

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
INTERNATIONAL UNION ET AL.,

Complainants/Appellants,

v.

2-PELRB-2005
PELRB Case. No. 136-04

NEW MEXICO STATE UNIVERSITY,

Respondent/Appellee,

ORDER ON PROHIBITED PRACTICES COMPLAINT

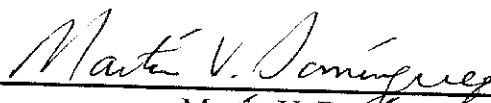
This matter having come before the Board by and through the written and oral submissions of the parties, and the Board having considered those submissions, the Board finds that the Complainants' Appeal is well taken; and

IT IS THEREFORE ORDERED that the prohibited practices complaint forming the subject matter of the Complainants' appeal shall be and hereby is remanded to Executive Director Juan Montoya who is hereby instructed to order NMSU to file an Answer to that Prohibited Practices Complaint within fifteen days of the date of this Order; and

IT IS FURTHER ORDERED that Executive Director Montoya process and resolve that Complaint on as expeditious a basis as possible.

Decided by the PELRB on the 19th day of May during open session at its regular meeting held in Santa Fe, New Mexico.

For the Board.



Martín V. Domínguez
Chairman

Date of Issuance: June 22nd, 2005

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December 6, 2004

VIA FACSIMILE 831-8820 and U.S. MAIL

Juan Montoya, Director
New Mexico State Public
Employees Labor Relations Board
2929 Coors N.W.
Albuquerque, NM 87120

Re: *AFSCME Prohibited Practices Complaint*
PELRB Case No. 136-04

Dear Director Montoya:

12-08-04A08:18 FILE

Thank you for your letter of December 1, 2004. The Prohibited Practice Complaint alleges fundamental transgressions of public employees' rights under PEBA at New Mexico State University. The New Mexico Court of Appeals has held that "a no-solicitation rule that encompasses rest breaks, lunch time, and residential hours would be presumptively contrary" to PEBA. *Las Cruces Professional Fire Fighters v. City of Las Cruces*, 1997-NMCA-31, 123 N.M. 329 (N.M. App. 1997). A blanket no-solicitation rule that prohibits employees from discussing a union at the workplace, during rest breaks, lunch time, before and after work has been interpreted as contrary to the core right to organize collectively and such rules have been presumptively invalid for over 50 years. See, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).

The Public Employee Bargaining Act, § 10-7E-10(A) articulates when, consistent with the statute, local boards can assume the duties and responsibilities of the public employee labor relations board. The statute is clear that local boards "once created and approved" can assume those responsibilities. The statute does not appear to contemplate the duties and responsibilities being abated prior to the creation and approval of the local board. The Respondent's local labor board has been conditionally approved, and is not yet created. Therefore, the powers and duties of the Board, should pursuant to the statute continue to rest with the Board.

The rules implementing the statute, have as objectives: to guarantee public employees the right to organize and bargaining collectively and to have procedures that are "fair and



expeditious." NMAC 11.21.1.6. Even NMAC 11.21.3.21, which governs prohibited practices proceedings, specifically leaves to the board's discretion holding in abeyance the processing of a complaint, while it is pending in another forum. Delay in creating a local board should not be used as a tool to perpetuate prohibited practices under the statute. As such, Complainants are asking that the Director reconsider holding in abeyance the Complaint and that the request for a temporary restraining order be scheduled for a brief hearing before the Board as expeditiously as possible.

Respectfully submitted,


Angela B. Cornell

cc: Bruce R. Kite



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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JUAN B. MONTOYA
DIRECTOR

December 1, 2004

Jerry Todd Wertheim
Jones, Snead, Wertheim & Wentworth, PA
215 Lincoln Avenue
Santa Fe, New Mexico 87504-2228

Robert P. Tinnin, Jr.
Tinnin Law Firm
500 Marquette NW, Suite 1300
Albuquerque, New Mexico 87102

RE: Prohibited Practice Complaints-AFSCME vs. NMSU
PELRB Case No. 136-04, AFSCME vs. NMSU
PELRB Case No. 138-04, and AFSCME vs. NMSU
PELRB Case No. 119-05.

Dear Messieurs Wertheim and Tinnin:

I am sending each of you a copy of the above referenced complaints filed in this office. The local labor board for NMSU has been approved by the State Board therefore these matters are no longer in abeyance and are being transferred to the NMSU Labor Board.

Thank you for your kind attention to this matter. If you have any questions, please don't hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to be "JBM".

Juan B. Montoya