

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 18,

Petitioner,

v.

PELRB No. 114-15

NEW MEXICO DEPARTMENT
OF WORKFORCE SOLUTIONS,

Respondent.

ORDER

THIS MATTER comes before a quorum of the Public Employee Labor Relations Board (“Board”) at a regular meeting on October 7, 2015, to consider AFSCME Council 18’s *Appeal of Director’s Denial of Request for Injunctive Relief* (“Appeal”), as well as the Department of Workforce Solutions (“DWS”) response. With a 2-1 vote in the affirmative, with Board Member Jay Bledsoe dissenting, the Board finds that AFSCME’s appeal was timely and hereby renders the following order:

IT IS THEREFORE ORDERED that the Director’s Decision letter dated August 24, 2015, dismissing the portion of AFSCME’s prohibited practice complaint (“PPC”) requesting pre-adjudicatory injunctive relief is **OVERRULED**. The Board’s authority to issue injunctive relief is found in NMSA 1978, Section 10-7E-23(A), which states in pertinent part: “The board . . . may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act (“PEBA”), *including those for appropriate temporary relief and restraining orders.*” (emphasis added). Section 10-7E-23(A) provides that the Board may issue orders for temporary relief and restraining orders, both of which are types of injunctive relief, and may ask

a district court to enforce those orders. This provision is much different from the statutory provision considered in *Leonard* which provided that Workers Compensation judges could only seek an injunction in district court. See NMSA 1978, § 52-1-62(A) (1989). That language from the Workers' Compensation Act clearly implies that Workers Compensation judges do not have the authority to issue injunctions themselves. In contrast, Section 10-7E-23(A) of the Public Employee Bargaining Act ("PEBA"), NMSA 1978, Sections 10-7E-1 through -24 (2003), PEBA clearly states that the Board may issue orders granting injunctive relief and enforce those orders through district court.

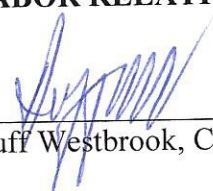
Notwithstanding this express authority, the Board's authority to grant injunctive relief is also implied from PEBA. See *Leonard v. Payday Prof'l/Bio-Cal Comp.*, 2008-NMCA-034, ¶ 11, 143 N.M. 637, 179 P.3d 1245 ("The authority of an administrative agency . . . is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom." (quoting *N.M. Dep't of Health v. Ulibarri*, 1993-NMCA-048, ¶ 8, 115 N.M. 413, 852 P.2d 686)).

IT IS FURTHER ORDERED that with the above-captioned matter is **REMANDED** to the Hearing Officer with instructions to hold a hearing on AFSCME's request for injunctive relief.

IT IS SO ORDERED.

Date: 10-9-15

**PUBLIC EMPLOYEE
LABOR RELATIONS BOARD**



Duff Westbrook, Chair



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SUSANA MARTINEZ
Governor

Duff Westbrook, Chair
Roger E. "Bart" Bartosiewicz, Vice-Chair
James Shaffner, Member

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

THOMAS J. GRIEGO
Executive Director

August 24, 2015

AFSCME Council # 18
c/o Youtz & Valdez, P.C.
900 Gold Avenue S.W.
Albuquerque, New Mexico 87102
Attn: James Montalbano

New Mexico Dep't of Workforce Solutions
P.O. Box 1928
401 Broadway Blvd. NE
Albuquerque, New Mexico 87102
Attn: Elizabeth Garcia

Re: *AFSCME, Council 18 v. NM Dep't of Workforce Solutions; PELRB No. 114-15*

Dear Ms. Garcia and Mr. Montalbano:

On August 18, 2015 the Employer filed its Answer to the Prohibited Practice Charge herein along with a Motion to Dismiss the PPC on the ground that the Complaint is untimely under NMAC 1. 11.21.3.9. (Providing that a complaint must be filed within six months after the complainant either discovered or reasonably should have discovered the conduct on which the PPC is based). The Union timely responded to the Motion on August 24, 2015. This constitutes my letter decision regarding the Motion to Dismiss.

To support its Motion the Employer references two time periods mentioned in the PPC:

1. "...the beginning of 2013" (Complaint, ¶5); and,
2. December 2014, when the New Mexico State Personnel Board approved a class study justifying the reclassification of the five positions at issue. (Complaint, ¶ 6).

Neither of those dates is the operative date from which one would calculate the six months limitations period. None of the events that occurred on those dates is alleged to have violated the Public Employee Bargaining Act. The events of those time periods are provided as background information only. Rather, the operative time period is found in paragraphs 8, 9, 10 and 11 of the PPC in which it is alleged that in March 2015, the Employer reclassified the positions at issue and submitted a Position Action Request Form signed by the DWS Cabinet Secretary to effect that reclassification, but no action has been taken to reclassify the specific positions at issue and adjust the affected employees' pay band. Instead, the Employer has advertised to fill the reclassified positions and has begun the interview and hiring process with outside applicants. It is those acts (or absence thereof) taken since March of 2015 that is alleged to have violated past practice and to constitute refusal to bargain in good faith, violating PEBA, Sections 10-7E-19(A), (B), (C), (F) and (H). Accordingly, this PPC is brought well within the six month limitations period established by NMAC 1. 11.21.3.9. The Employer's Motion to Dismiss is therefore **DENIED**.

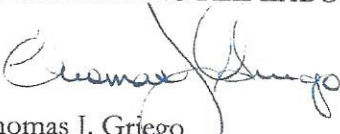
PELRB 114-15 letter decision
August 24, 2015
Page 2

The Employer's Motion to Dismiss does not mention the Union's request for immediate injunctive relief, perhaps because if the Motion were to be granted the request for injunctive relief would be moot. I raise the issue *sua sponte* because of my recent letter decision in *CSEC-LC v. Las Cruces Public Schools*; PELRB No. 111-15 (July 13, 2015). In that case I acknowledged that the PELRB has previously entertained motions for pre-adjudication injunction pursuant to the PEBA § 23(A), referencing Board orders for "appropriate temporary relief and restraining orders" and as being within the general grant of authority to the PELRB under the authority found in Sections 9 (E) and (F) to issue and enforce its orders through the imposition of appropriate administrative remedies. However, I decided in PELRB No. 111-15 that without a more explicit grant of statutory authority than we now have, the better course is to assume that the Board may not issue injunctive relief *pendente lite*. See 2 Am. Jur. 2d Administrative Law § 51 (explaining that an "agency may not exceed its statutory authority or constitutional limitations . . . nor can it confer jurisdiction upon itself."). See also *Leonard v. Payday Professional/Bio Cal Comp.*, 2008-NMCA-034, ¶ 12, 143 N.M. 637, 179 P.3d 1245 (holding that a Worker's Compensation Judge did not have authority to grant a claimant's motion for injunctive relief since the statute did not expressly grant such authority). That decision was not reviewed by the PELRB.

I am therefore, *sua sponte* applying the rationale in PELRB No. 111-15 to **DISMISS** that portion of the PPC requesting pre-adjudication injunctive relief. Subject to the Employer's right to object I believe that this dismissal may be appealed to the Board by Complainant serving upon the other parties a notice of appeal within ten days following service of the dismissal decision pursuant to NMAC 11.21.3.13. The Board is scheduled to meet next on September 16, 2015 in the event an appeal is filed and served.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director