

BEFORE THE PUBLIC EMPLOYEE
LABOR RELATIONS BOARD

REPRESENTATION PROCEEDING

01-PELRB-2006

IN THE MATTER OF
PETITION FOR RECOGNITION FILED BY
TEAMSTERS LOCAL NO. 492.

PELRB CASE NO. 320-05

DECISION AND ORDER

THIS MATTER came before the Public Employee Labor Relations Board on March 24, 2006 upon the appeal of Teamsters Local No. 492 (Teamsters) of the Decision of the Director of the Public Employee Labor Relations Board denying the Teamsters' petition seeking to represent the custodians employed by the Alamogordo Public Schools.

The Board, having considered the material facts in this case and having heard oral argument of the Teamsters' representative, the representative of the NEA-Alamogordo and legal counsel of the Alamogordo Public Schools, hereby approves and adopts the Director's Decision and incorporates that Decision as its own as follows:

1. The NEA had a contract with the [Alamogordo Public] Schools from July 1, 1998 through June 30, 2000.
2. The Custodians were included in the bargaining unit under contract on June 30, 1999.
3. The NEA was the exclusive bargaining agent for the Custodians at the Schools on June 30, 1999.

Therefore, pursuant to 10-7E-24 (B) NMSA 1978 I conclude that the NEA is the incumbent exclusive bargaining agent for the classified employees including the Custodians employed with the Alamogordo Public Schools. The petition filed by the Teamsters is hereby denied.

The Classified Agreement between the Alamogordo Public Schools and the NEA-Alamogordo for the period of July 1, 1998 through June 30, 2000 recites, under Article 2, "Recognition":

In accordance with the New Mexico Public Employee Bargaining Act, the Board recognizes the Association as the sole and exclusive representative for all certified positions included in the bargaining unit: Health, Instructional, Library, Security, and other Miscellaneous Assistants; and Custodial, Warehouse, Maintenance, and other Personnel paid from the Custodial, Warehouse and Maintenance Salary Schedule. Positions excluded are confidential, managerial, and supervisory as defined in the Act, and all others.

All employees whose salaries are based on salary schedules other than the Assistant Salary Schedule and the Custodial, Warehouse, Maintenance Salary Schedule are excluded from this bargaining unit.

As recited in Article 2, custodians are included in the bargaining unit.

NMSA 1978, § 10-7E-24 (2003) of the Public Employee Bargaining Act provides:

A. Bargaining units established prior to July 1, 1999 shall continue to be recognized as the appropriate bargaining units for the purposes of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978]. Bargaining units established between July 1, 1999 and the effective date of that act shall continue in effect only if the unit is covered by a collective bargaining agreement on the date of this act.

B. A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978]; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA 1978] of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.


Rule 11.21.2.36 NMAC of the Public Employee Labor Relations Board provides, in part:

CERTIFICATION OF INCUMBENT BARGAINING STATUS: A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit....

Because the NEA-Alamogordo is the incumbent, exclusive representative of Alamogordo Public Schools, a public employer, having been recognized as such on June 30, 1999, it remains,

on the 2003 effective date of the Public Employee Bargaining Act (PEBA), the exclusive representative of the unit, which includes members that Teamsters seeks to represent.

IT IS ORDERED, therefore, that the Teamsters' petition be and hereby is denied.


MARTÍN DOMÍNGUEZ
Chairman
Public Employee Labor Relations Board

04/13/06
DATE



STATE OF NEW MEXICO

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March 2, 2006

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RE: Petition for Recognition, Teamsters and Alamogordo
Public Schools-PELRB Case # 320-05

Dear Messieurs Vigil, Ortega and Bowyer:

This matter came before the Board by way of a petition filed by Teamsters Local No. 492 seeking to represent the Custodians employed by the Alamogordo Public Schools. A status conference was held on January 27, 2006 at which time the issue arose as to the incumbent exclusive bargaining agent status of the NEA-Alamogordo. A representation hearing was scheduled for March 2, 2006. Present at the hearing were the Alamogordo Public Schools (Schools), the NEA Alamogordo (NEA) and Teamsters Local No. 492 (Teamsters).

The NEA submitted the following documents in support of their position asking to be recognized as the incumbent exclusive bargaining agent for the Custodians employed by the Schools. First, a Public Employee Labor Relations Board letter dated May 27, 1994 entitled "Certification of Exclusive Representative" signed by the then director of this agency, Mr. Patrick J. Halter. The unit certified was the "Classified positions" at the

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Schools. Secondly, a copy of the cover page of the contract between the Schools and the NEA with a Table of Content and Article 2 entitled "Recognition". The Custodians are included in the description of the bargaining unit. The term of the contract is from July 1, 1998 to June 30, 2000.

The Schools echoed the NEA position on the issue. They agreed with the NEA that the NEA is the exclusive bargaining agent for the Custodians employed with the Schools.

Teamsters argued that while they recognize that 10-7E-24 (B) NMSA 1978 does establish an incumbent bargaining agent that in this case the statute should not be applied to this situation because the NEA waited too long to move to be recognized as the bargaining agent for these School employees. Teamsters argue that while the statute does not establish a time period or limit within which the incumbent must actively move to establish collective bargaining for a unit in which it is the incumbent, thirty-one (31) months is too long and the incumbent status granted under the statute should be denied.

Having considered the documents produced, and the arguments made by the parties I find that:

1. The NEA had a contract with the Schools from July 1, 1998 through June 30, 2000.
2. The Custodians were included in the bargaining unit under contract on June 30, 1999.
3. The NEA was the exclusive bargaining agent for the Custodians at the Schools on June 30, 1999.

Therefore, pursuant to 10-7E-24 (B) NMSA 1978 I conclude that the NEA is the incumbent exclusive bargaining agent for the classified employees including the Custodians employed with the Alamogordo Public Schools. The petition filed by the Teamsters is hereby denied.

Any party may ask for Board review pursuant to NMAC 11.21.2.22. A request for Board review must be filed within ten work (10) days. March 17, 2006 is the last day for a request for Board review in this case. Thank you.

Sincerely yours,



Juan B. Montoya