

BEFORE THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME,
Complainant,

11-PELRB-2009

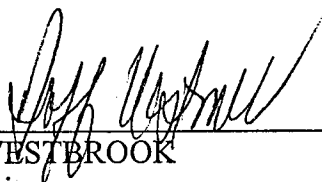
PELRB case No. 105-09

New Mexico Department
of Corrections,
Respondent.

DECISION AND ORDER

THIS MATTER having come before the Public Employee Labor Relations Board (“Board”) upon the Respondent’s appeal of the hearing officer’s recommended decision, and the Board, having heard argument and being otherwise fully advised:

IT IS HEREBY ORDERED that the hearing officer’s decision dated July 27, 2009 is upheld and affirmed as the decision and order of this Board for the reasons stated in the hearing officer’s report.



DUFF WESTBROOK
Vice Chairman
Public Employee Labor Relations Board

Date: 9-16-09



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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July 27, 2009

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PELRB Case No. 105-09

RE: Prohibited Practice Complaint, AFSCME vs. NM Dept. of Corrections,

Dear Ms. Haught and Mr. Youtz:

Thank you for your timely filed post-hearing briefs. After careful consideration of the pleadings, evidence and counsel's arguments I find that the New Mexico Department of Corrections (Department) has violated the Public Employee Bargaining Act (PEBA). Treating state employees who are union officials in a different manner than other state employees violates PEBA see 10-7E-19 (A) and (D) NMSA which prohibits discrimination for union activity.

PROCEDURE:

The American Federation of State, County and Municipal Employees (Union) filed a prohibited practice complaint alleging that the Department had violated PEBA by not allowing state employees who are union officials, presidents and stewards, use of Department automobiles to attend labor-management relations meetings. State employees in management positions attend these meetings by use of state owned automobiles. State employees who are union officials are not allowed to use state owned automobiles to attend these meetings.

The Department answered the complaint and denied any violation of PEBA. The Department then filed a Motion for Summary Judgment. A hearing was held and the motion was denied based on the existence of several issues of material fact. One of those issues was whether a state employee, who is a union steward or holds some union office, is engaged in state business when the employee travels to and attends a labor-management relations meeting. A hearing on the merits was held and at the close of the hearing the parties opted to submit post-hearing briefs rather than make closing arguments. Post-hearing briefs were timely filed.

FINDINGS OF FACT:

The Department scheduled a policy review meeting on January 26, 2009 at the Los Lunas Correctional Facility.

Frank Blair and Gabe Molina AFSCME Local 3422 officials and employees of the Department requested automobiles to travel to, attend and return from the policy review meeting in Los Lunas.

The Department refused to allow Mr. Blair and Mr. Molina the use of a state owned automobile for the purpose of traveling to and from the policy review meeting in Los Lunas.

Other employees (management employees) of the Department were allowed to use state owned automobiles to attend the Department scheduled policy review meeting in Los Lunas.

State employee union officials are paid by the State while attending labor-management relations meetings.

State employee union officials are on official State business while attending labor-management relations meetings, grievance meetings or other meetings necessary for the administration of the contract.

RATIONAL:

The Department argues that a state employee who is also a union official is not on official state duty because he is not furthering the employer's interest. The Department argues that a union official while conducting union business cannot be furthering the business of the State. The Department cites an opinion written by a lawyer for the General Services Department concluding that a union official state employee is not on official state business while attending a labor-management relation meeting on state time. The Department further states "that the union and the State are distinct and separate parties

with inherently different mandates. Therefore, union members conducting union business are not conducting "official State business."

PEBA requires that the parties bargain in good faith. The legislatively states purposes of PEBA are to promote harmonious relationships between the public employees and public employers and to ensure the orderly operation and functioning of the state and it's political subdivision.

Discrimination for union activity is prohibited by 10-7E-19 (A) NMSA 1978 Comp. State management employees attend the labor management relations meetings and are paid to attend, they use state vehicles to get there and return to their duty stations. While other state employees that are union officials attend the same meetings, are paid to attend the meetings but cannot use state vehicles to get there and return to their duty stations. The Department has violated PEBA by disallowing some state employees to use state owned vehicles to attend labor-management relations meeting and allowed others to use state owned vehicles.

CONCLUSIONS OF LAW:

A state employee who is also a union official of a state bargaining unit is on official state business while attending labor-management relations meetings, grievance meetings and other meetings necessary for the administration of the contract.

ORDER:

The Department of Corrections is hereby ordered to cease and desist from treating one set of employees differently from other employees because of their union activity. This letter order is to be posted fifteen (15) days after the date of this order unless one or both of the parties properly appeals this matter to the Public Employee Labor Relation Board (PELRB). This Letter Order is to remain posted for an uninterrupted period of forty-five (45) days.

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

Sincerely yours,


Juan B. Montoya