole issue in this case was whether the installation of a GPS on Department vehicles without prior consultation with the Union was a unilateral change in the terms and conditions of employment. The State installed a GPS on its trucks, the Union knew of the GPS installation because it expressed concern the information from the GPS would be used to

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discipline employees. The State assured the Union that the system would not be used "to spy" on the employees. The State has a right and in fact an obligation to supervise its employees. Here the GPS was used to log miles driven, gas used and other management useful information. The purpose of the GPS was not to collect information for the sole purpose of disciplining employees.

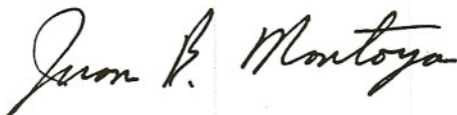
CONCLUTIONS OF LAW:

The isolated act of installing a GPS on the Department's trucks used by the inspectors is not a unilateral change in the terms and conditions of employment.

APPEAL:

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. Provisions for appeal are found at NMAC 11.21.3.19. An appeal must be filed within 10 work days and otherwise comply with NMAC 11.21.3.19.

Sincerely yours,



Juan B. Montoya