

MARCH 1995

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1 PELRB No. 7

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In the Matter of

*Western Council of Industrial Workers,
United Brotherhood of Carpenters and Joiners
of America, AFL-CIO
Petitioner*

and

*Fort Bayard Medical Center
Public Employer*

DECISION AND ORDER

Pursuant to the authority of the Public Employee Labor Relations Board (PELRB or Board) under the Public Employee Bargaining Act of 1992 (PEBA or Act), NMSA 1978, §§10-7D-1 to 10-7D-26, (Repl. Pamp. 1992), and in accordance with PELRB rules and regulations, 4 N.M.Reg.No. 6, 475 (Mar. 31, 1993), the petition for certification in Case No. CP 10-95(S) was investigated pursuant to PELRB Rule 2.

The PELRB Director issued a report and certification of incumbent labor organization on December 16, 1994. Neither party filed a request for review of the decision; however, the public employer did express concerns to the Board at the February 15, 1995, meeting whether voluntary recognition had been authorized for the labor organization or an election had occurred prior to the labor organization being certified as the exclusive representative. It requested that the Board defer final action on the petition until its next meeting. The request was granted by the Board.

With respect to the concerns of the public employer, the record shows that on April 14, 1971, Attorney General David Norvell advised the Department of Hospitals and Institutions that a state agency could enter into collective bargaining negotiations with a

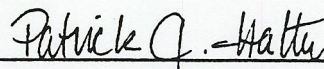
representative of an appropriate bargaining unit and enter into a collective bargaining agreement (CBA) with that representative provided the terms of the CBA did not exceed the rules or regulations of the State Personnel Board (SPB).

On April 28, 1971, the public employer--Fort Bayard Medical Center--voluntarily recognized the petitioner as the exclusive representative for certain positions and entered into collective bargaining negotiations. Thereafter a CBA was signed between the petitioner and public employer; however, the Secretary for the Department of Health did not approve the agreement until after the SPB adopted its Rules for Labor-Management Relations (RLMR) in 1972. All subsequent CBAs between the petitioner and public employer were submitted for approval as required by the SPB's RLMR.

In view of these findings of fact and the absence of comment or further concerns by the public employer in this matter, the Board hereby adopts and incorporates as its decision and order the attached Director's report and certification, findings of fact and conclusions of law.

The Board's final action occurred during open session at its March 15, 1995, regular meeting in Santa Fe, New Mexico, following notice and publication of the meeting pursuant to the Open Meetings Act.

By direction of the Board.



Patrick J. Halter
Director, PELRB

Issued: March 16, 1995
Albuquerque, New Mexico



State of New Mexico
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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DIRECTOR

BOARD MEMBERS
BILL GIRON
CHAIRMAN
JAMES KEATON
DICK LOY

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Western Council of Industrial)
Workers, United Brotherhood)
of Carpenters and Joiners)
of America, AFL-CIO)
)
Petitioner,)
)
and	Case No.) CP 10-95(S)
)
State of New Mexico)
Fort Bayard Medical Center)
)
Public Employer.)
_____)

DIRECTOR'S REPORT
and
CERTIFICATION OF INCUMBENT LABOR ORGANIZATION

Pursuant to the authority of the Public Employee Labor Relations Board (PELRB or Board) under the Public Employee Bargaining Act of 1992 (PEBA or Act), NMSA 1978, §§10-7D-1 to 10-7D-26, (Repl. Pamp. 1992), and in accordance with PELRB rules and regulations, 4 N.M.Reg.No. 6, 475 (Mar. 31, 1993), the petition for certification as incumbent in Case No. CP 10-95(S) was investigated pursuant to PELRB Rule 2.

The Director's Report is issued in accord with Rule 2.29. The findings of fact and conclusions follow from the investigation of the petition:

1. Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Petitioner or WCIW), is a "labor organization" as that term is defined under the Act at §4.J.

2. The State of New Mexico (Public Employer) is a "public employer" as defined under the Act at §4.Q. Fort Bayard Medical Center is an agency of the State.

3. In the spring of 1971 Petitioner was recognized and certified by the Department of Hospitals and Institutions as the exclusive representative for employees at Fort Bayard Medical Center (FBMC). There was no representation election or State Personnel Board (SPB) formal action. At that time, the SPB did not have rules or regulations in effect regarding collective bargaining.

4. Petitioner's bargaining unit was established prior to January 1, 1992 and is recognized as appropriate for the purposes of the Act at §24.

5. Based on testimonial evidence in the form of an affidavit from Kennis Ray Berard, Administrative Law Judge, SPB, since at least 1975 the Petitioner has been recognized as the exclusive representative at FBMC in accordance with the SPB's Rules for Labor Management Relations (RLMR) or predecessor regulations. On October 26, 1992, the SPB amended the appropriate unit for certain employees at FBMC.

6. The Public Employer, State of New Mexico, consents to the certification of Petitioner's existing bargaining unit pursuant to PELRB Rule 2.29 and applicable provisions of the Act.

7. The job titles in the bargaining unit are alcoholism counselor I, II; baker, beautician; carpenter I, II; clerk I, II, III, IV; client services agent I, II, III, IV; cook I, II; custodial worker I, II; drug room assistant; electrician I, II; food service aide I, II; laboratory technologist III; laundry worker I, II; maintenance lead worker; maintenance worker I, II; medical laboratory technician II; medical records technician I, II; nursing technician I, II; painter I, II; plumber I, II; recreation leader I, II; painter I, II; plumber I, II; recreation leader I, II; seamstress; secretary I, II, III; security officer I, II; social worker; social worker associate; steam plant operator I, II; storekeeper I, II; therapy aide I, II; typist I, II, III; welder II.

8. Based on the findings of fact developed during the investigation of the petition and set forth in the preceding paragraphs, the Petitioner is hereby certified as the exclusive representative at FBMC for the positions identified in paragraph 7.

9. PELRB Rule 2.15 states in part that "[w]ithin 10 [work]days after service" of a Director's Report, "any party may file a request for Board review of...the Director's" decision.

10. PELRB Rule 2.15(c) states in part that "[w]hether or not a party has filed a request for review, the Board, within 60 [work]days, shall review any recommended disposition regarding the scope of the bargaining unit made by the Director[.]"

Patrick J. Halter

Patrick J. Halter
Director, PELRB

December 16, 1994
Albuquerque, New Mexico