

Dec. 1994

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1 PELRB No. 8

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

*In the Matter of*

*Communications Workers of America  
Petitioner*

*and*

*State of New Mexico  
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 15-95(S) was investigated pursuant to PELRB Rule 2.

The PELRB Director issued a report and certification of incumbent labor organization on December 22, 1994. Neither party filed a timely request for review of the decision; however, the public employer did express concerns to the Board at the February 15, 1995, meeting whether representation elections had occurred prior to the labor organization being certified as the exclusive representative as well as the inclusion of certain positions containing the title of "manager" within the bargaining unit. It requested that the Board defer final action on the petition until its next meeting. The request was granted by the Board.

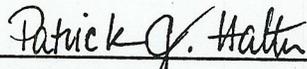
With respect to the concerns voiced by the public employer, the record shows that the State Personnel Board (SPB) determined that the bargaining units were appropriate and conducted elections involving the petitioner and Agency on Aging (1984), Health and Environment Department (1984), Commission on Status of Women (1985), and Office of Cultural Affairs (1991).

As for certain positions with the title of "manager" being included within at least one of the bargaining units, the units were determined to be appropriate by SPB prior to January 1, 1992, in accordance with SPB's Rules for Labor Management Relations. In this regard, the Act's § 24 states that "[b]argaining units established prior to January 1, 1992 shall continue to be recognized as appropriate for the purposes of the Public Employee Bargaining Act [10-7D-1 to 10-7D-26 NMSA 1978]." Petitioner's units clearly pre-date January 1, 1992, and fall within the statutory mandate reflected at § 24 wherein such units continue to be recognized as appropriate.

In view of these findings of fact and the absence of comment or further concerns from 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.



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Patrick J. Halter  
Director, PELRB

Issued: March 17, 1995  
Albuquerque, New Mexico



State of New Mexico  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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DICK LOY

PATRICK J. HALTER  
DIRECTOR

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In the Matter of )  
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Local 7037 )  
Communications Workers )  
of America, )  
AFL-CIO )  
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Petitioner, )  
 )  
and )  
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State of New Mexico )  
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Public Employer. )  
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Case No. CP 15-95(S)

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 15-95(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 certification follow from the investigation of the petition:

1. Local 7037, Communications Workers of America, AFL-CIO (Petitioner or CWA), 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.

3. CWA was certified as exclusive representative before March 31, 1992, pursuant to the State Personnel Board's (SPB) Rules for Labor Management Relations (RLMR) for separate bargaining units composed of certain job titles at each of the following executive agencies: Office of Cultural Affairs, Agency on Aging, Commission on Status of Women, and New Mexico Health and Environment Department.

4. In 1991 the Legislature separated the New Mexico Health and Environment Department into two distinct agencies--the Department of Health and the Environment Department. Petitioner was subsequently certified as the exclusive representative by SPB under the RLMR for a separate unit at the Department of Health on March 23, 1992, and a separate unit at the Environment Department on April 27, 1992. Each unit is composed of the same job titles as previously existed under the single bargaining unit that was recognized by SPB at the New Mexico Health and Environment Department.

5. The legislatively-mandated change in the structure and name of the New Mexico Health and Environment Department resulting in two separate departments constitutes an amendment to the SPB certification of the previously established and recognized CWA bargaining unit. An issue of representation is not raised by the recognition of separate units composed of previously recognized job titles under the RLMR.

6. Petitioner's bargaining units were established prior to January 1, 1992, and are recognized as appropriate for the purposes of the Act at §24.

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

8. The job titles in the bargaining units are set forth in the attached exhibits identified as Exhibits A through E.

9. 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 for the job titles in the attached Exhibits A through E at the Office of Cultural Affairs, Agency on Aging, Commission on Status of Women, Department of Health, and Environment Department.

10. 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.

11. 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*

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Patrick J. Halter  
Director, PELRB

December 22, 1994  
Albuquerque, New Mexico