

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME COUNCIL 18,

Complainant,

v.

PELRB No. 111-12

NEW MEXICO DEP'T. OF TRANSPORTATION,

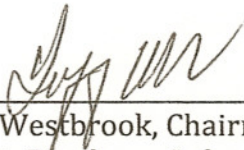
Respondent.

ORDER AND DECISION

THIS MATTER comes before the Public Employee Labor Relations Board for ratification of the Hearing Officer's Dismissal following a voluntary withdrawal of the charge herein. Upon a 3-0 vote at the Board's August 28, 2012 meeting;

IT IS HEREBY ORDERED that the Hearing Officer's Dismissal shall be and hereby is ratified by the Board as its Order.

Date: 9-9-12



Duff Westbrook, Chairman
Public Employee Labor Relations Board

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

In re:

AFSCME COUNCIL 18,

Complainant,

**v.
NM DEP'T OF TRANSPORTATION,**

PELRB No. 111-12


Respondent

VOLUNTARY DISMISSAL

THIS MATTER comes before the Board on the Complainant's Withdrawal of the Prohibited Practices Charge herein. The withdrawal is premised on a stipulated settlement agreement entered into by the parties on August 1, 2012, which agreement has been reviewed and approved by the Executive Director.

WHEREFORE, the above-captioned Prohibited Practices Complaint shall be and hereby is deemed withdrawn pursuant to Board Rule 11.21.3.12 NMAC. The case shall be administratively closed and no further action taken on it after ratification by the Board.

Issued this 1st day of August, 2012



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

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 18
AFL-CIO,

PELRB No. 111-12

Petitioner,

v.

NEW MEXICO DEPARTMENT
OF TRANSPORTATION,

Respondent.

STIPULATED SETTLEMENT AGREEMENT

COMES NOW the Petitioner, American Federation of State, County and Municipal Employees, Council 18, AFL-CIO and Respondent, the New Mexico Department of Transportation, as Parties to the above-captioned matter, have mutually agreed to the following terms, conditions, and stipulations in full settlement of the above-captioned matter.

1. When this Stipulated Settlement Agreement ("Agreement") is fully executed, it will constitute a **withdrawal with prejudice** and **full and final release** by Petitioner of its Prohibited Practices Complaint ("Complaint") against Respondent, and including any and all related complaints, claims - known or unknown, and any and all appeals, charges, or grievances against the Respondent its officials, employees, or agents that have arisen on or prior to the date of execution of this Agreement, as related to this Complaint and the basis thereof.
2. Petitioner shall:
 - a. Motion to Voluntarily Withdrawal with Prejudice its Prohibited Practices Complaint, Docket No. 111-12, upon execution of the Agreement.
3. Respondent shall:
 - a. Initiate the reinstatement of assignment of lead work duties for employee, Ken Long, in accordance with the Parties' collective bargaining agreement, with associated lead worker pay (effectuated via temporary salary increase or T.S.I.), initiated upon execution of this Agreement - lead worker duties to reinstate upon the onset of the next available pay period.
 - b. Initiate issuance to employee, Ken Long, backpay for rescinded lead work pay from January 7, 2012 up to date of re-institution of lead worker duties, as set forth in 3a. above.

Initials.



4. Beyond that which is specifically set forth in Paragraph 3 above, Petitioner agrees that it, its agents, employees or NMDOT-employed bargaining unit member employee(s), including specifically, Ken Long, are not entitled to any monetary amounts, attorney's fees, back pay, compensatory damages, interest, or any other form of damages, in connection with this Agreement or otherwise. Petitioner agrees that this Agreement resolves all matters, issues and claims that it has filed or could have filed against the Respondent as pertaining to the subject matter which defines the nature of its above-cited Complaint, through the date of execution of this Agreement.
5. Petitioner agrees not to file any complaints, grievances, or court actions, or initiate any other administrative or judicial proceedings concerning any of the matters raised in, which might have been raised in, or relates to the above-captioned matter, having occurred through the date of execution of this Agreement.
6. The Parties to this Agreement agree, to the extent permitted by law, that the terms and conditions of this Agreement, including all related correspondence and documents, the identity of the Parties, and the facts surrounding settlement of the above-captioned matter, are deemed confidential and shall not be discussed with anyone, with the following exceptions:
 - a. As required by law or court order;
 - b. Pursuant to the provisions of applicable privacy laws;
 - c. Disclosures made and record kept by the Parties for the limited purpose of implementing and/or enforcing the terms of this Agreement, including to the limited extent that Petitioner reports to its membership Mr. Ken Long's reinstatement of lead worker duties; and
 - d. In reference to Paragraph 9.
7. The Parties understand that this Agreement is the compromise of disputed claims, and is not to be construed as an admission of liability or culpability by either party. Further, with sole exception to the issue of notice as set forth in Paragraph 9, below, this Agreement shall not be used as precedent in any other matter before the Public Employee Labor Relations Board, the Personnel Board of the State of New Mexico, the State of New Mexico District Court, or any other administrative, judicial or quasi-judicial body.
8. Respondent denies the commission of any unlawful action against Petitioner, its agents, employees or NMDOT-employed bargaining unit member employee(s), including specifically, Ken Long, in violation of the Constitutions of the United States of America and the State of New Mexico, the Public Employee Bargaining Act, or any other Federal, State or local law, statute or regulation, or any applicable State of New Mexico personnel rule, regulation, collective bargaining agreement or practice, with respect to any allegation(s) raised in Petitioner's above-captioned matter or otherwise.
9. Respondent affirms the original basis for its December 13, 2011, notice of rescission of lead worker duties remains a management right, and with just grounds, including as associated with excessive leave taken by employee, Ken Long, and the impact such leave has on his ability to regularly assume lead worker duties, provided that Petitioner does not agree with either Respondent's action of


AS / SY

rescinding Mr. Long's lead worker duties or Petitioner's argument for rescinding Mr. Long's lead worker duties as contained in this provision.

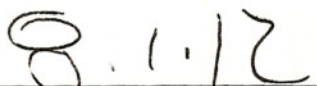
10. This Agreement contains the complete understanding of the Parties regarding the terms and conditions of this Agreement. There are no other terms – express or implied. The terms and conditions of this Agreement are contained exclusively in this Agreement and have been voluntarily agreed to by the Parties. The Parties agree that this Agreement shall only be modified by a written agreement signed by both Parties.
11. By signing this Agreement, Petitioner acknowledges that it has been advised to consult with an attorney and that it has (a) sought the assistance and counsel of an attorney regarding the above-captioned matter and the terms and conditions of this Agreement and/or (b) has been provided sufficient opportunity to read and consider this Agreement, and to consult with an attorney prior to signing this Agreement.
12. By signing this Agreement, Petitioner acknowledges that it enters into this Agreement with a full understanding of its terms and conditions. Further, by signing this Agreement, Petitioner acknowledges that it is voluntarily entering into this Agreement, without threat or coercion by the Respondent, its officials, employees, or agents.
13. This Agreement is entered into in recognition of authorities contained in the New Mexico Administrative Code, Title 11, Chapter 21 et. seq., and will be fully executed once approved of by the Hearing Examiner, pursuant to 11.21.3.15(D) N.M.A.C. Once executed, this Agreement is binding on Petitioner and Respondent, their respective officials, employees, agents, representatives, successors, and assigns.
14. If any paragraph or portion of this Agreement is determined to be unenforceable, the rest and remainder of this Agreement shall remain in full force and effect. Duplicate copies of this Agreement shall act as originals if all the individuals sign them at the original identified signature lines, below. The Parties agree that this Agreement may be executed in counterparts, and that facsimiles, or scanned electronic copies of the Parties' signatures are acceptable.
15. This Agreement shall become fully executed when signed by all Parties.

IN WITNESS WHEREOF, the Parties to this Agreement have affixed their signatures below, documenting herein the Parties' stipulated motion for the resolution and prejudicial withdrawal of the above-captioned matter.

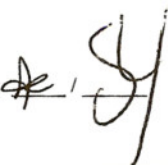
FOR THE PETITIONER:



Rob Trombley
Council 18 Staff Representative



Date

Initials: 

Shane Youtz

Shane Youtz, Esq.
Counsel of Record for Petitioner

8-1-12

Date

FOR THE RESPONDENT:

[Signature]

Aaron C. Frankland
as authorized by Tamara Haas
District 3 District Engineer

2012.08.01

Date

[Signature]

Aaron C. Frankland, Assistant General Counsel
Counsel of Record for Respondent

2012.08.01

Date

APPROVED AND ORDERED:

[Signature]

Thomas Griego, Executive Director
Public Employee Labor Relations Board

August 1, 2012

Date

Initials: *SY*

**STATE OF NEW MEXICO
PUBLIC EMPLOYEES LABOR RELATIONS BOARD**

**American Federation of State, County
And Municipal Employees, Council 18,
AFC-CIO,**

Petitioner,

vs.

PELRB CASE NO. 111-12

**New Mexico Department of
Transportation,**

Respondent.

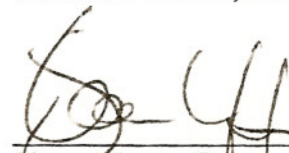
**AFSCME COUNCIL 18's WITHDRAWAL OF PROHIBITED PRACTICES
COMPLAINT WITH PREJUDICE**

COMES NOW AFSCME Council 18 ("Petitioner" or "Union"), by and through its counsel, Youtz & Valdez, P.C. (Shane Youtz, Marianne Bowers), and hereby WITHDRAWS WITH PREJUDICE the Prohibited Practices Complaint filed on June 26, 2012, in the above-captioned case.

Dated: August 1, 2012

Respectfully submitted,

Youtz & Valdez, P.C.



Shane Youtz, Esq.
Marianne Bowers, Esq.
900 Gold Avenue SW
Albuquerque, NM 87102
Tel: (505) 244-1200
Fax: (505) 244-9700

Council for AFSCME

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served on all parties to this action pursuant to 11.21.3.8 N.M.A.C. this 1st day of August, 2012.

Aaron C. Frankland, Asst. General Counsel
Office of the General Counsel
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149



Shane Youtz, Esq.