

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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

10-PELRB-2010

Petitioner,

vs.

PELRB Case No. 136-09

STATE OF NEW MEXICO
CORRECTIONS DEPARTMENT,

Respondent.

DECISION AND ORDER

THIS MATTER having come before the Public Employee Labor Relations Board upon appeal by Corrections Department of Hearing Officer Juan Montoya's Recommended Decision dated June 15, 2010, and the Board, having reviewed the pleadings and briefs and having heard oral argument of counsel for the parties, hereby reverses the Recommended Decision of the Hearing Officer. The Corrections Department has specified the evidence in the record supporting the exceptions it has taken to the Hearing Officer's Recommended Decision. Based on the parties' recitation of the pertinent evidence, both verbally and in writing, the Board finds as follows:

1. The evidence is not sufficient to support a finding that the Corrections Department instructed the employee, Ms. Adams, not to speak with Union representatives about the subject matter of the Advisement of Investigation.

2. The Advisement of Investigation, which was in writing and was delivered to Ms. Adams, states:

You are hereby directed that you are not to engage in any type of retaliatory behavior in any manner, written or verbal, directly or indirectly,

or otherwise with any persons interviewed or involved in this investigation. You are also directed not to communicate with any persons interviewed or involved in this investigation in regards to this investigation. Failure to adhere to this directive may result in disciplinary action.

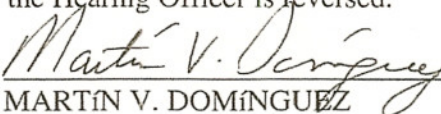
3. The Advisement of Investigation does not state that Ms. Adams is directed to not speak to a Union representative. The Advisement and its direction to not communicate appears to relate to individuals who are or may become witnesses in the matter under investigation.

4. Ms. Adams testified that at the time this Advisement was delivered to her by Department employee Ms. Peters, she was told not to speak with anyone about this investigation and that it was her "impression" that she could "not speak to anyone ... co-workers ...not even her husband." In response to AFSCME counsel's question whether this extended to the Union, Ms. Adams responded: "Yes, not even the Union ... nobody."

5. After receiving this Advisement, Ms. Adams did, in fact, talk to Union representatives and others.

6. Based on the specific content of the written Advisement and the fact that Ms. Adams talked to others, including Union representatives, about the matter, the evidence is doubtful in supporting any finding that Ms. Adams was directed to not speak to a Union representative.

Accordingly, the Recommended Decision of the Hearing Officer is reversed.


MARTIN V. DOMÍNGUEZ
Chairman
Public Employee Labor Relations
Board
Date: 10/12/10

restraint or coercion and shall have the right to refuse any such activities. Ms. Amy Ames had her rights violated in that she was interfered with in her right to confer with her Union representatives (10-7E-19 (B)). She was interfered with in the existence or administration of a labor organization (10-7E-19 (C)). her rights were violated pursuant to 10-7E-19 (G) by violating paragraphs (B) and (C) and finally the violation of the Collective Bargaining Agreement (CBA) Article 9, Section 8. Article 9, Sections 1 through 12 are meaningless if an employee is required to not discuss some potential discipline after being served with an Advisement of Investigation.

FINDINGS OF FACT:

Amy Adams has worked for the Department for almost four (4) years; she holds a Bachelor of Arts and Master's in Business Administration degrees.

Amy Adams is on the executive committee for Local 2777 of the Union.

Mr. Larry Franco is her direct supervisor today, her supervisor in August of 2009 was Ms. Gail Peters.

On August 11, 2009 Ms. Peters called Ms Ames into her office, Mr. Franco was present and Ms. Peters delivered an Advisement of Investigation to Ms. Ames.

At the time the Advisement of Investigation was delivered to Ms. Ames she was told not to talk to anyone about the investigation or be subject to discipline.

DISCUSSION:

The complaint alleges a violation of every section of 10-7E-19 the Prohibited Practices section of PEBA. Much was said about a variety of incidents, mainly, an incident where Ms. Ames took a car from her office to go do an interview of a client at the local jail. The parties argued whether the proper channels were followed by Ms. Ames in the use of the car. The parties also

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argue that the Union was kept from meeting with Ms. Ames after the car incident the day before. The Union did not notify management that there was going to be a Union/employee meeting and therefore management was not required to allow the meeting. There is no question that the Union has an absolute right to confer with its membership but meetings during work time must conform to the agreed to procedure. Permission for the meeting was not sought nor was any one informed that Ms. Ames was on a break and therefore not during work time.

CONCLUSIONS OF LAW:

A public employee's rights are violated when they are interfered with in their right to confer with their Union representatives about disciplinary matters.

To order a public employee not to discuss a discipline matter with a Union representative is to interfere with the existence or administration of a labor organization.

The violation of the Collective Bargaining Agreement (CBA) Article 9, Section 8 makes Article 9, Sections 1 through 12 meaningless if an employee is required to not discuss some potential discipline, under penalty of additional discipline, after being served with an Advisement of Investigation.

APPEAL:

Either party may appeal this hearing examiner's decision by filing a notice of appeal with the PELRB staff at 2929 Coors Blvd. NW in Albuquerque New Mexico 87120. Provisions for appeal are found at NMAC 11.21.3.19. An appeal must be filed within 10 work days and otherwise comply with NMAC 11.21.3.19.

Sincerely yours,


Juan B. Montoya