

BEFORE THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SANTA FE POLICE OFFICERS'
ASSOCIATION,

Petitioner,

02-PELRB-2007

v.

PELRB Case No. 325-06

CITY OF SANTA FE,

Respondent.

DECISION AND ORDER

THIS MATTER comes before the Public Employee Labor Relations Board (PELRB) upon the interlocutory appeal of the City of Santa Fe (Santa Fe) from the hearing officer's ruling that supervisors are covered by the Public Employee Bargaining Act (PEBA), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended), although they must be in a bargaining unit separate from non-supervisory personnel. A majority of the PELRB, consisting of Chairman Domínguez and member Westbrook, with member Boyd dissenting, reverses the hearing officer's ruling and concludes that supervisors are not covered by PEBA. Accordingly, the PELRB remands this case to the hearing officer for further proceedings consistent with this Decision and Order.

In this case, the PELRB is required to resolve competing interpretations respecting supervisor coverage under PEBA brought about by two sections of PEBA, both enacted in 2003 by the same bill as an independent measure, not amending former law.¹ Those two sections are Section 10-7E-5 and Section 10-7E-13, specifically Subsection C. Section 10-7E-5 provides:

Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

¹ The former Public Employee Bargaining Act (PEBA I), NMSA 1978, §§ 10-7D-1 to -26 was repealed by N.M. Laws 1992, Ch. 9, § 30 effective July 1, 1999.

(Emphasis added.) Section 10-7E-13 provides, in part:

A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved....

C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.

(Emphasis added.) “Appropriate bargaining unit” is defined as “a group of public employees designated by the board or local board for the purpose of collective bargaining.” Section 10-7E-4(A). The terms “supervisor,” “management employee” and “confidential employee” are separately defined. Section 10-7E-4(G), (O) and (U). The term “public employee” means a “regular nonprobationary employee of a public employer” [and including regular probationary employees of a public school]. Section 10-7E-4(R).

Respecting “supervisors,” under the language of Section 10-7E-5, “supervisors,” as a category of “public employees,” are not excluded from the ability to join a labor organization for the purpose of collective bargaining, but under Section 10-7E-13(C), neither the PELRB nor a local board may include “supervisors” in a bargaining unit. Although much of the argument in this case has been devoted to the distinction between “an,” used in the current PEBA at Section 10-7E-13(C), and “any,” used in the former PEBA (repealed effective July 1, 1999) at Section 10-7D-13(C) because the former and current subsections (C) are otherwise the same, the statutory directive is the same either way: Neither the PELRB nor a local board can include “supervisors” in “a group of public employees designated ... for the purpose of collective bargaining.” Thus, whatever implication may arise from the fact that “supervisors” are not

expressly excluded under Section 10-7E-5,² the fact remains that “supervisors” are expressly disabled from being included in an appropriate bargaining unit under Section 10-7E-13(C) and hence are unable to bargain collectively under PEBA through a labor organization.

Because “supervisors” are expressly treated in Section 10-7E-13(C), to the extent of a conflict between Section 10-7E-5 and Section 10-7E-13(C), the latter section, being the more specific, is controlling. Where two statutes deal with the same subject, one general and one specific, the specific statute controls. Crutchfield v. N.M. Dept. of Taxation and Revenue, 2005-NMCA-022, ¶ 23, 137 N.M. 26, 106 P.3d 1273; Stinbrink v. Farmers Ins. Co., 111 N.M. 179, 182, 803 P.2d 664, 667 (1990). We conclude, therefore, that “supervisors” are not covered under PEBA and may not collectively bargain under PEBA by reason of their exclusion in Section 10-7E-13(C).

Moreover, the legislative history of the current PEBA supports our conclusion that “supervisors” may not collectively bargain under PEBA by reason of their being expressly excluded from inclusion in a bargaining unit under Section 10-7E-13(C). The current PEBA was introduced in 2003 by HB 508. As introduced, “supervisors” were expressly granted collective bargaining rights but could not be included in a bargaining unit with non-supervisory employees.

² In City of Deming v. Deming Firefighters Local 4521, 2007-NMCA-069, ¶ 10, 141 N.M. 686, 160 P.3d 595, the Court of Appeals observed the following respecting the former and current versions of Section 10-7E-5 as it relates to “supervisors”:

The City’s [Deming’s] ordinance prohibits supervisors from participating in a bargaining unit. It defines a “supervisor” as including fire captains regardless of their job responsibilities. The PEBA, on the other hand, affords collective bargaining rights to all public employees except management and confidential employees. Section 10-7E-5. We note that although the original PEBA permitted exception to “management employees, supervisors and confidential employees,” we do not consider the difference to be material to this appeal. NMSA 1978, § 10-7D-5 (1992) (repealed 1999). The critical difference between the ordinance and the PEBA is that the ordinance categorically excludes specific positions from collectively bargaining without reference to the responsibilities of the positions, whereas the PEBA creates broad exceptions based on job responsibilities.

However, during its course of passage through both houses of the legislature, Senate Public Affairs Committee amended HB 508 to insert “supervisors” in the exclusion at Subsection C of Section 10-7E-13 and amended Subsection A of Section 10-7E-13 to eliminate the references to “supervisors,” “supervisory employees” and “supervisory employee.” The Fiscal Impact Report pertaining to HB 508 states: “The Senate Public Affairs Committee amendment to House Bill 508 strikes language that allows the board or local board to include supervisory employees in appropriate collective bargaining units, thus effectively prohibiting unionization of supervisory employees.” Fiscal impact reports may be considered in ascertaining legislative intent. See State ex rel. Helman v. Gallegos, 117 N.M. 346, 355, 871 P.2d 1352, 1361 (1994) (“[w]e see no reason why contemporaneous documents, presented to and presumably considered by the legislature during the course of enactment of a statute, may not be considered by a court in attempting to glean legislative intent”) (emphasis in original).

Finally, we note that while Section 10-7E-13(C) expressly excludes “supervisors” from being included in an appropriate bargaining unit, thus precluding their ability to bargain collectively under PEBA, the legislature, at the same time, narrowed the definition of “supervisor” in comparison to the former PEBA. The current PEBA defines “supervisor” as an employee who devotes a “majority” of work time to supervisory duties, while the former PEBA defined “supervisor” as an employee who devotes a “substantial amount” of work time to supervisory duties. Cf. Section 10-7E-4(U) with Section 10-7D-4(S) (repealed).

IT IS THEREFORE ORDERED, by a majority of the PELRB, consisting of Chairman Domínguez and member Westbrook, with member Boyd dissenting, that the hearing officer’s ruling that supervisors are covered by PEBA is reversed, and this case is remanded to the hearing officer for further proceedings consistent with this Decision and Order.

Martín V. Domínguez

MARTÍN V. DOMÍNGUEZ
Chairman
Public Employee Labor Relations Board

Date: *10/14/07*