

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

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

**09-PELRB-2012**

**Petitioner,**

**v.**

**PELRB NO.'s 139-11 and 311-11**

**NEW MEXICO CORRECTIONS DEPARTMENT,**

**Respondent.**

**ORDER AND DECISION**

THIS MATTER comes before the Public Employee Labor Relations Board for Hearing on Interlocutory Appeal of the Executive Director's Recommended Decision and Order of October 21, 2011. Upon a 3-0 vote at the Board's January 10, 2012 meeting;

**IT IS HEREBY ORDERED** that the Hearing Officer's Recommended Decision of October 21, 2011 including its Findings, Conclusions and Rationale shall be, and hereby are, adopted as the Order of the Board for the reasons set forth therein. The petition in PELRB No. 311-11, is facially adequate and there is nothing at this juncture to indicate that the Lieutenants' inclusion in the bargaining unit would render the proposed unit inappropriate. The Respondent has argued that unit Clarification is the appropriate way to proceed with this matter and so agrees with the result of the Hearing Officer's conclusion based on the finding that the group sought to be accreted is less than 10% of the number of employees in the existing unit. Accordingly their inclusion does not raise a question concerning

representation requiring an election, and the petitioner may proceed by filing a unit clarification petition. In addition as a sanction for its refusal to cooperate with the Board in the processing of this Petition by willfully refusing to provide requested information the Corrections Department shall be and hereby is estopped from further attack on the question of representation and it should be determined as the law of the case from this point forward.

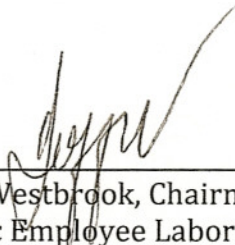
**IT IS FURTHER ORDERED** that the Department of Corrections' Motion to Dismiss or Cure the Petition shall be and hereby is, **DISMISSED** as without merit. Although it appears the Motion was timely filed the Motion is dismissed for the other reasons outlined in the Hearing Officer's recommended Decision of October 21, 2011.

The parties are directed to meet and confer immediately on the question of whether a stipulation is possible that the employees sought to be accreted are already part of the bargaining unit. If such a stipulation is entered into, it shall be forwarded to the Executive Director and this matter closed.

If a stipulation that the employees sought to be accreted are already part of the bargaining unit is not possible, then the Respondent is directed to provide the Executive Director within seven calendar days of this letter a list of all members of the existing bargaining unit as requested previously on September 15, 2011. To the extent the Lieutenants sought to be accreted are not included in that list then the Respondent shall provide a separate list in alphabetical order showing all employees in the group sought to be accreted and their hire dates. Within the same seven day period the Respondent shall inform the executive Director of any

evidence it may have that the positions sought to be accreted should more appropriately be in a separate bargaining unit. Upon receipt of the list(s) required the Executive Director may then proceed to determine whether the requisite thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit by a card count.

Date: 1-22-12

  
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Duff Westbrook, Chairman  
Public Employee Labor Relations Board