

23-PELRB-2021

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

MCKINLEY COUNTY FEDERATION
OF UNITED SCHOOL EMPLOYEES
LOCAL 2212, AFT-NM,

Complainant,

v.

PELRB 122-20

GALLUP-MCKINLEY COUNTY
PUBLIC SCHOOLS,

Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board (“Board”) on a Motion by McKinley County Federation of United School Employees Local 2212, AFT-NM (“MCFUSE”) for Order to Show Cause and/or For Judicial Enforcement of the Board’s Temporary Restraining Order and Preliminary Injunction (“Order”) entered on December 23, 2020. MCFUSE alleges that Gallup-McKinley County Public Schools (“School”) violated the Order when the School District failed to adequately notify employees that the Remote Instruction Assurances for Quarter 1 of the 2020-21 School Year authorizing surveillance of employees is unenforceable and failed to announce to teachers when School administrators enter and exit from TEAMS software to observe teachers. MCFUSE requested that the Board issue an Order to Show Cause why sanctions not be entered, and (1) direct the Superintendent to record himself reading this Board’s Order of December 23, 2020, posting a video of that recording on the District’s webpage, (2) issue any other sanction necessary to ensure compliance with this Board’s order, and (3) seek judicial enforcement of its injunctions, pursuant to NMSA 1978, § 10-7E-23(A) (2003). The School filed a Motion and Brief to Disqualify Board Members from Decision on Appeal (“Motion to Disqualify”). After hearing oral argument, review of the Order, and parties’ briefs, the

Board being otherwise sufficiently advised, finds that neither Chair Bowers nor Board members should be disqualified from hearing and deciding the Motion and that a further Order is necessary. The Board voted 3-0 as follows:

- A. On December 23, 2020, the Board efficiently and fairly held a hearing on the Motion for Preliminary Injunction.
- B. The School's argument that the Board cannot act fairly because of previous involvement with union labor activities is specious.
- C. The School violated the December 23, 2020 Order when it failed to adequately notify employees that the Remote Instruction Assurances for Quarter 1 of the 2020-21 School Year signed by employees authorizing the surveillance of employees is unenforceable.
- D. Clarification is necessary to explain how the School shall notify any teacher of the School's presence when any School staff is observing the teacher through the TEAMS software.

IT IS ORDERED:

- A. That the School email all employees, and to include Executive Director Thomas Griego (tom.griego@state.nm.us) and Board's legal counsel Lori Chavez (lchavez@nmag.gov), written notice that the Remote Instruction Assurances for Quarter 1 of the 2020-21 School Year signed by employees authorizing the surveillance of employees is unenforceable. The language in the notice should reflect the Board's previous Order. Written notice shall be emailed out to all employees and the Board no later than the close of business on January 22, 2021.
- B. The School shall verbally announce when entering into TEAMS to observe teachers and teachers shall acknowledge the presence of the School. The School

shall keep their camera on with School staff being visible to teachers at all times. Any time School staff is not visible on camera to teachers, that School staff member shall physically log out of TEAMS before leaving view of the camera. Keeping the camera on and being visually seen on the screen at all times then physically exiting out of TEAMS when no longer visible is sufficient notice to teachers that the School has left the class and that the teacher is no longer being observed by the School. The School shall email written formal procedures for entering, observing and exiting virtual classrooms in compliance with this Order to principals of all schools, and to include Executive Director Thomas Griego (tom.griego@state.nm.us) and Board's legal counsel Lori Chavez (lchavez@nmag.gov). Written formal procedures shall be emailed out to principals and the Board no later than the close of business on January 22, 2021.

- C. Failure to comply with this Order shall result in the Board seeking an order of enforcement from the district court without further hearing.
- D. The Motion to Disqualify is **DENIED**.
- E. The request that a sanction be imposed on the School and for judicial enforcement of the Board's December 23, 2020 Order is **DENIED** without prejudice to any future enforcement action that may be necessary to enforce this Order.

IT IS SO ORDERED.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

1/20/2021
DATE

Marianne Bowers
MARIANNE BOWERS, BOARD CHAIR