

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

NORTHERN FEDERATION  
OF EDUCATION EMPLOYEES

Complainant,

v.

PELRB No.'s 123-11, 124-11,  
125-11, 130-11, 136-11 and  
138-11

NORTHERN NEW MEXICO  
COMMUNITY COLLEGE, et al.

Respondent

**ORDER**

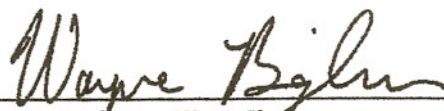
THIS MATTER comes before the Public Employee Labor Relations Board for ratification of the Hearing Officer's Recommended Decision on the merits of the complaint herein. Upon a 2-0 vote at the Board's June 6, 2012 meeting the Board revised an earlier adoption of the Hearing Officer's Recommended Decision *in toto* as follows:

**IT IS HEREBY ORDERED** that the Hearing Officer's findings of fact, conclusions of law, rationale and ultimate recommended decision shall be and hereby is adopted by the Board as its own except to the extent the Hearing Officer held that this Board does not have jurisdiction over the parties and subject matter. Respondent's local commission is duly constituted and fully functional therefore this Board declines to exercise jurisdiction over the parties and the subject matter in PELRB 123-11, 125-11, 138-11 and they are hereby dismissed.

The Respondent's Labor/Management Relations Commission may determine what if anything remains to be heard by it on the issues brought to this Board in those PPC's but which we are declining to consider. This Board has jurisdiction over the subject matter and

parties in PELRB No. 124-11, PELRB No. 130-11 and PELRB No. 136-11. Complainant has not met its burden of proof necessary to establish grounds for this Board to revoke approval of the local board resolution at issue. Therefore PELRB No. 124-11, PELRB No. 130-11 and PELRB No. 136-11 are hereby dismissed.

Date: July 2, 2012

  
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Wayne Bingham, Vice-Chairman  
Public Employee Labor Relations Board

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**Respondents**

**HEARING OFFICER'S REPORT AND RECOMMENDED DECISION**

THIS MATTER comes before the Hearing Officer for an evidentiary Hearing on the Merits February 28, 2012. At a status and scheduling conference held July 26, 2011 it was determined that the above-captioned charges would be scheduled and heard together.

**FINDINGS OF FACT:**

1. Respondent enacted a resolution for creation of a local Labor/Management Relations Commission October 12, 2006 pursuant to PEBA §10-7E-10 which calls for the local commission, once created, to assume the duties and responsibilities of the Public Employee Labor Relations Board.
2. No changes to the local board resolution have been made since its certification nor has a court of competent jurisdiction issued a decision invalidating any provision of the local board resolution so that the provisions of NMAC 11.21.5.13 and 12.21.5.14 are not implicated.
3. Section 8 of the aforementioned Labor/Management Relations Resolution provides that the chairperson of the Respondent's governing body is to appoint three

members of the Commission: one on the recommendation of individuals representing labor, one on the recommendation of individuals representing management and one on the recommendation of the other two appointees.

4. Section 8(C) of the Resolution provides that Commission members shall serve for a period of one year with terms normally commencing in the month of July. Commission members may serve an unlimited number of terms.
5. The appointees to the local labor Commission have not changed since they were first appointed in 2006. However, in 2011 the labor-recommended appointee to the Commission indicated that she did not agree to the annual reappointment of the neutral, Ms. Vigil-Coppler, because of what she considered to be inadequate deliberation during a closed session of the Commission to consider an adjudicatory matter.
6. Despite the inability of management's appointee and labor's appointee to the Commission to agree on a new third party neutral appointment, the Commission published an agenda for a special meeting to be held June 13, 2011 to consider, *inter alia* four PPC's filed by the Complainant as well as a PPC filed by the Respondent against the Complainant.
7. The labor appointee to the Board was unavailable to meet on the scheduled date, complained to the employer that she had not been consulted prior to scheduling the meeting, but did not suggest an alternate date or request that the meeting be rescheduled to a date that she could attend.
8. The Commission meeting took place as scheduled in the absence of labor's appointee. The union had voluntarily dismissed its PPC's prior to the meeting to

avoid their being heard by what it considered to be an improperly constituted Commission and the Commission ruled in favor of management on its PPC against the union.

9. Based at least in part on the inability of the labor recommended appointee and the management recommended appointee to agree on the appointment of a neutral member, the Complainant union filed the six above-captioned PPC's with this Board, which were later consolidated for purposes of this hearing, The PPC's are summarized as follows:

A. PELRB No. 123-11 alleges refusal of the Respondent to negotiate furloughs, terminations and pay cuts in violation of the local bargaining resolution and §10-7E-17 of PEBA.

B. PELRB No. 124-11 alleges that the local board has been non-operational for three years and that the current board had not been able to agree on a neutral third and therefore is not duly constituted. Based on those allegations the Complainant requested injunctive relief to prevent a scheduled Commission meeting from taking place and requested that this Board revoke its prior approval of the local labor-management resolution pursuant to NMAC 11.21.5.13.

C. PELRB No. 125-11 alleges that on April 19, 2011 the employer approved a reduction in force (RIF) and implemented the RIF without bargaining in violation of 10-7E-19 (F).

D. PELRB No. 130-11 alleges essentially the same facts as does PELRB 124-11

E. PELRB No. 136-11 alleges that the third party neutral board member has not been duly appointed and requests that this Board revoke its approval of the local ordinance.

F. PELRB No. 138-11 alleges management interference with union members processing union applications, presumably for payroll dues deductions.

**CONCLUSIONS OF LAW:**

A. Respondent's local Commission is duly constituted and fully functional.

Therefore, this Board does not have jurisdiction over the parties and the subject matter in PELRB No. 123-11, PELRB No. 125-11 and PELRB No. 138-11 and they should be dismissed. It is the province of the Respondent's Labor/Management Relations Commission to determine what if anything remains to be heard by it on the issues brought to this Board in those PPC's but which we are declining to consider.

B. This Board has jurisdiction over the subject matter and parties in PELRB No. 124-11, PELRB No. 130-11 and PELRB No. 136-11.

C. Complainant has not met its burden of proof necessary to establish grounds for this Board to revoke approval of the local board resolution at issue. Therefore PELRB No. 124-11, PELRB No. 130-11 and PELRB No. 136-11 should be dismissed.

**RATIONALE:**

The Board has jurisdiction to review a local ordinance, whether grandfathered or not, for compliance with PEBA. *See City of Deming v. Deming*

*Firefighters Local 4251*, 2007 NMCA 069, 160 P.3d 595 (concluding that “the PELRB has the initial ability to determine its jurisdiction, and upholding the PELRB’s determination that a certain provision of the local board was denied grandfathered effect). This exercise of jurisdiction is not without limitation, however. Because we are dealing here with a local board created under §10 of PEBA this Board will exercise jurisdiction only if it can be shown that the local board has taken some generally applicable action that is both in violation of PEBA and threatens the uniform interpretation and application of PEBA statewide. As the Complainant in the above-captioned PPC’s, NMFEE has the burden of proof with regard to the question of whether approval of Respondent’s local Labor/Management Relations Resolution should be revoked. There is no evidence that would lead this Board to conclude that either of these elements has been established. PEBA does not allow a union to apply to the PERLB because it does not like the procedures and process of the local board. *Deming* states that PEBA, “does not provide any minimal requirement with respect to the quality of the system or provide any qualitative measure as to the effectiveness of the collective bargaining.”

A recent decision by the New Mexico Supreme Court with regard to appointments to the State Public Employee Labor Relations Board sheds light on the validity of the Labor/Management Relations Commission in the present case. In *AFSCME v. Martinez*, 2011-018.257. ¶2, P.2d 952 [check cite] the Court stated:

“Under the provisions of Article XX, Section 2 of the New Mexico Constitution, Westbrook [the third neutral board member whose appointment had expired] serves until his successor is duly qualified unless he is lawfully removed.”

When one applies Article XX, Section 2 of the New Mexico Constitution to the present case, the inability of the labor and management appointees to the Commission to agree on appointment of the third party neutral results in Ms. Vigil-Coppler continuing to serve until that stalemate is resolved. There is no evidence, indeed there is no allegation, that Ms. Coppler-Vigil's appointment to the Commission was faulty when first made. Complainant asserts that the neutral appointee is "no longer acceptable" to labor; the clear implication being that once upon a time she was acceptable to them. The fact that the union has thus far not been able to accomplish her replacement does not, without more, indicate that management's appointee dominates or controls the board because he prefers the existing neutral to the suggested replacement recommended by labor. The converse argument could just as easily be made – that if the union could accomplish by administrative fiat the seating of its preferred appointment to the Commission, the union would be seen as dominating or controlling the Commission against the wishes of the management appointee.

The fact that the labor appointee's disaffection for the neutral appointee began over what she considered to be the neutral's lack of proper deliberation in a closed adjudicatory session, coupled with the union's objections to the special Commission meeting held June 13, 2011, belies the union's allegation that the Commission has been inoperable for three years. Because it is my recommended decision that there is a valid local resolution and a fully functioning board in place at the Northern New Mexico Community College it follows that it is that Commission that has jurisdiction over the subject matter alleged in PELRB No. 123-11, PELRB



No. 125-11 and PELRB No. 138-11. That being the case there is no need to decide those Complaints, indeed there is no ability to decide those Complaints, and they should be dismissed.


In light of the *Deming Firefighters* case and the general application of PEBA §10, I am compelled to also decide that Complainant has not met the burden of proof necessary to establish grounds for this Board to revoke approval of the local board resolution at issue. Therefore PELRB No. 124-11, PELRB No. 130-11 and PELRB No. 136-11 should likewise be dismissed.

**Recommended Order:** For the reasons stated above the Complaints should be **DISMISSED**

**APPEAL:**

Either party may appeal this hearing officer's decision by filing a notice of appeal with the PELRB staff at 2929 Coors Blvd. NW in Albuquerque New Mexico 87120. Provisions for appeal are found at NMAC 11.21.3.19. An appeal must be filed within 10 work days of this opinion and otherwise comply with NMAC 11.21.3.19.

Issued this 28<sup>th</sup> day of March, 2012

  
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Thomas J. Griego  
Executive Director  
Public Employee Labor Relations Board  
2929 Coors N.W., Suite 303  
Albuquerque, NM 87120