

BEFORE THE NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NATIONAL EDUCATION ASSOCIATION-
WEST LAS VEGAS (NEA-WLA),

Complainant,

vs.

PELRB No. 108-13

WEST LAS VEGAS SCHOOL
DISTRICT,

Respondent.

ORDER GRANTING PRE-ADJUDICATION INJUNCTION

THIS MATTER came before the New Mexico Public Employee Labor Relations Board (PELRB) upon the motion of complainant National Education Association-West Las Vegas (NEA-WLV), requesting the PELRB to issue a pre-adjudication injunction against the West Las Vegas School District (District) to prevent the District's unilateral implementation of the District's bargaining proposals to change Article VIII, Hours and Workload, of the existing collective bargaining agreement by and between NEA-WLV and the District, pending adjudication by the PELRB of the subject matter of the dispute, which is the underlying, pending prohibited practices complaint (PPC) that the NEA-WLV has filed against the District.

NEA-WLV's motion for pre-adjudication injunction was heard by the PELRB on August 16, 2013, at which time the District was present, represented by counsel Dina E. Holcomb, Esq. Evidence and argument of the parties was received and heard by the PELRB at said hearing.

The PELRB finds and concludes as follows:

1. The PELRB has jurisdiction to entertain NEA-WLV's motion for pre-adjudication injunction pursuant to Section 10-7E-23(A) (providing that PELRB may request judicial enforcement of its orders, including those for appropriate temporary relief and restraining

orders). In addition, the PELRB, under Section 10-7E-9 (E) and (F), has the power to issue orders and to enforce its orders through the imposition of appropriate administrative remedies. The PELRB is not limited by statute in its ability to issue orders to those only following a decision by it on the merits of the PPC.

2. Section 10-7E-18(D) (known as the “Evergreen provision” of the Public Employee Bargaining Act), provides, in the case of impasse, for the continuation in full force and effect of an existing collective bargaining agreement until replaced by a subsequent agreement.

3. Under the Evergreen provision, the existing collective bargaining agreement remains in full force and effect.

4. Granting a pre-adjudication injunction under the facts here would serve to preserve the “status quo,” while the underlying PPC remains in the process of adjudication, to be decided by the PELRB, and is consistent with PEBA’s Evergreen provision.

5. The District’s proposals, which it proposes to unilaterally implement, relate to mandatory subjects of bargaining under Section 10-7E-17 and are, in comparison to the existing collective bargaining agreement, more burdensome to the members of NEA-WLV, by increasing the number of classes and subjects, as well as by reducing class-preparation time and the period for lunch.

6. Unless a pre-adjudication injunction is granted, the membership of NEA-WLV will suffer irreparable harm caused by these more burdensome conditions of employment.

7. Unless a pre-adjudication injunction is granted, the membership of NEA-WLV will suffer irreparable harm by reason of eroding their confidence in the NEA-WLV’s practical and legal ability to negotiate agreements on their behalf. This erosion of confidence in turn undermines and interferes with their willingness to form, join or assist a labor organization of

their choosing for the purpose of collective bargaining, contrary to their rights as public employees, as set forth at Section 10-7E-5.

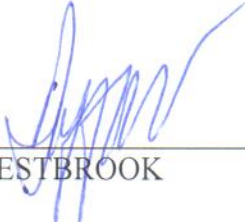
8. NEA-WLV has demonstrated a substantial likelihood of prevailing on the merits of its PPC.

9. NEA-WLV has demonstrated the absence of an adequate and complete remedy at law at this juncture.

10. Any claimed hardship caused by the grant of this pre-adjudication injunction to the District that the District may claim, the District has occasioned, in contravention of the Evergreen provision. Moreover, it is and remains the purpose of the PELRB to protect and enforce the PEBA-guaranteed rights and obligations and the employer-employee relations under PEBA.

11. The equities in the case before the PELRB favor granting the NEA-WLV's motion for pre-adjudication injunction.

IT IS, THEREFORE, ORDERED that NEA-WLV's motion for pre-adjudication injunction be and hereby is GRANTED. Absent a successor agreement by and between the parties in the manner required by PEBA, the District is enjoined, pending adjudication of the merits of the underlying PPC, from unilaterally implementing its bargaining proposals.



DUFF WESTBROOK
Chair
Public Employee Labor Relations Board

Date: 8/19/13

JOINED BY MEMBER
ROGER "BART" BARTOSIEWICZ

DISSENT BY:
MEMBER JAMES SHAFFNER
(attached)

Dissent

The August 17th emergency meeting of the PELRB I attended was to listen to the representative from the NEA and the representatives for the West Las Vegas School District make a case to issue or not issue a pre-adjudication injunction against the Las Vegas School District. The NEA wished to stop the school district from implementing a 5 x 5 block schedule from a previous 4 x 4 block schedule, which meant that the new schedule will create smaller class sizes and more classes per day for teachers. The other issue was a 15 minute cut to the lunch break with which the NEA also did not agree.

My understanding is the NEA contract terminated in November of 2010 and has been under the Evergreen Provision since the collective bargaining agreement expired. A mediator was called in and was unable to negotiate a settlement between the NEA and the West Las Vegas School District therefore; the NEA requested that the PELRB issue a request for an injunction to prevent the district from implementing the 5 x 5 block schedule.

The NEA representative Jonathan Lebowitz indicated that irreparable harm would be caused to the Association's bargaining unit members and this outweighs any harm that would occur to the district by going back to the 4 x 4 block schedule. He also stated that the computer program the district uses to develop student schedules could be implemented immediately with no harm to the district.

The group, Management Associates for the West Las Vegas School District, represented by John Martinez and Dina Holcomb indicated in their arguments that the PELRB did not have the authority to request an injunction. They cited

several provisions in the PELRB rules that would prevent it from making such a request. In addition, there was a discussion about the meaning of administrative and judicial terms in Black's Law Dictionary. This group also indicated there was another remedy, which were administrative rather than judicial.

At issue here is the ability of the Las Vegas School District to re-program an extremely complicated class schedule for 400 high school students on opening day, two days hence. The very thought that the school district will not be harmed is not in the realm of possibilities. The assumption that they could enter information for 400 students into a computer program, test it for errors, correct them and implement it, three or four days hence, is ridiculous. I call attention to the Albuquerque Rio Grande High School principal in 2010 that made a schedule change for opening day of classes. Superintendent of Albuquerque Public Schools, Winston Brooks said.....

"It is principal Cynthia Challberg-Hale's first year at Rio Grande,and decided to change the schedule in August. But it takes months to create a schedule to make sure students are in the right classes.

"This was a crisis. It should not have happened, no question about it," Brooks said".

There is absolutely no difference in what happened to 1600 Rio Grande High School students and what is potentially going to happen to 400 Las Vegas School District High School students. The very thought of an administration bogged down, trying to make schedule changes the day school opens is ludicrous. It puts the students and staff at risk at a time when it has the greatest potential

for both minor and substantial problems and confusion the opening day of school. Not only are the 400 students and a number of teachers and staff affected at the high school, this will affect the entire 1800 student body across the district, if the administration's attention is turned to solely the high school. In addition, the superintendent of the Las Vegas School District admitted they were short staffed and would be difficult to change back to the 4 x 4 block schedule.

One other issue is the graduating seniors and the credit hours and classes that are necessary to complete graduation requirements. These issues have already been calculated under the 5 x 5 block schedule and to go back and try to adjust classes and credit hours for the graduating seniors under the 4 x 4 block schedule will be difficult at best.

I submit that these two groups need to go back to the bargaining table, and renegotiate the collective bargaining agreement and put student success first and not move forward with the ridiculous judicial remedy, which will turn the district into a tumultuous mess that will not benefit parents, teachers or students. With 1800 students across the district it could well effect another 5,000 parents, teachers, staff and students.

Date 8/18/2013

