

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, COUNCIL 18,

Complainant,

PELRB No. 128-15

v.

SANTA FE COUNTY BOARD  
OF COUNTY COMMISSIONERS,

Respondent.

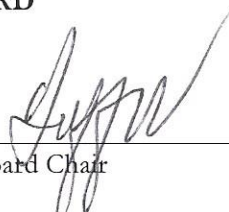
ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board on an Appeal from the Hearing Officer's Report and Recommended Decision Regarding Damages entered August 15, 2016. Upon review of the parties' submissions and after hearing argument of counsel the Board voted 3-0 as follows:

- A. The Board finds that its rules NMAC 11.21.1.27 (Appeal or Review by the Board), NMAC 11.21.2.22 (Board Review of Hearing Examiner Reports and Director Decisions), NMAC 11.21.3.13 (Appeal to Board of Director's Dismissal) and NMAC 11.21.3.19 (Appeal to Board of Hearing Examiner's Recommendation), construed together, permit the filing of a cross-appeal within 10 days of an appeal being filed.
- B. The Board strikes the Hearing Officer's Findings of Fact as either duplicative of prior findings or as otherwise unnecessary while adopting his conclusions of law to the effect that the Board is without authority to award consequential damages such as were requested by the Union in this case.
- C. The Board declines to enter any additional findings.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Date: 10/17/16

  
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Duff Westbrook, Board Chair

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME, COUNCIL 18,  
Complainant,

v.

PELRB No. 128-15

SANTA FE COUNTY,  
Respondent

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

**STATEMENT OF THE CASE:** This matter comes before Thomas J. Griego, designated as the Hearing Officer in this case, on AFSCME's Prohibited Practices Complaint alleging that the County violated PEBA §19(F) (refusing to bargain collectively in good faith with the exclusive representative) when it refused to provide the Union with home addresses of bargaining unit members requested in connection with a dues increase. The County denies that it committed a prohibited labor practice by denying the union's request because it was not submitted in a manner that comported with the parties contract. The County also defends the allegation on the grounds that "*Excelsior*" rights do not apply, the refusal to provide the addresses does not constitute a refusal to bargain, the doctrine of waiver bars the union's charge, the employees' privacy interests bar disclosure of the addresses and the Union failed to exhaust administrative remedies.

This matter was principally decided on legal briefs without a Hearing on the Merits. Each party filed competing Motions for Summary Judgment on February 26, 2016. Each responded to the other's Motion on March 11, 2016. My letter decision on Summary Judgment denying the County's motion and granting the union's was issued on March 22, 2016. As a remedy I recommended to the Board that the County should immediately disclose the requested information to the Union, that the County should post Notice of the violation and an evidentiary hearing should be held to evaluate any damages that may have resulted from the prohibited act found. An appeal of my Decision

regarding the two competing Motions for Summary Judgment was taken by the County and heard by the PELRB 128-15 at its May 3, 2016 meeting. The Board affirmed my Decision on Summary Judgment and clarified that further appeal to District Court must await the hearing on damages recommended in the Decision. The evidentiary hearing on damages was held on July 22, 2016. Upon receipt and consideration of the Motions for Summary Judgment, Responses thereto and after an evidentiary hearing on damages, all parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, incorporating the findings from my decision on Summary Judgment I make the following **FINDINGS OF FACT**:

1. AFSCME is the duly elected, exclusive bargaining representative for three bargaining units of eligible employees employed by the County of Santa Fe. See Stipulation (filed 2/5/16), ¶ 1.

2. Relevant to this dispute, AFSCME is the exclusive representative for the following County employees in the bargaining unit labeled Local 1413: all non-probationary Corrections Department employees in the positions of Detention Officer, Corporal, Sergeant, Teacher, Therapist, Case Manager, Booking Clerk, Senior Case Manager/Electronic Monitoring, Case Manager/Electronic Monitoring, Life Skills Worker I, Life Skills Worker II, and YDP Assistant Shift Supervisor. See Stipulation, ¶ 2, Ex. 1, at Art. I, § 1(A).

3. On or about September 30, 2015, Connie Derr, Executive Director of AFSCME Council 18, sent a letter to Justin Salazar, Payroll Department, notifying the County of the revised 2015 dues rate for AFSCME members in Local 1413. In that letter, she requested the “dues rosters” in electronic format, to include (among other things) the employees’ full name, address, home phone number and cell phone number. See Stipulation, ¶ 7, Ex. 6.

4. On or about October 20, 2015, Bernadette Salazar, HR Director for Santa Fe County, sent a letter to Connie Derr denying the dues increase. In that letter, she pointed out that the Collective Bargaining Agreement (CBA) required the Union to “provide written notification to the employer and all bargaining unit members” prior to the effective date of the increase. She instructed Ms. Derr to “provide me confirmation that all bargaining unit members have been notified in writing pursuant to the CBA by providing a copy of the dated letter sent to all bargaining unit employees.” *Id.*



5. By email dated November 18, 2015, Connie Derr sent the following request to Bernadette Salazar: "In order to notify the bargaining unit of the dues increase, AFSCME needs the names and address of all the bargaining unit members. Please forward this information to me as soon as possible." See Stipulation, ¶ 5, Ex. 4.

6. Bernadette Salazar responded in relevant part: "It is not common that we release home addresses of County employees however, if you would like to post something on the locked bulletin board in accordance with the CBA, please let me know." *Id.*

7. The County does provide AFSCME with the home addresses of the bargaining unit members represented by Local 1782. See Stipulation, ¶ 9, Ex. 8.

8. On November 19, 2015, Bernadette Salazar provided Connie Derr with "the report you requested yesterday pursuant to the CBA." That report, however, did not include the employees' home addresses, which was the information Connie Derr had requested on the previous day. *Id.*

9. Connie Derr responded in relevant part: "Thank you for sending the bargaining unit list of names, classifications, etc. I am still requesting the home addresses in order for us to communicate with our represented unit. Will you be providing AFSCME with the home addresses for the bargaining unit?" *Id.*

10. Bernadette Salazar responded in relevant part: "Although we do not believe Santa Fe County is obligated to release the home addresses of employees who are part of Local 1413, in an effort to assist with your request, we are willing to reach out to those employees to seek their authorization to release their home addresses to AFSCME Council 18. Please let me know if you would like us to undertake that outreach." *Id.*

11. Connie Derr responded: "I appreciate your suggestion, but it does not satisfy our request. When AFSCME became the duly elected representative of the bargaining unit, it was not for partial representation. The union must be able to communicate directly to its bargaining unit and not with the employer as the intermediary. So again, please provide the information requested. Failure to do so continues to interfere with AFSCME's right to unfettered access to its bargaining unit." *Id.*

12. The CBA provision at issue requires AFSCME to provide the entire bargaining unit (not just its members) with "prior written notification" of a dues increase, even though there is no "fair share" provision in the CBA and only members would be affected by the increase. See CBA, Exhibit 4 at Article 8, § 1(A).

13. AFSCME posted a notice of the dues increase on a work-place bulletin board on January 27, 2016 but on February 15, 2016 the County's HR Director informed AFSCME that this posting did not satisfy the "prior written notification" requirement before the dues increase would be put into effect. See Last Email Chain contained in Ex. 3.

14. In settlement of PELRB Case No. 104-16 the dues increase went into effect beginning the pay period of March 19, 2016, through April 1, 2016.

15. It is undisputed that the requested increase was from \$17.50 per pay period per member to \$20. *See* First Stipulation, ¶ 7, Ex. 6 (containing the October 20, 2015 letter from Bernadette Salazar noting the requested increase).

**REASONING AND CONCLUSIONS OF LAW:** Petitioner bears the initial burden of proof both as to its Prohibited Practices Complaint and that damages are appropriate under the facts of this case. If Petitioner meets its burden of proof, Respondent bears the burden of proving that Petitioner failed to mitigate its damages. With regard to the underlying prohibited practices complaint, I incorporate herein my finding of fact and conclusions of law in my letter decision on Summary Judgment issued on March 22, 2016 and which has already been reviewed and affirmed by the PELRB. In summary, by that decision it has been held that the PELRB has jurisdiction to hear and decide this matter; the County violated the PEBA §§17(A)(1) and 19(F) by refusing to provide the union with the home addresses of bargaining unit members as requested; the County's defense based on the Inspection of Public Records Act (IPRA), is without merit; the Union's complaint against the County for refusal to provide information is not subject to arbitration and there is no "clear and unmistakable" waiver of the union's statutory right to receive the requested information. With regard to whether the PELRB has authority to award damages, I must first consider whether compensatory damages such as are being sought here are an appropriate "administrative remedy" authorized under the Act before considering whether such damages are appropriate under the facts of this case.

**1. An Award of Compensatory Damages is Not an Appropriate Administrative Remedy Authorized by the Act.**

Under the PEBA this Board has authority to "enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies" NMSA 1978 § 10-7E-9 (2003). Although §9 of the Act gives the Board broad discretion to impose an

“appropriate administrative remedies” it does not define that term. Neither has the Board defined by its own rules whether the power to award compensatory damages is among those “appropriate administrative remedies” available to redress prohibited practices. This Board’s authority to impose “appropriate administrative remedies” has not been extensively analyzed by our courts, but we can look to one New Mexico Supreme Court case for guidance. In *Callahan v. New Mexico Fed’n of Teachers-TV1*, 139 N.M. 201, 131 P.3d 51 (2006), the New Mexico Supreme Court analyzed the language of the predecessor to our current Act (referred to as PEBA I) sections 10-7D-9(F) and 11(E)<sup>1</sup> in the context of a breach of a duty of fair representation claim brought against a union. Although the facts of *Callahan* concerned the award of damages against a union for breach of a duty of fair representation, the Court’s dicta on this issue of damages suggests that money damages for breach of contract may not be awarded by the Board:

“However, the TVI-LRB, armed with the Legislature’s grant of power to impose ‘appropriate administrative remedies,’ could not order Union Defendants to reinstate Plaintiffs<sup>2</sup>. *It is also doubtful that the Legislature’s grant empowers the TVI-LRB to award monetary damages other than back pay, such as the actual and exemplary damages sought by Plaintiffs here against Union Defendants.*”

*Id.* at page 59. (Emphasis added).

Although the facts of *Callahan* are unique in that the plaintiff sought money damages directly from the union in a breach of the duty of fair representation case the Court’s dicta states that the Board’s power to impose an appropriate administrative remedy does not include the power to award monetary damages other than back pay.

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<sup>1</sup> Analysis of the former Public Employee Bargaining Act is pertinent because the language of Sections 10-7E-9(F) and 11(E) is exactly the same as the current statute.

<sup>2</sup> Although the Board could not order the *Union* to reinstate, the Court had no issue with the Board’s ability to order the *Employer* to reinstate.



I am aware that the National Labor Relations Board interpretations of the NLRA are generally followed when interpreting substantially similar PEBA provisions, “particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time the PEBA was enacted.” See *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 123 NM 239 (1997); see also *Regents of UNM v. NM Federation of Teachers*, 125 NM 401, 408 (1998) and the Union relies on NLRB cases to support its damages calculations in this case. However, I conclude that in this case the New Mexico Supreme Court has suggested that we should depart from the general rule of looking to the NLRB for guidance.

Having concluded that an award of contract damages is not an appropriate administrative remedy I do not analyze the County's defenses or the Union's proposal for proper calculation of the damages alleged to be due.

WHEREFORE, I conclude as follows:

**DECISION:**

- A. By its actions as found herein, the County has violated the PEBA Sections 17(A)(1) and (C) and County violated PEBA §19(F) (refusing to bargain collectively in good faith with the exclusive representative) when it refused to provide the Union with home addresses of bargaining unit members requested in connection with a dues increase.).
- B. The County should be Ordered to cease and desist from the actions complained of; provide to the union the names, addresses and telephone numbers as requested; implement the dues increase upon proof of satisfactory notice under the parties' CBA; post notice of its violations in a form substantially conforming to that

Issued, Monday, August 15, 2016.

A handwritten signature in blue ink, appearing to read "Thomas J. Griego", written over a horizontal line.

Thomas J. Griego  
Hearing Officer  
Public Employee Labor Relations Board  
2929 Coors Blvd. N.W., Suite 303  
Albuquerque, New Mexico 87120



APPENDIX 1

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD  
An Agency of the State of New Mexico

The Public Employee Labor Relations Board has found that Santa Fe County violated the Public Employee Bargaining Act and has ordered it to post and obey this notice.

You have the right under Public Employee Bargaining Act §10-7E-17(A)(1), to organize and bargain collectively with the District in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. Furthermore, pursuant to PEBA §19(F), the County may not refuse to bargain collectively in good faith with the exclusive representative.

On or about September 30, 2015, AFSCME Council 18 sent a letter to the County regarding a revised dues rate for AFSCME members in Local 1413. The County declined to effectuate the dues increase because the parties' Collective Bargaining Agreement (CBA) required the Union to "provide written notification to the employer and all bargaining unit members" prior to the effective date of the increase. In order to give the required notice AFSCME requested the names and address of all the bargaining unit members. The County refused to provide the requested information citing employee privacy interests.

The County's actions have been determined to have violated its obligation to bargain collectively in good faith with the District.

We acknowledge the above-described rights and responsibilities and will not in any like manner refuse to bargain in good faith with AFSCME, Council 18.

\_\_\_\_\_  
Katherine Miller,  
Santa Fe County Manager

Date: \_\_\_\_\_