

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME COUNCIL 18,

Complainant,

v.

PELRB No. 101-12

THE STATE OF NEW MEXICO CHILDREN,
YOUTH AND FAMILIES, DEPT.,

Respondent

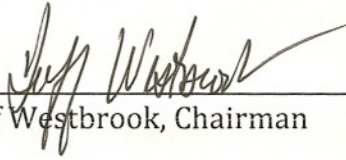
ORDER

THIS MATTER comes before the Board on the Executive Director's Dismissal of the Complaint herein based on Complainant's Withdrawal of its claims. On a vote of 3-0 during the Board's regularly scheduled April Board meeting to ratify the Executive Director's dismissal and closure of the case;

IT IS HEREBY ORDERED:

The above action shall be and hereby is **DISMISSED**, having been withdrawn pursuant to NMAC 11.21.3.12.

Dated: 5-6-12



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

2929 Coors Road N.W., Suite #303
Albuquerque, NM 87120
(505) 831-5422
(505) 831-8820 (Fax)

THOMAS J. GRIEGO
Executive Director

March 30, 2012

AFSCME Council 18
1202 Pennsylvania St. N.E.
Albuquerque, NM 87109
Attn: Sam Chavez

C.Y.F.D.
P.O. Drawer 5160
Santa Fe, NM 87502
Attn: Lisa Fitting,
Assistant General Counsel

Youtz & Valdez, P.C.
900 Gold Ave. S.W.
Albuquerque, NM 87102
Attn: Marianne Bowers

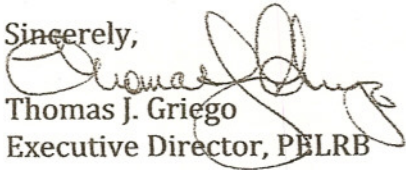
Re: ***AFSCME Council 18 v. CYFD; PELRB No.101-12***

Dear parties:

Yesterday, March 29, 2012, at 4:40 pm, I received via fax a Response to Respondent's Motion to Dismiss and a Cross Motion for Judgment on the Pleadings submitted by Youtz & Valdez, P.C. on behalf of the Petitioner in this case. By the time I received that submission my letter decision dismissing the PPC had already been written and mailed. Pursuant to a Scheduling Order in this case dated February 23, 2012, Petitioner was to file its Response to the Motion no later than March 26, 2012. No provision was made for filing a countermotion. Therefore, the submissions will not be considered and the case remains in "dismissed" status.

AFSCME's appeal rights are set forth in the dismissal.

Sincerely,


Thomas J. Griego
Executive Director, PELRB

Cc: Sandy Martinez



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THOMAS J. GRIEGO
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March 29, 2012

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P.O. Drawer 5160
Santa Fe, NM 87502
Attn: Lisa Fitting,
Assistant General Counsel

Re: ***AFSCME Council 18 v. CYFD; PELRB No.101-12***

Dear parties:


I am in receipt of Respondent's Motion to Dismiss filed herein on March 15, 2012. Pursuant to a Scheduling Order in this case dated February 23, 2012, Respondent was to file its Motion to Dismiss for failure to State a Claim no later than March 14, 2012. Petitioner was to file its Response to the Motion no later than March 26, 2012. No responsive pleading was filed. Based on the record and arguments contained in Respondent's Motion my decision with regard to the Motion is as follows:

1. §10-7E-18(B)(2) is inapplicable to the Respondent.
2. Even if Petitioner had plead that Respondent breached its obligation to bargain to impasse and follow impasse procedures under in good under §10-7E-18(A) the plain reading the Complaint when read together with the allegations of Respondent's Motion indicates that the parties bargained in good faith to impasse on the shift bidding issue. There is nothing in the record to indicate that implementation of the shift bid preferred by management violated any provision of the parties' contract so that there is nothing to support the Petitioner's allegations that Respondent violated §10-7E-18(D)

In light of the foregoing, it is my decision that the Complaint should be dismissed in its entirety for failure to state a claim for which relief can be granted under PEBA.

AFSCME may appeal this dismissal within ten (10) days following service of this decision pursuant to NMAC 11.21.3.13.

Sincerely,



Thomas J. Griego
Executive Director, PELRB

Cc: Sandy Martinez