

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME COUNCIL 18 and  
NMCP SO,

13 - PELRB - 2014

Petitioners

and

PELRB 303-14

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY,

Respondent

**ORDER**

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting July 1, 2014 for review of the Election Supervisor's Report Following Investigation of Objection filed by NMCP SO. Upon a 3-0 roll call vote the Election Supervisor's Report is was ratified by the Board and the Findings of Fact and Conclusions of Law therein adopted by the Board as its own; to wit:

1. Pursuant to NMAC 11.21.2.24 and paragraph 4 of the parties' Consent Election Agreement (CEA) approved by this Board at its May 28, 2014 meeting, employees in the bargaining unit were eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement and were still employed in the unit on the date of the election. Although a preliminary voter eligibility list was filed on April 16, 2014 an updated voter eligibility list was to have been submitted by the Employer no later than June 4, 2014 according to paragraph 4(B) of the CEA and NMAC 11.21.2.24 (C).
2. The updated list was not filed as called for and so, the Election Supervisor used the April 16 list as the operative eligibility list to conduct the election on June 11 and 12, 2014 and challenged the eligibility of 11 voters who did not appear on the April 16 list, segregating their ballots. That procedure is consistent with the requirements of NMAC 11.21.2.24 (C) and NMAC 11.21.2.30.
3. Among those present for the ballot count was Nicholas Garcia for NMCP SO, Patrick Gutierrez for AFSCME and Bernadette Salazar, Human Resources Director for the Employer. During the ballot tally, AFSCME's representative

- objected to one ballot cast in favor of NMCPSO because the selection was circled rather than a mark having been made in the corresponding box as directed.
4. The Election Supervisor reserved judgment on AFSCME's objection and counted the uncontested ballots which resulted in a tie with 36 votes cast in favor of each union. Therefore, the challenged ballots would be determinative of the election.
  5. At the request of the Election Supervisor, the Employer's Human Resources Director produced an updated voter eligibility list at the ballot count showing members of the bargaining unit employed by the County as of the end of the pay period immediately preceding the election. That information was shared with all present for the ballot count as it pertained to each of the challenged ballots. NMCPSO made no objection to proceeding in that matter and its representative participated fully in the debate over whether to sustain the various challenges to the 11 ballots.
  6. After debating the challenges the parties agreed to count eight of the challenged ballots and not to count the remaining three, either because the voters were not members of the bargaining unit or were probationary employees. Each of the challenged ballots counted were cast by voters who met the definition of an "eligible voter" as set forth in NMAC 11.21.2.24 and paragraph 4 of the parties' Consent Election Agreement.
  7. After including challenged ballots agreed to by the parties, the ballots were recounted with the result that 43 ballots were cast in favor of AFSCME, Council 18 and 37 in favor of NMCPSO. In light of the differential existing after counting the challenged ballots AFSCME withdrew its objection to the ballot on which the choice was circled instead of a mark having been made in the corresponding box with the result that the final preliminary tally was 43 ballots cast in favor of AFSCME and 38 in favor of NMCPSO.
  8. No error was committed by the Election Supervisor treating the challenged ballots as they were. The ballots counted represented the will of members of the bargaining unit eligible to vote both under the Board's rules and under the terms of the parties' CEA. Using the revised list to resolve ballot challenges was both

appropriate and necessary and NMCP SO's representative present at the ballot count agreed to permit the eight dispositive ballots to be counted and there was no factual basis on which anyone could have claimed that those voters were not eligible to vote.

9. Objections raised orally at the Board's July 1, 2014 meeting or by its response to the Election Supervisor's report of investigation were not timely raised pursuant to NMAC 11.21.2.34 requiring such objections to be raised within five days following the service of a tally of ballots and therefore were not considered.

Based on the foregoing the Executive Director shall certify AFSCME, Council 18 as the exclusive bargaining representative for the employees at issue.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Date: 7-14-14

  
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Duff Westbrook, Chair

STATE OF NEW MEXICO  
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AFSCME COUNCIL 18 & NMCP SO,

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THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY,

Respondent

REPORT FOLLOWING INVESTIGATION OF OBJECTION

THIS MATTER comes before the Public Employee Labor Relations Board upon an objection to conduct affecting the outcome of the election in this matter held June 11 and 12, 2014. Upon investigation of the facts alleged and accepting them as true, I find that they do not sustain an objection to the outcome of the election for the following reasons:

1. Pursuant to NMAC 11.21.2.24 and paragraph 4 of the parties' Consent Election Agreement approved by this Board at its May 28, 2014 meeting, employees in the bargaining unit were eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement and were still employed in the unit on the date of the election. Although a preliminary voter eligibility list was filed on April 16, 2014 an updated voter eligibility list was to have been submitted by the Employer no later than June 4, 2014 according to paragraph 4(B) of the Consent Election Agreement and NMAC 11.21.2.24 (C). The updated list was not filed as called for and so, the Election Supervisor used the April 16 list as the operative eligibility list and challenged the eligibility of 11 voters who did not appear on the April 16 list, segregating their ballots. That

procedure is consistent with the requirements of NMAC 11.21.2.24 (C) and NMAC 11.21.2.30.

2. Among those present for the ballot count was Nicholas Garcia for NMCPSO, Patrick Gutierrez for AFSCME and Bernadette Salazar, Human Resources Director for the Employer. During the ballot tally, AFSCME's representative objected to one ballot cast in favor of NMCPSO because the selection was circled rather than a mark having been made in the corresponding box as directed. Pursuant to Section 8(A) of the Consent Election Agreement "The eligible voters shall mark the square of his/her choice" and "THERE SHALL BE NO NAMES SIGNED ON THE BALLOT AND ANY OTHER MARKINGS ON THE BALLOT WILL INVALIDATE THE BALLOT". The Election Supervisor told each voter to mark the square corresponding with their choices. On the face of the ballot itself voters are instructed "MARK AN "X" IN THE SQUARE OF YOUR CHOICE" and "Do not sign this ballot. Fold and drop it in the Ballot Box. If you spoil this ballot return it to the Election Agent for a new ballot. THIS IS AN OFFICIAL GOVERNMENT DOCUMENT AND MUST NOT BE DEFACED". A sample copy of the ballot used in this election is incorporated herein as Attachment A.
3. The Election Supervisor reserved judgment on AFSCME's objection. Tallying the uncontested ballots resulted in a tie with 36 votes cast in favor of each union. Therefore, the challenged ballots would likely be determinative of the election. At the request of the Election Supervisor, the Employer's Human Resources Director produced at the ballot tally an updated voter eligibility list showing members of the bargaining unit employed by the County as of the end of the pay

period immediately preceding the election. That information was shared with all present for the ballot tally as it pertained to each of the challenged ballots.

NMCPSO made no objection to proceeding in that matter and its representative participated fully in the debate over whether to sustain the various challenges to the 11 ballots.

4. As a result of the challenges the parties agreed to count eight of the challenged ballots and not to count the remaining three, either because the voters were not members of the bargaining unit or were probationary employees. Each of the challenged ballots counted were cast by voters who met the definition of an “eligible voter” as set forth in NMAC 11.21.2.24 and paragraph 4 of the parties’ Consent Election Agreement.
5. After counting the challenged ballots 43 ballots were cast in favor of AFSCME and 37 in favor of NMCPSO. In light of the differential existing after counting the challenged ballots AFSCME withdrew its objection to the ballot on which the choice was circled instead of a mark having been made in the corresponding box with the result that the final preliminary tally was 43 ballots cast in favor of AFSCME and 38 in favor of NMCPSO.

In light of the foregoing I can find no reason why the challenged ballots should not have been counted as they were. Under any permutation of the uncontested facts those ballots represented the will of members of the bargaining unit eligible to vote; both under the Board’s rules and under the terms of the parties’ CEA. Using the revised list to resolve ballot challenges was both appropriate and necessary. Perhaps most importantly, NMCPSO’s representative present at the ballot count agreed to permit the eight dispositive ballots to be counted; a reasonable position to have taken since there was no factual basis on which

anyone could have claimed that those voters were not eligible. For these reasons I conclude that the election results tallied on June 12, 2014 represents the will of a majority of the members in the relevant bargaining unit.

In order to protect NMCPSO's appellate rights while simultaneously expediting this matter, I am presuming that NMCPSO desires Board review of this report as it adversely affects them and so, this report has been scheduled for review at the Board's July 1, 2014 meeting. Nevertheless, NMCPSO should file a request for such review in order to have a complete record.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Date: 6-24-14

  
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Thomas J. Griego, Executive Director