

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

STATE OF NEW MEXICO,

31-PELRB-2012

Complainant,

v.

PELRB No.'s 146-11

AFSCME Council 18,

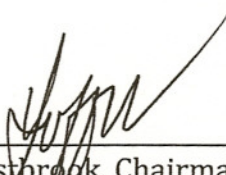
Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board for ratification of the Hearing Officer's Decision regarding the State's Motion for Default Judgment. Upon a 3-0 vote at the Board's March 14, 2012 meeting;

IT IS HEREBY ORDERED that the Hearing Officer's Decision of January 20, 2012, including its Findings of Fact and Conclusions of Law and the Rationale stated therein, shall be and hereby is adopted by the Board.

Date: 3/19/12



Duff Westbrook, Chairman
Public Employee Labor Relations Board

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

In re:

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Respondent.

RECOMMENDED DECISION ON COMPLAINANT'S MOTION FOR DEFAULT

THIS MATTER comes before the Hearing Officer on the State's Motion for Default Judgment. Upon the record of the proceedings thus far and upon the Motions and Responses thereto filed by the parties pursuant to NMAC 11.21.1.23 the Hearing Officer Finds and Concludes as follows:

FINDINGS OF FACT:

1. On August 15, 2011, Petitioner filed and served the Prohibited Practices Complaint (PPC) herein.
2. On , August 16, 2011 the Executive Director issued a letter to the parties indicating his receipt of the PPC and notifying the Respondent that it had fifteen days to file an answer to the Complaint pursuant to NMAC 11.21.3.10(A)
3. On August 30, 2011 the Respondent filed a Motion to Dismiss the Complaint on the grounds that, accepting the allegations of the Complaint as true the Complaint cannot state a claim of a Prohibited Practice as a matter of law.

4. On January 5, 2011 the Executive Director requested submission by Complainant of all evidence and legal authority in support of its PPC and set a deadline for such submission of January 16, 2012.
5. The Complainant has not responded to the Motion to Dismiss but on January 11, 2012 the Petitioner filed its Motion for Default Judgment and by separate motion requested an extension of the deadline for submission of supporting evidence and authorities until January 20, 2012 or until after the Hearing Officer decides the Motion to Dismiss. On January 17, 2012 by e-mail the Executive Director granted the extension of time as requested by the Complainant until January 20, 2012. Complainant submitted evidence and legal authority by the deadline as requested but in so doing asked for further leave to supplement its submissions after deciding the Motion for Default.

CONCLUSIONS OF LAW:

- A. This Board has jurisdiction over both the parties and the subject matter in this case.
- B. Complainant's Motion for Default Judgment is without merit or in the alternative the interests of substantial justice militate against granting the motion.

RATIONALE:

A plain reading of the Board's Rule 11.21.3.11 requires the Hearing Officer to conclude that when a Respondent fails to file a timely Answer to a Prohibited Practices Charge the Director shall serve on the parties a determination of violation by default, based upon the allegations of the complaint and any evidence submitted in

support of the complaint. See, NMAC 11.21.3.11, Default Determination. It is also clear that the Respondent did not file a pleading designated as an "Answer" within the time period established by the Board's rules and the Executive Director in his letter of August 16, 2011, but did file a responsive pleading, i.e. its Motion to Dismiss within that time period.

According to NMAC 11.21.3.10 an Answer "admitting, denying or explaining each allegation of the complaint" is required to be filed. However, the rule also provides that "No particular form is required either to state allegations or to answer them". See, NMAC 11.21.3.10(A). If the Answer, in whatever form may be filed, "fails to deny an allegation of the complaint, the director, hearing examiner or board **may** find the allegation to be true." See NMAC 11.21.3.10(B). (Emphasis added).

Therefore, a responsive pleading may serve as an "Answer" under our rules but at the risk that if it fails to address specific allegations of the complaint, those allegations may be deemed admitted in the Hearing Officer's discretion. In the present case, the "Answer", in the form of a Motion to Dismiss, admits the factual allegations of the PPC but raises the legal issue of whether under the facts as admitted the allegations are sufficient as a matter of law. As such it admits or explains the allegations of the Complaint as contemplated under Rule 11.21.3.10. The procedure established by this Board's rules whereby no particular form is required either to state allegations or to answer them is consistent with the notion embodied in the New Mexico Rules of Civil Procedure for the District Courts, SCRA 1-008(F) that "All pleadings shall be so construed as to do substantial justice." See also, *In re Forfeiture of Fourteen Thousand Six Hundred and Thirty Nine Dollars*, 120

N.M. 408, 902 P.2d 563 (Ct. App. 1995) wherein the Albuquerque Police Department appealed the trial court's order and judgment setting aside a default judgment in favor of the Department and ordering the return of certain seized property in essence dismissing the forfeiture case. The Department argued that the trial court erred by dismissing the forfeiture petition without requiring an answer to the petition. The fact that no answer was filed was not fatal to the trial court's decision to dismiss the petition because "Although the Rules of Civil Procedure require a complaint and an answer to be filed, SCRA 1986, 1-007(A) (Repl.1992), a motion to dismiss for failure to state a claim, SCRA 1986, 1-012(B) (6) (Repl.1992), can be filed in lieu of an answer. Since we have determined that Martinez's motion substantively constituted a motion to dismiss, an answer was not required." 902 P.2d at 566. Likewise, this Board should look to the substance of a pleading rather than just its form.

Default judgments are disfavored by the law. See, ***Daniels Ins. Agency, Inc. v. Jordan***, 692 P.2d 1311, 102 N.M. 162 (N.M., 1984); citing ***Franco v. Federal Building Service, Inc.***, 98 N.M. 333, 334, 648 P.2d 791, 792 (1982). Therefore, procedural safeguards such as NMSA 1978, Civ. P. Rule 55(a) making default appropriate only when there has been no responsive pleading at all and 55(b) requiring advance notice to the party against whom judgment by default is sought, have been established to insure that claims are adjudicated on their merits Therefore, it is the Executive Director's decision that the State's Motion for Default shall be denied on the ground that an "Answer" was timely filed designated as a Motion to Dismiss. To the extent the Motion to Dismiss fails to answer any averments in the Complaint, the Hearing

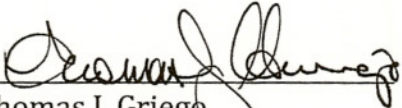
Officer or the Board *may* but is not required to consider them as true and established as the law of the case but may conduct any hearings necessary to establish the truth of facts alleged in the interest of doing substantial justice.

Recommended Order: Respondent's Motion for Default Judgment should be and is hereby **DENIED**.

The parties are directed to meet and confer regarding a mutually acceptable date and time to conduct a hearing on Respondent's Motion to Dismiss from among the following dates: anytime on January 30, 31, 2012; February 1 and 2, 2012 and February 7, 2012 following the Board Meeting at approximately 12:00 noon. At the hearing the State may supplement its submission of evidence and authorities received January 20, 2012,

APPEAL: Either party may appeal this hearing officer's decision by filing a notice of appeal with the PELRB staff at 2929 Coors Blvd. NW in Albuquerque New Mexico 87120. Provisions for appeal are found at **NMAC 11.21.3.19**. Pursuant to **NMAC 11.21.1.27** appeal or request for review by the board shall be permitted only upon completion of proceedings before a hearing examiner or the director. An interlocutory appeal may be allowed with the permission of the board, director or the hearing examiner. It is the Hearing Officer's opinion that this decision does not present issues appropriate for interlocutory appeal.

Issued this 20th day of January 2012


Thomas J. Griego
Executive Director
Public Employee Labor Relations Board
2929 Coors N.W., Suite 303
Albuquerque, NM 87120