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THOMAS J. GRIEGO
Executive Director

August 24, 2015

AFSCME Council # 18
c/o Youtz & Valdez, P.C.
900 Gold Avenue S.W.
Albuquerque, New Mexico 87102
Attn: James Montalbano

New Mexico Dep't of Workforce Solutions
P.O. Box 1928
401 Broadway Blvd. NE
Albuquerque, New Mexico 87102
Attn: Elizabeth Garcia

Re: *AFSCME, Council 18 v. NM Dep't of Workforce Solutions; PELRB No. 114-15*

Dear Ms. Garcia and Mr. Montalbano:

On August 18, 2015 the Employer filed its Answer to the Prohibited Practice Charge herein along with a Motion to Dismiss the PPC on the ground that the Complaint is untimely under NMAC 1. 11.21.3.9. (Providing that a complaint must be filed within six months after the complainant either discovered or reasonably should have discovered the conduct on which the PPC is based). The Union timely responded to the Motion on August 24, 2015. This constitutes my letter decision regarding the Motion to Dismiss.

To support its Motion the Employer references two time periods mentioned in the PPC:

1. "...the beginning of 2013" (Complaint, ¶5); and
2. December 2014, when the New Mexico State Personnel Board approved a class study justifying the reclassification of the five positions at issue. (Complaint, ¶ 6).

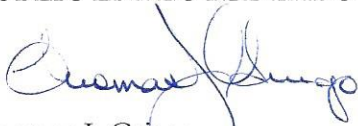
Neither of those dates is the operative date from which one would calculate the six months limitations period. None of the events that occurred on those dates is alleged to have violated the Public Employee Bargaining Act. The events of those time periods are provided as background information only. Rather, the operative time period is found in paragraphs 8, 9, 10 and 11 of the PPC in which it is alleged that in March 2015, the Employer reclassified the positions at issue and submitted a Position Action Request Form signed by the DWS Cabinet Secretary to effect that reclassification, but no action has been taken to reclassify the specific positions at issue and adjust the affected employees' pay band. Instead, the Employer has advertised to fill the reclassified positions and has begun the interview and hiring process with outside applicants. It is those acts (or absence thereof) taken since March of 2015 that is alleged to have violated past practice and to constitute refusal to bargain in good faith, violating PEBA, Sections 10-7E-19(A), (B), (C), (F) and (H). Accordingly, this PPC is brought well within the six month limitations period established by NMAC 1. 11.21.3.9. The Employer's Motion to Dismiss is therefore **DENIED**.

The Employer's Motion to Dismiss does not mention the Union's request for immediate injunctive relief, perhaps because if the Motion were to be granted the request for injunctive relief would be moot. I raise the issue *sua sponte* because of my recent letter decision in *CSEC-LC v. Las Cruces Public Schools*; PELRB No. 111-15 (July 13, 2015). In that case I acknowledged that 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. However, I decided in PELRB No. 111-15 that without a more explicit grant of statutory authority than we now have, 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 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). That decision was not reviewed by the PELRB.

I am therefore, *sua sponte* applying the rationale in PELRB No. 111-15 to **DISMISS** that portion of the PPC requesting pre-adjudication injunctive relief. Subject to the Employer's right to object I believe that this dismissal may be appealed to the Board by Complainant serving upon the other parties a notice of appeal within ten days following service of the dismissal decision pursuant to NMAC 11.21.3.13. The Board is scheduled to meet next on September 16, 2015 in the event an appeal is filed and served.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director