

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME Local 3277,

Petitioner,

vs.

PELRB CASE NO. 113-18

CITY OF RIO RANCHO,

Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board (“Board”) on appeal by the City of Rio Rancho, (“City”) of Director Griego’s granting Petitioner’s Motion for Injunctive relief.

I. Jurisdiction

The City argues that the Board lacks jurisdiction to issue a preliminary injunction, and that even if such jurisdiction exists, the Board has not delegated that authority to the Hearing Officer. In support of its Motion, the City argues that the Board does not have statutory authority to issue preliminary injunctions. AFSCME argues that the Board has jurisdiction to issue preliminary injunctions pursuant to the Public Employee Bargaining Act (“PEBA”) section 23(A).

Section 23(A) allows the Board to petition the district court to issue an order enforcing the Board’s orders. Included in the description of the types of Board orders that may be enforced by the district court are orders for appropriate temporary relief and restraining orders. All Board orders are subject to appeal to the district court and may be filed by either party. NMSA 1978, Section 10-7E-23(B). The Board may appoint a

hearing examiner to conduct any adjudicatory hearing authorized by the Board. NMSA 1978, Section 10-7E-12(C). Implicit to that authorization is the granting of power to the Hearing Officer to issue temporary relief and restraining orders. Interlocutory appeals of decisions made by the Hearing Officer, such as restraining orders may, be reviewed by the Board. 11.21.1.27 NMAC.

II. Irreparable Harm

The City also alleges that the Hearing Officer incorrectly applied the ruling in the U.S. Supreme Court decision in *Janus v. AFSCME*, 851 F. 3d 746. The City argues that *Janus* stands for the proposition that all employees, including existing union members, must reauthorize deduction of union dues. The City states that clear and affirmative consent for deduction of union dues is required and that the consent required is not limited to fair share payers. Further, the City argues that under the facts of this case, it is unclear whether the original union dues deduction consents were valid.

AFSCME argues that the City unlawfully withheld union due deductions from employee payroll for existing union members in response to the decision by the *Janus v. AFSCME*. AFSCME takes the position that *Janus v. AFSCME* only applies to non-union members paying fair share union dues. AFSCME argues that the City too broadly interpreted the decision as applying to existing union members and should have only ceased collecting fair share due deductions for non-union members. Further, AFSCME argues that the Public Employee Bargaining Act section 17 (C) requires union due deductions of union members until the employee revokes membership in the union in accordance with the Collective Bargaining Agreement. By ceasing the collection of

union due deductions for union members, the City violated the Collective Bargaining Agreement.

After hearing oral argument from both parties, the Board being sufficiently advised finds by a vote of 3-0 the following:

A. Both the Board and the Hearing Officer has authority to issue preliminary injunctions, although Chairman Westbrook expressed concern that the authority is not as expressly stated in the statute and a decision on the Board's authority preliminary injunctions from the District Court is desirable.

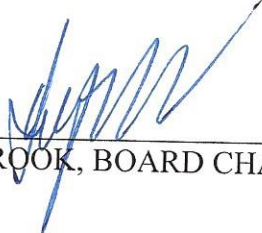
B. The City's actions may exceed what was required under the *Janus* decision when withholding union dues from existing union members;

C. Director Griego's decision to issue the preliminary injunction was justified.

THEREFORE THE BOARD denies the appeal of the Motion for Injunctive Relief and ratifies Director Griego's decision to issue a preliminary injunction pending the outcome on the hearing of the merits.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

11-13-18
DATE



DUFF WESTBROOK, BOARD CHAIR