

BEFORE THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 18, AFL-CIO,

Petitioner,

vs.

01-PELRB_2007
PELRB Case No. 149-06
(Prohibited Practices Complaint)

STATE OF NEW MEXICO, DEPARTMENT
OF LABOR,

Respondent.

DECISION AND ORDER

THIS MATTER having come before the Public Employee Labor Relations Board (PELRB) upon the appeal of American Federation of State, County and Municipal Employees, Council 18, AFL-CIO (AFSCME) seeking review of the Director's decision granting summary judgment in favor of the State of New Mexico, Department of Labor (DOL) upon AFSCME's prohibited practices complaint. Because the summary judgment procedures used in this case do not enable the PELRB to accurately assess whether the undisputed material facts entitle the DOL to summary judgment, the PELRB reverses the grant of summary judgment and remands to the Director for resubmission of this case upon new summary judgment proceedings.

Referring to Rule 1-056 NMRA for guidance, the movant for summary must set out a concise statement of all of the material facts as to which the moving party contends no genuine issue exists. The facts must be numbered and must refer with particularity to those portions of the record upon which the moving party relies.


The party opposing the motion for summary judgment must file a response that contains a concise statement of the material facts as to which that party contends a genuine issue does exist.

Each fact in dispute must be numbered, must refer with particularity to those portions of the record upon which the opposing party relies, and must state the number of the moving party's fact that is disputed. All material facts set forth in the statement of the moving party shall be deemed admitted unless specifically controverted.

With respect to a motion for summary judgment and the response to it, supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein.

If a motion for summary judgment is made and properly supported, the opposing party may not rest upon the mere allegations or denials of his pleadings or in the prohibited practices complaint. Rather, the opposing party's response, by affidavits, must set forth specific facts showing that there is a genuine issue for trial. If that party does not so respond, summary judgment, if appropriate, must be entered against him.

IT IS THEREFORE ORDERED that the grant of summary judgment in this case is reversed, and this case is remanded to the Director for resubmission of this case upon new summary judgment proceedings.


MARTIN V. DOMINGUEZ
Chairman
Public Employee Labor Relations Board

Date: 10/15/07