



**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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May 19, 2017

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Attn: Adrian Terry

Rio Rancho Police and Communications Ass'n., Inc.
500 Quantum Rd.
Rio Rancho, New Mexico 87124
Attn: Justin L. Garcia

Re: ***NMCPSO and City of Rio Rancho; PELRB 303-17 – via USPS and email***

Dear Messrs. Terry and Garcia and Ms. Holcomb:

This letter constitutes my decision pursuant to 11.21.2.35 NMAC with regard to whether the Amended Petition for Amendment of Certification herein presents a question concerning representation (QCR). I am in receipt of a faxed Petition to Intervene from Rio Rancho Police and Communications Ass'n., Inc. (RRPCA) purporting to represent the same bargaining unit as that the NMCPSO seeks Amendment of Certification. A hard copy of the Motion to Intervene was never mailed or hand-delivered to this office and so I cannot consider it to have been timely filed under Rule 11.21.1.10 NMAC and I do not consider any of the allegations of that Motion in this decision.

The Amended Petition for Amendment of Certification must be processed in accordance with 11.21.2.35 NMAC, which states:

"A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in affiliation of the labor organization. The director shall dismiss such a petition within thirty (30) days of its filing if the director determines that it raises a question concerning representation and petitioner may proceed otherwise under these rules. If the director finds sufficient facts to show that the amendment should be made, after giving the parties notice and an opportunity to submit their views, the director shall issue an amend-

ment of certification within thirty (30) days of the filing of the petition. The director's decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above."

Thus, the first issue for determination is whether the Amended Petition by NMCP SO presents a QCR. If it does, then NMCP SO's Petition must be dismissed and the employees given a voice in the selection of their exclusive representative through a Board-sanctioned election. If it does not, the Amended Petition should be granted, unless dismissed for other reasons. An element of whether a QCR exists involves answering whether there is a "continuation of representation" demonstrated.

FINDINGS OF FACT:

There are several established facts found in other cases involving these same parties that bear on that question and which I adopt herein. In *NMCP SO-CWA Local 7911 and City of Rio Rancho*, 04-PELRB -2009 (In re: PELRB Case No. 319-08) this Board found:

1. Under a local public employee collective bargaining ordinance, prior to the enactment of the PEBA, Rio Rancho Department of Public Safety Association a/k/a "Rio Rancho Police, Fire and Dispatch Association" was formed in 1989 and is a grandfathered bargaining unit under §24(B) of PEBA I. (Finding 1; n.2 and n.3).
2. Rio Rancho Police, Fire and Dispatch Association entered into its first collective bargaining agreement (CBA) with the City that same year, 1989. (Finding 1).
3. On September 30, 2008 New Mexico Coalition of Public Safety Officers - Communications Workers of America Local 7911 (NMCP SO) represented the bargaining unit in question on behalf of the recognized bargaining representative known interchangeably as "Rio Rancho Department of Public Safety Association" and "Rio Rancho Police, Fire and Dispatch Association" both of which were NMCP SO affiliates.
4. NMCP SO successfully petitioned this Board to sever the firefighters from Rio Rancho Police, Fire and Dispatch Association in 2008 after the City's Department of Public Safety was reorganized (See PELRB Case No. 322-08) and announced its intent to change the Association's name to "Rio Rancho Police and Dispatch Association."
5. As a result of the severance noted in Finding 5 above, this Board issued an Amended Certification of Representation certifying the Rio Rancho Police and Dispatch Association (RRPDA) as bargaining agent for:

"All police officers, sergeants, corporals, detectives, dispatchers, call takers, and dispatch supervisors employed by the City, except for management, confidential, supervisory or probationary employees as defined under NMSA §10-7E-4(O), §10-7E-4(G), §10-7E-4(U) and §10-7E-4(R)."

(Exhibit 1 to Petition).

6. Rio Rancho Police and Dispatch Association a/k/a the Rio Rancho Department of Public Safety Association and Rio Rancho Police, Fire and Dispatch Association (Association) affiliated with NMCP SO in 2000 after NMCP SO severed its relationship with CWA 7911 as described below in *New Mexico Coalition of Public Safety Officers and AFSCME, Council 18 and Santa Fe County*. (Finding 1, n.4).

In *New Mexico Coalition of Public Safety Officers and AFSCME, Council 18 and Santa Fe County*, 7 PELRB 2014 (PELRB No's. 313-13; 314-13; 315-13 and 316-13 consolidated) this Board found:

7. On August 28, 2012, the CWA, Local 7911 and the NMCP SO entered into a Disaffiliation Agreement for all of its locals in the State of New Mexico. With the exception of Doña Ana Deputy Sheriffs Association, which remained with the CWA, all other formerly affiliated locals remained with NMCP SO. (Finding No. 4.)

From Amended Petition and the Response thereto, I make the following findings of fact:

8. The City of Rio Rancho entered into a collective bargaining agreement with "Rio Rancho Department of Public Safety Association" for the period July 1, 2007 through June 30, 2010. (Exhibit 3 to NMCP SO's Amended Petition).
9. The above-referenced CBA reflects the affiliation between the "Rio Rancho Department of Public Safety Association" and CWA Local 7911 on its signature page and on its title page ambiguously purports to be an agreement between the City of Rio Rancho and "Rio Rancho Police Fire Dispatch Association NMCP SO/NCP SO – LOCAL 7911". (Exhibit 3 to NMCP SO's Amended Petition).
10. The Disaffiliation Agreement entered into between CWA 7911 and NMCP SO refers to "Rio Rancho Police Officers" as continuing to be represented by NMCP SO. (Exhibit 5 to NMCP SO's Amended Petition), which is binding only between the parties to that agreement.
11. The group of employees that are the subject of this Petition by NMCP SO is the same as that in the 2008 Amended Certification of Representation certifying the Rio Rancho Police and Dispatch Association (RRPDA) as bargaining agent for them except that in Article I of the current CBA the Rio Rancho Police and Communications Association claims to also represent, training coordinators, evidence technicians and public service aides, that were not part of the 2008 Amended Certification.
12. There is no record of the RRPDA or NMCP SO having filed an accretion Petition with this Board to add training coordinators, evidence technicians and public service aides to the unit recognized by this Board in 2008.
13. No petition for incumbent recognition has been filed by any party hereto nor has any party in any prior case involving this bargaining unit alleged that such a petition has ever been filed. Accordingly, I find that none of the various representative entities herein have petitioned for recognition as an incumbent representative under the PEBA.
14. In a Prohibited Practices proceeding before this Board in 2016, PELRB 113-16, the City of Rio Rancho admitted NMCP SO's allegation in paragraph 2 of its PPC that it was the

exclusive representative for Rio Rancho police officers, corporals and sergeants and a stipulation to that effect was entered by the Hearing Officer in the Pre-Hearing Order . (Exhibit 7 to the Petition).

15. The City acknowledges that its understanding of the relationship between NMCP SO and RRPDA is that the latter is an "affiliate" or a "chapter" of the former and that affiliate status is reflected in the parties' current CBA. (Affidavit of Ty Rayburn).

DECISION AND RATIONALE:

The facts do not establish continuity of representation of the unit petitioned for by NMCP SO. The recognized bargaining representative for *part* of the bargaining unit in question is the Rio Rancho Police and Dispatch Association, an affiliate of NMCP SO. No document on record establishes what the parameters of the parties' affiliation agreement may be. Whatever their agreement, it does not bind those who are not parties to it and does not bind this Board in its duty to determine appropriate bargaining units and certify exclusive bargaining representatives. See, §10-7E-9 (1) and (2) NMSA 1978 (2003). Although affiliates share resources, interests or business dealings, they are not by virtue of affiliation alone, alternative names for the same entity.

The finding in PELRB 113-16 that NMCP SO is the exclusive bargaining representative for police officers, corporals and sergeants, is the law of the case, binding in that proceeding only and may not be considered to be *res judicata* because it was not contested and thus, never adjudicated. It remains an open question who represents training coordinators, evidence technicians and public service aides employed by Rio Rancho.


Because NMCP SO is not the certified bargaining representative for the group in question it does not have standing to bring its amended petition in lieu of an affiliated entity unless it is acting on the affiliate's behalf which is not the case here. The Amended Petition does not present a simple change in the representative's or the employer's name or affiliation.

CONCLUSION:

For the reasons set forth above, I conclude that the Amended Petition by NMCP SO presents a QCR. Accordingly, the Amended Petition shall be, and hereby is, **DISMISSED**. The petitioner is directed to "...proceed otherwise under [the Board's] rules" as called for in NMAC 11.21.2.35. This decision may be appealed to the Board pursuant to the procedures set out in Section 22 of the Board's rules.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD


Thomas J. Griego
Executive Director