

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME, COUNCIL 18,

Complainant,

v.

PELRB No. 108-12

N.M. DEP'T. OF HEALTH,

Respondent

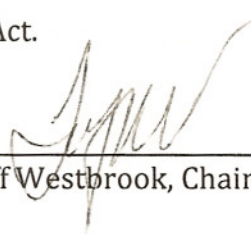
ORDER

THIS MATTER comes before the Board on the Hearing Officer's Letter Decision finding the Prohibited Practices Complaint to be facially inadequate in that the allegations therein did not state a claim under PEBA. On a vote of 3-0 during the Board's regularly scheduled July Board meeting the Board voted to ratify the Hearing Officer's Dismissal for the reasons stated in his letter of dismissal.

WHEREFORE, IT IS HEREBY ORDERED:

The above-captioned action shall be and hereby is **DISMISSED** for failure to state a claim under the Public Employee Bargaining Act.

Dated: 7-13-12



Duff Westbrook, Chair



SUSANA MARTINEZ
Governor

Duff Westbrook, Board Chair
Wayne Bingham, Vice-Chair
Roger E. "Bart" Bartosiewicz, Board Member

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

2929 Coors Blvd N.W., Suite 303
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THOMAS J. GRIEGO
Executive Director

May 3, 2012

Robert Collazo
AFSCME, Council 18
138 S. Downtown Mall
Las Cruces, NM 88001

Brad McGrath
DOH Chief Facilities Officer
NM Dep't. of Health
1190 S. St. Francis Drive
Santa Fe, NM 87505

Re: AFSCME, Council 18 v. NM DOH; PELRB No. 108-12

Dear parties:

On April 24, 2012 I received a Prohibited Practices Complaint filed by AFSCME Council 18 against the New Mexico Department of Health. Upon initial review I found the Complaint to be facially inadequate in that the allegations therein did not state a claim under PEBA. AFSCME was given five (5) days pursuant to **NMAC 11.21.3.12** in which to amend the complaint or allege additional facts or theories. I received supplemental information on May 2, 2012. I do not consider the additional information provided regarding the timing of the parties attempt to settle a grievance to have cured the facial inadequacies earlier identified. Therefore, I am dismissing this PPC for failure to state a claim.

Pursuant to **NMAC 11.21.3.13** this decision to dismiss is subject to board review by the complainant filing with the board and serving upon the other parties a notice of appeal within ten (10) days following service of the dismissal decision. Please refer to the rule for the specific requirements of filing an appeal available on our website at www.pelrb.state.nm.us.

Sincerely,

Thomas J. Griego
Executive Director, PELRB

Cc: Sandy Martinez, SPO



SUSANA MARTINEZ
Governor

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PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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April 25, 2012

Roberto Collazo
AFSCME Council 18
138 Downtown Mall
Las Cruces, NM 88001

Re: ***Prohibited Practices Complaint PELRB No.108-12;***

Dear Mr. Collazo:

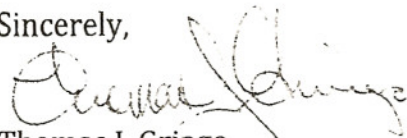
I am in receipt of your Prohibited Practices Complaint filed on behalf of Joe Chavez. I cannot tell from the allegations of the complaint how the acts alleged constitute a failure to comply with PEBA or with your CBA. It seems to me that the facts alleged indicate that the parties attempted to settle a grievance at Step 1 but failed to complete the settlement because Mr. Chavez rejected the terms of the settlement and his counterproposal was not acceptable to the State.

The parties are not required by either the contract or PEBA to settle these kinds of disputes and in the event a settlement is not reached it is the Grievant's burden to move the grievance to the next level. Perhaps there are additional facts that need to be brought to my attention or perhaps I am missing some nuanced argument that the facts as plead would rise to the level of a prohibited practices complaint in which case please bring those to my attention. In the meantime I am compelled by **NMAC 11.21.3.12(A)** to conclude that the PPC as filed is facially inadequate in that it does not state a claim.

I am therefore giving you five (5) days pursuant to **NMAC 11.21.3.12** in which to amend the complaint in order to plead additional facts or bring to my attention any errors in my analysis. Absent an amendment curing the complaint, the director shall dismiss the complaint for the reasons set forth in this letter.

The Public Employee Bargaining Act (10-7E-1 thru 10-7E-26 NMSA 1978 Comp.), the PELRB rules and forms can be accessed on our website at www.state.nm.us/pelrb.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Griego". The signature is written in a cursive style with a large, stylized initial "T".

Thomas J. Griego
Executive Director PELRB