

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

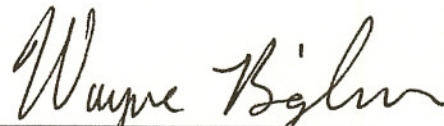
ORDER

THIS MATTER comes before the Board on appeal of the Executive Director's March 29, 2012 letter decision dismissing the Complaint herein. On a vote of 2-0 (Board Chair Duff Westbrook being absent) during the scheduled Board Meeting May 8, 2012;

IT IS HEREBY ORDERED:

That the Executive Director's March 29, 2012 letter decision dismissing the Complaint shall be and hereby is adopted by the Board as its own decision and Order and the Complaint should be dismissed in its entirety for failure to state a claim for which relief can be granted under PEBA.

Date: May 10, 2012



Wayne Bingham, Vice Chair,
Chairing by designation
Public Employee Labor Relations Board



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 29, 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

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

Dear parties:

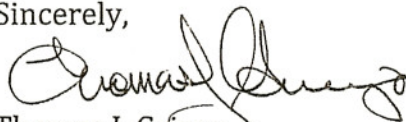
I am in receipt of Respondent's Motion to Dismiss filed herein on March 15, 2012. Pursuant to a Scheduling Order in this case dated February 23, 2012, Respondent was to file its Motion to Dismiss for failure to State a Claim no later than March 14, 2012. Petitioner was to file its Response to the Motion 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,

A handwritten signature in black ink, appearing to read "Thomas J. Griego". The signature is fluid and cursive, with a large initial "T" and "G".

Thomas J. Griego
Executive Director, PELRB

Cc: Sandy Martinez