

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
(AFSCME) COUNCIL 18, AFL-CIO,

29-PELRB-2012

Petitioner,

v.
NEW MEXICO CORRECTIONS DEPARTMENT,

PELRB NO. 139-11

Respondent.

ORDER

THIS MATTER comes before the Board on the Executive Director's Dismissal of that portion of the allegations of Complainant's PPC relating to Lee Ortega; more specifically, paragraphs 3 through 7 inclusive, paragraph 29 and that portion of the prayer for relief specific to Mr. Ortega.

Upon a 3-0 vote of the Board at its March 14, 2012 meeting **IT IS HEREBY**

ORDERED:

That the allegations of Complainant's PPC relating to Lee Ortega shall be and are hereby **DISMISSED** and that further, he is **DISMISSED AS A PARTY** and the case caption will be amended to reflect that dismissal. In light of this Order it is not necessary that the Executive Director issue a recommended decision on Respondent's Second Alternative Motion to Dismiss or to Sever, filed herein on 01-09-2012.

Dated: 3/19/12



Duff Westbrook, Chairman



STATE OF NEW MEXICO

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SUSANA MARTINEZ
Governor

Duff Westbrook, Board Chair
Wayne Bingham, Vice-Chair
Roger E. "Bart" Bartosiewicz, Board Member

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THOMAS J. GRIEGO
Executive Director

February 20, 2012

AFSCME Council 18
1202 Pennsylvania N.E.
Albuquerque, NM 87109

New Mexico Corrections Dept.
PO Box 27116
Santa Fe, NM 87502-0116
Attn: Michelle Bowdon, Deputy General
Counsel

Re: *AFSCME v. Dep't. of Corrections; PELRB No.139-11*

This matter came before the Board's Executive Director upon the Union's withdrawal of the charges relating to Petitioner Lee Ortega. Pursuant to **NMAC 11.21.3.15 (D)** the complainant may withdraw the complaint at any time prior to hearing, without approval by the director or the board and **NMAC 11.21.3.15 (A)** encourages the parties to reach a settlement. **NMAC 11.21.1.16 (A)** provides that the director shall hold a status and scheduling conference in a representation, prohibited practices or impasse resolution case to determine the issues, etc. Respondent had earlier moved to dismiss Lee Ortega as a party and to dismiss his claims or in the alternative to sever the parties and claims. At a Status and Scheduling conference in this case held for the purposes stated in **NMAC 11.21.1.16 (A)** and after receipt of the Arbitrator's decision regarding Ortega's dismissal, the Union indicated its intent to withdraw that portion of its PPC relating to Ortega and his claims. Read together the Executive Director construes the above-referenced rules to encompass not only withdrawal of PPC's in their entirety but select portions of them as well in a manner consistent with either settlement of issues between the parties or limitations of actions in the context of a pre-hearing conference.

Accordingly, upon the withdrawal of portions of the charge by the union it is my recommended decision that the portion of the allegations of Complainant's PPC relating to Lee Ortega be **DISMISSED** and that he further be **DISMISSED AS A PARTY** and the case caption amended to reflect that dismissal. More specifically, this recommended decision disposes of paragraphs 3 through 7 inclusive of the Complaint, paragraph 29 of the

Complaint and that portion of the prayer for relief specific to Mr. Ortega. In light of this recommended decision it is not necessary to issue a separate recommended decision on Respondent's Second Alternative Motion to Dismiss or to Sever, filed herein on 01-09-2012.

Either party may appeal this decision within ten (10) days in accordance with the Board's Rules governing appeal of Dismissal of claims **NMAC 11.21.3.13 (A)**.

Sincerely,



Thomas J. Griego
Executive Director PELRB

Cc: Sandy Martinez, SPO Labor Relations Director
Carlos Elizondo, Deputy General Counsel