



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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2929 Coors Blvd. N.W. Suite 303
Albuquerque, NM 87120
(505) 831-5422
(505) 831-8820 (Fax)

THOMAS J. GRIEGO
Executive Director

July 13, 2015

The Jones Firm
PO Box 2228
Santa Fe, New Mexico 87504-2228
Attn: Elizabeth Clifford, Esq.

Las Cruces Public Schools
505 S. Main Street
Las Cruces, New Mexico 88001
Attn: Stan Rounds, Superintendent

Re: ***CSEC-LC v. Las Cruces Public Schools; PELRB No. 111-15***

Dear parties:

The Complainant herein, Classified School Employees Council - Las Cruces (CSEC-LC) moved this Board to issue a pre-adjudication injunction against Las Cruces Public Schools (District) enjoining implementation of the District's proposals for a three day furlough of the classified staff until such time as this Board rules on the merits of the PPC. The following constitutes my letter decision regarding the Union's Motion.

The PELRB has previously entertained motions for pre-adjudication injunction pursuant to the PEBA § 23(A), referencing Board orders for "appropriate temporary relief and restraining orders" and as being within the general grant of authority to the PELRB under the authority found in Sections 9 (E) and (F) to issue and enforce its orders through the imposition of appropriate administrative remedies. This Board has issued pre-adjudication injunctive Orders such as has been requested here. *See, e.g. West Las Vegas School District v. National Education Association – West Las Vegas*, PELRB No. 108-13 (August 19, 2013) citing *LaBalbo v. Hymes*, 115 N.M. 314, 318 (Ct. App. 1993).

Prior PELRB cases granting pre-adjudication injunctions point to NLRB cases granting similar relief. I note however that Congress in section 10(l) of the National Labor Relations Act directed the National Labor Relations Board to seek appropriate injunctive relief in the United States district courts during the pendency of litigation before the Board concerning alleged violations of section 8(b) (4) and in section 10(j) empowered the Board to seek *pendente lite* relief against all other types of unfair labor practices, whether committed by an employer, labor union, or both. New Mexico's Public Employee Bargaining Act is not so clear on the subject of our Board's authority to grant injunctive relief *pendente lite*.

There is nothing in the PEBA that gives the Board explicit authority to issue injunctive relief prior to a hearing on the merits of a claim. Without such an explicit grant of authority, the better course is to assume that the Board may not issue injunctive relief *pendente lite*. See 2 Am. Jur. 2d Administrative Law § 51 (explaining that an "agency may not exceed its statutory authority or constitutional

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limitations . . . nor can it confer jurisdiction upon itself.”). See also *Leonard v. Payday Professional/ Bio Cal Comp.*, 2008-NMCA-034, ¶ 12, 143 N.M. 637, 179 P.3d 1245 (holding that a Worker’s Compensation Judge did not have authority to grant a claimant’s motion for injunctive relief since the statute did not expressly grant such authority).

In general, an injunction is a type of equitable relief that only a district court has discretion to award. *Insure New Mexico, LLC v. McGonigle*, 2000-NMCA-018, ¶ 7, 128 N.M. 611, 995 P.2d 1053 (“The granting of an injunction is an equitable remedy, and whether to grant equitable relief lies within the sound discretion of the trial court.”). Under Article VI, Section 13 of the New Mexico Constitution, district courts have original jurisdiction over all matters, including the power to issue injunctive relief:

“The district court shall have original jurisdiction in all matters and causes not excepted in this constitution. . . . The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise in the exercise of their jurisdiction;”


N.M. Const. art. VI, § 13.

New Mexico appellate courts have stated that district courts have full and complete jurisdiction over all equity cases. See e.g. *State ex rel. Brady v. Frenger*, 1940-NMSC-035, ¶ 6, 44 N.M. 386, 103 P.2d 115. Furthermore, through the New Mexico Rules of Civil Procedure, the Supreme Court set forth the procedures that a district court must follow when awarding a preliminary injunction or restraining order. See Rule 1-066 NMRA.

For these reasons, I must conclude that the authority to issue the pre-adjudication injunctive relief requested by the Complainant resides with the district courts, not the PELRB. Prior Board decisions to the contrary should be considered to be in error on that point. Accordingly, the Union’s Motion to enjoin implementation of the District’s proposals for a three day furlough of the classified staff until such time as this Board rules on the merits of the PPC is **DENIED**. This decision is not intended to impair the Union’s ability to seek the same relief from a Court of competent jurisdiction, nor does it impair the Board’s ability to fashion an appropriate administrative remedy, including injunctive relief, after hearing on the merits.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director