

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, NEW MEXICO
COUNCIL 18, AFL-CIO,

and

ANDREW GILMORE,

Complainants,

v.

PELRB No. 105-16

LUNA COUNTY,

Respondent.

ORDER DENYING REQUEST FOR INJUNCTIVE RELIEF

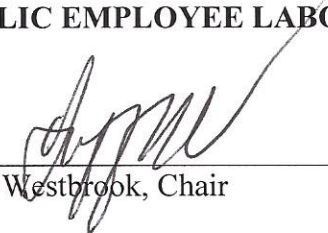
THIS MATTER came before the Public Employee Labor Relations Board ("Board") at a special meeting on April 1, 2016, to consider AFSCME and Andrew Gilmore's (collectively "Complainants") *Request for Injunctive Relief* ("Motion"), filed on March 8, 2016. Counsel for both AFSCME and Luna County were present at the Board's April 1, 2016 meeting and presented oral arguments in support of their respective positions.

Having reviewed the pleadings and being sufficiently advised, and by a unanimous 3-0 vote in the affirmative, the Board finds that the Motion is not well taken and therefore should not be granted.

IT IS HEREBY ORDERED that the Complainants' Request for Injunctive Relief is **DENIED**.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Date: 4-11-16



Duff Westbrook, Chair

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

**AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES, NEW MEXICO
COUNCIL 18, AFL-CIO,**

and

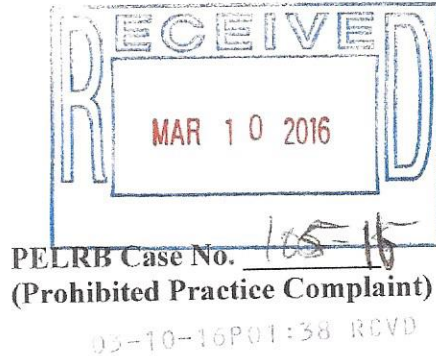
ANDREW GILMORE,

Complainants,

v.

LUNA COUNTY,

Respondent.



**PROHIBITED PRACTICE COMPLAINT AND
REQUEST FOR INJUNCTIVE RELIEF**

COMES NOW Complainants, American Federation of State, County and Municipal Employees, New Mexico, Council 18, AFL-CIO ("AFSCME") and Andrew Gilmore, and file this Prohibited Practice Complaint, and as grounds therefore state as follows. As detailed below, Respondent's violations and threat to terminate Andy Gilmore's employment for providing relevant and necessary information for the representation hearing create an imminent and urgent threat of harm. Accordingly, Petitioners ask for injunctive relief under NMSA 1978, § 10-7E-23(A) (2003), and request that the Executive Director, in response to the imminent and urgent threat to Mr. Gilmore's livelihood, enjoin the County from going through with the proposed termination announced on March 8, 2016, while this Complaint is processed.

1. The Contact information for Petitioner is:

AFSCME Council 18
1202 Pennsylvania Street NE
Albuquerque, NM 87110

Youtz & Valdez, P.C.
900 Gold Ave. SW
Albuquerque, NM 87102

Tel. (505) 266-2505
Fax: (505) 266-2404
Petitioner

Tel. (505) 244-1200
Fax (505) 244-9700
Petitioner's Representative

2. The Contact information for Luna County is:

Charles "Tink" Jackson
County Manager
Courthouse
700 S. Silver Ave.,
P.O. Box 551
Deming, NM 88030
(575) 546-0494
charles_jackson@lunacountynm.us

Jonlyn M. Martinez
Law Office of Jonlyn M. Martinez, LLC
P.O. Box 1805
Albuquerque, NM 87103-1805
(505) 247-9488
(505) 247-9566 (fax)
jonlyn@jmartinezlawn.net

3. AFSCME is a "labor organization" as that term is defined in Section 4(L) of PEBA (NMSA 1978, § 10-7E-4(L) (2003)).

4. Andrew Gilmore is a "public employee" as that term is defined in Section 4(R) of the PEBA.

5. Respondent is a "public employer" as that term is defined in Section 4(S) of PEBA.

6. The PELRB has subject matter jurisdiction over this dispute, and personal jurisdiction over the parties.

7. AFSCME filed a Petition for Certification, given PELRB Case No. 310-15. Respondent initially claimed that the sergeants and lieutenants, sought to be included in the bargaining unit, should be excluded. Accordingly, a representation hearing was held on February 22, 2016.

8. At that hearing, Complainant Andrew Gilmore sat at counsel table as the designated representative and was one of the three witnesses who testified on that day.

9. Pursuant to the Scheduling Order in PELRB Case No. 310-15, the undersigned provided AFSCME's portion of the Stipulated Pre-Hearing Order to counsel for the County on February 5, 2016.

10. That document identified post orders as a potential exhibit to be used at the hearing; counsel for Respondent voiced no objection to the use of the post orders following this February 5, 2015, disclosure.

11. Pursuant to the Scheduling Order in PELRB Case No. 310-15, counsel for Respondent provided the undersigned with the County's portion of the Pre-Hearing Order on February 12, 2016; again, the County voiced no objection to the use or introduction of the post orders at that time, and indeed identified that it might introduce "Any and all records and documents produced by Petitioner."

12. Pursuant to the Scheduling Order in PELRB Case No. 310-15, the undersigned provided the County with copies of the exhibits AFSCME intended to introduce on February 15, 2016; again, the County voiced no objection to the use or introduction of the post orders at that time.

13. Counsel for Respondent submitted the Pre-Hearing Order to the PELRB on February 15, 2016, again without raising any concerns or objections regarding the use of the post orders that the Pre-Hearing Order identified might be introduced by *either* party.

14. At the beginning of the February 22, 2016, hearing, the County *stipulated* to the admission of all of the exhibits identified by the Pre-Hearing Order, again without raising any concerns about the admission of the post orders or their use in a public hearing.

15. The post orders themselves do not identify that they are confidential or not to be released for use in a PELRB hearing where, as the County conceded at the February 22, 2016,

hearing, they are clearly relevant to the PELRB's statutory duty to determine appropriate bargaining units. It is only the 327-page 2015 SOPs that indicate that they are confidential and not to be released to an "unauthorized" person.

16. Despite not once objecting to their introduction during the pre-hearing process, despite stipulating to their admission at the hearing, and despite the fact that the post orders themselves are not marked confidential, the County aggressively cross-examined Andy Gilmore regarding how they came to be used in the hearing. Following that examination, counsel for Respondent indicated that there could be an investigation begun regarding the "security leak" that the County was equally complicit in.

17. During his testimony at the hearing, Andy Gilmore was asked whether he provided the document to "counsel." In the room were two representatives of Council 18. Andy was confused as to what the attorney for the County meant, as he (like most non-attorneys) does not normally refer to an attorney as "counsel." In fact, he did not provide the document to Council 18, but rather provided it to the undersigned, after the undersigned disclosed it to the attorney for the County as a potential exhibit without objection.

18. During his sixteen years of employment with Respondent, Andy Gilmore had little prior disciplinary record.. As he testified at the hearing, prior administrators did not understand the post orders to be confidential, which is why they are not marked confidential. Based on that long experience, and the fact that the documents are not marked confidential, Andy Gilmore did not understand that it would be improper to provide them to the undersigned for use in the hearing, for which they are clearly relevant and necessary information.

19. Shortly after the February 22, 2016, hearing at which Andy Gilmore testified, the County placed him and other members of his shift under investigation for potential discipline,

have removed him from his typical duties, and placed him in the maintenance unit. While on the maintenance unit, he was assigned to pull weeds, but was not provided with gloves or other necessary protective equipment.

20. On March 8, 2016, the County provided Andy Gilmore of notice of its intent to terminate his employment for providing the post orders for use at the hearing, despite the County's stipulation that they were admissible and relevant to those proceedings.

21. These actions were taken in retaliation for Andy Gilmore's assistance to AFSCME, for his testimony at the hearing, and for providing necessary information and testimony for the PELRB to determine the appropriate bargaining unit in that case.

22. The undersigned declares that the information contained herein is true correct to the best of his knowledge and belief

23. By the foregoing, Respondent has violated the following sections of PEBA within the past six months:

a. Section 19(A) (NMSA 1978, § 10-7E-19(A) (2003) (making it a prohibited practice to "discriminate against a public employee with regards to terms and conditions of employment because of the employee's membership in a labor organization");

b. Section 19(B) (making it a prohibited practice to "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the [PEBA]");

c. Section 19(D) (making it a prohibited practice to "discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization);

d. Section 19(E) (making it a prohibited practice to "discharge or otherwise discriminate against a public employee because he has ... given information or testimony

pursuant to the provisions of the [PEBA] or because a public employee is forming, joining or choosing to be represented by a labor organization”).

24. Respondent's actions not only affect Andy Gilmore's employment, but they will inevitably chill other public employees from providing information to the PELRB that is relevant and necessary for the PELRB's statutory duties. This is an unacceptable affront to the authority and role the Legislature has assigned the PELRB.

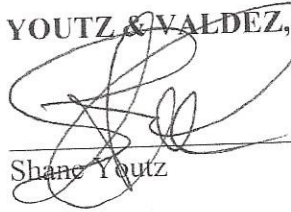
25. Respondent's violations and threat to terminate Andy Gilmore's employment for providing relevant and necessary information for the representation hearing create an imminent and urgent threat of harm. Accordingly, Petitioners ask for injunctive relief under NMSA 1978, § 10-7E-23(A) (2003), and request that the Executive Director, in response to the imminent and urgent threat to Mr. Gilmore's livelihood, enjoin the County from going through with the proposed termination announced on March 8, 2016, while this Complaint is processed.

WHEREFORE, Complainants respectfully request that the PELRB: (1) enjoin Respondent from following through with the threatened termination of Andrew Gilmore's employment announced on March 8, 2016; (2) declare that Respondent has violated the foregoing provisions of the PEBA; (3) order Respondent to cease and desist for these violations of PEBA; (4) order Respondent to make Andrew Gilmore whole; (5) order Respondent to post and email a notice appropriate under the circumstances; and (6) any other relief the PELRB finds just and equitable under the circumstances.

Dated: March 8, 2016

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.



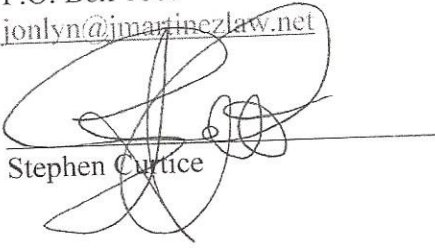
Shane Youtz

Stephen Curtice
James Montalbano
900 Gold Avenue S.W.
Albuquerque, NM 87102
(505) 244-1200 – Telephone
Counsel for Complainants

I HEREBY CERTIFY that a true
and correct copy of the foregoing
pleading was served on all parties
to this action pursuant to 11.21.2.9
NMAC this 8th day of March, 2016.

Charles "Tink" Jackson
County Manager
Courthouse
700 S. Silver Ave.,
P.O. Box 551
Deming, NM 88030
charles_jackson@lunacountynm.us

Jonlyn M. Martinez
Law Office of Jonlyn M. Martinez, LLC
P.O. Box 1805
jonlyn@jmartinezlaw.net



Stephen Curtice