

BEFORE THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SSEA, LOCAL #3878,

Complainant,

05-PELRB-2007

vs.

PELRB Case No. 129-07

SOCORRO CONSOLIDATED  
SCHOOL DISTRICT,

Respondent.

DECISION AND ORDER

THIS MATTER has come before the Public Employee Labor Relations Board (PELRB) in the context of an adjudicatory proceeding, specifically, an appeal by Socorro Consolidated School District (District) of the Hearing Examiner's recommended findings of fact, conclusions of law and order arising out of a prohibited practice complaint filed by the Socorro School Employees Association, Local # 3878 (Union) against the District. Having heard argument of the parties and being otherwise fully advised, the PELRB hereby adopts the recommended findings of fact, conclusions of law and order of the Hearing Examiner. That order is clarified to include the express directive that addresses of bargaining unit employees be provided. In addition, this Decision and Order of the PELRB is to be posted, along with the letter decision and order of the Hearing Examiner.

By not providing the Union with a list of proposed bargaining unit employee names and addresses, the District has violated the provisions of the Public Employee Bargaining Act (PEBA), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended), Section 10-7E-19 (B) (forbidding an employer from interfering with, restraining or coercing a public employee in the exercise of a right guaranteed by PEBA) and Section 10-7E-5 (assuring the right of public employees generally to form, join or assist a labor organization for the purpose of collective bargaining

through representatives chosen by them without interference, restraint or coercion). The requirement to provide a union with such list of proposed bargaining unit employee names and addresses is a bedrock principle of labor law as it pertains to collective bargaining, one that is firmly entrenched under the authority Excelsior Underwear, Inc., 156 NLRB 111, 156 NLRB 1236, 61 L.R.R.M. (BNA) 1217, 1966 NLRB Dec. P 20180, 1996 WL 18282 (N.L.R.B.). This requirement has become known as the "Excelsior Rule." As explained by the National Labor Relations Board:

As a practical matter, an employer, through his possession of employee names and home addresses as well as his ability to communicate with employees on plant premises, is assured of the continuing opportunity to inform the entire electorate of his view with respect to union representation. On the other hand, without a list of employee names and addresses, a labor organization ... has no method by which it can be certain of reaching all the employees with its arguments in favor of representation, and, as a result, employees are often completely unaware of that point of view.... [B]y providing all parties with employees' names and addresses, we maximize the likelihood that all the voters will be exposed to the arguments for, as well as against, union representation.

[W]e believe that access to employee names and addresses is fundamental to a fair and free election....

156 NLRB 1236 at 1240-41, 1246. Construing PEBA, as we do, in a manner consistent with the guidance provided by the National Labor Relations Board adheres to the direction New Mexico courts have provided to the PELRB. See Las Cruces Professional Firefighters v. City of Las Cruces, 1997-NMCA-031, ¶15, 123 N.M. 239, 938 P.2d 1384 ("Absent cogent reasons to the contrary, we should interpret language of the PEBA in a manner that the same language of the NLRA has been interpreted, particularly when that interpretation was a well-settled, long-standing interpretation of the NLRA at the time PEBA was enacted"); Regents of the University of New Mexico v. New Mexico Federation of Teachers, 1998-NMSC-020, ¶ 18, 125 N.M. 401, 962 P.2d 1236 (citing this direction of the court in Firefighters with approval).

ACCORDINGLY, the PELRB hereby ORDERS, as recommended by the Hearing Examiner, with the clarification and express directive that addresses of bargaining unit employees be provided:

Having found that the District violated the provisions of the Public Employee Bargaining Act, [Section] 10-7E-19 (B), by not providing the Union with a list of proposed bargaining unit employee names and addresses, the District is hereby ordered to provide the Union with a list of all proposed bargaining unit employees and the addresses of those bargaining unit employees. Also, the District is to post this letter Decision and Order [of the Hearing Examiner] in all places where information is normally posted for employees. Also, the District is to post this Decision and Order of the Public Employee Labor Relations Board.

*Martin V. Dominguez*  
MARTIN V. DOMINGUEZ  
Chairman  
Public Employee Labor Relations Board

Date: 12/13/07



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September 24, 2007

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Socorro School Employees Assoc. Local #3878  
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RE: Prohibited Practice Complaint, Socorro School Employees Assoc. Local #3878 vs. Socorro Consolidated School District, PELRB Case No. 129-07

Dear Ms. Holcomb and Mr. Lotrich:

Thank you for your briefs and for your patience in waiting for a decision.

This matter came before this Board upon the compliant filed by the Socorro School Employees Association Local #3878 (Union). The compliant alleges that the Socorro Consolidated School District (District) violated the provisions of the Public Employee Bargaining Act (PEBA) by refusing to provide a list of proposed bargaining unit employee names and addresses. The District filed an answer and the parties agreed to proceed by filing of briefs and not have a hearing on the merits.

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After review of the entire record I find that the District violated the provisions of the Public Employee Bargaining Act 10-7E-19 (B) by not providing the Union with a list of proposed bargaining unit employee names and addresses.

### **FINDINGS OF FACT:**

The operative facts in this case are and I find that:

The Union requested a list of proposed bargaining unit employee names and addresses from the District on April 24, 2007.

To date the District has not provided the Union with a list of proposed bargaining unit employee names and addresses.

The relationship between the District, its employees and the Union is regulated by the Public Employee Bargaining Act not the National Labor Relation Act (NLRA). Although, the Public Employee Labor Relations Board (PELRB) has been directed by the New Mexico Court of Appeals and the New Mexico Supreme Court to use as a guide National Labor Relations Board (NLRB) interpretation of similar language between the NLRA and the PEBA, Las Cruces Professional Fire Fighters and International Association of Fire Fighters, Local No. 2362, vs. City of Las Cruces and Louis Roman, Las Cruces Fire Department Fire Chief, 123 N.M. 239, 1997 NMCA 31, and, The Regents of the University of New Mexico, vs. New Mexico Federation of Teachers and American Association of University Professors, Gallup Campus, 125 N.M. 401, 1998 NMSC 20, respectively.

The NLRB has a substantial history of interpreting the provisions of Section 8 (a) (1) and Section 7 of the NLRA. The following cases span a forty-one (41) year time period of consistent Board rulings.

In Excelsior Underwear Inc. and Saluda Knitting Inc. and Amalgamated Clothing Workers of America, AFL-CIO, and K.L. Kellogg and Sons and International Union of Operating Engineers, Local No. 3, AFL-CIO and

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International Union of Operating Engineers, Local No. 12, AFL-CIO, 156 N.L.R.B. 1236, 1966, the National Labor Relations Board (NLRB) established what has come to be known as the Excelsior rule. The rule being that prompt disclosure of employee names and addresses are necessary to insure an informed electorate. It is a violation of Section 8 (a) (1) to violate any of the enumerated Section 7 rights namely to restrain or interfere with the right to organize.

Since Excelsior, supra, the NLRB has ruled time and again that the rule is required for a fair resolution of organizing efforts. In Rocketdyne Division of North American Space Operations of Rockwell International 055 (Canoga Park and Santa Susana Field Laboratories), 235 N.L.R.B. 1159, 1978 the NLRB ordered that an election of about 7,000 employees be set aside and another election held where the union lost the election by about a 55% to 45% vote where the Excelsior list was provided to the Union fifteen (15) days late. In Rite-Care Poultry Co. Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, 185 NLRB 41, 1970 The Board found that the employer did not substantially comply with Excelsior, supra, "because the names and addresses which it supplied did not include information ... as to street addresses and/or post box numbers." In 2007, the Board refused to order that e-mail addresses be provided as an Excelsior requirement but reaffirmed the name and address requirement. See, Trustees of Columbia University in the City of New York and International Organization of Masters, Mates and Pilots, AFL-CIO, 350 NLRB No. 54.

### **CONCLUSIONS OF LAW:**

The NLRB has ruled that it is a violation of Section 8 (a) (1) to violate any of the enumerated Section 7 rights namely to restrain or interfere with the right to organize. The PEBA has an almost identical provision in 10-7E-19 (B) NMSA 1978. Namely that, a public employer or his representative shall not interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978].

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Section 7 of the NLRA protects employee rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The rights protected under 10-7E-5 NMSA 1978 are the right to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

The NLRA and the PEBA provide virtually the same rights and protect those rights by creating an unfair labor practice or a prohibited practice and creating an administrative remedy for violation of those protected rights. Because an Excelsior list, names and addresses of proposed bargaining unit employees, is required to be produced under the NLRA, I conclude that the PEBA also requires the same list of names and addresses.

**ORDER:**

Having found that the District violated the provisions of the Public Employee Bargaining Act 10-7E-19 (B) by not providing the Union with a list of proposed bargaining unit employee names and addresses, the District is hereby ordered to provide the Union with a list of all proposed bargaining unit employees. Also the District is to post this letter Decision and Order in all places where information is normally posted for employees.

Sincerely yours,



Juan B. Montoya