

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

NEW MEXICO COALITION OF
PUBLIC SAFETY OFFICERS and
AFSCME, COUNCIL 18

7 - PELRB - 2014

Petitioners,

v.

PELRB No's. 313-13; 314-13; 315-13
and 316-13 consolidated

SANTA FE COUNTY,

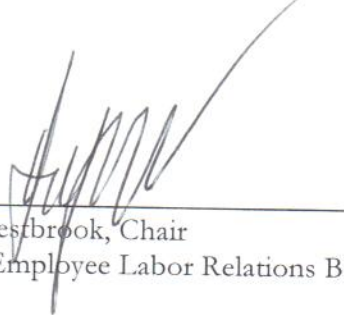
Respondent

ORDER

THIS MATTER comes before the Board on appeal by AFSCME, Council 18 of the Hearing Officer's Report and Recommended Decision issued December 20, 2013. Upon a 3-0 vote at the Board's April 15, 2014 meeting the Board adopted as its Order the Hearing Officer's Report and Recommended Decision, including its Findings, Conclusions and rationale, without modification. Accordingly, NMCP SO'S Petitions for Amendment of Certification Name Change, PELRB No. 314-13 pertaining to Santa Fe County Sheriff's employees; PELRB No. 315-13 pertaining to Detention and Youth Development employees; PELRB No. 316-13 pertaining to Regional Communications Center employees shall be, and are hereby, **GRANTED**.

IT IS FURTHER ORDERED that AFSCME's Petition for Certification, PELRB No. 313-13 pertaining to Corrections employees, shall be and is hereby, **DENIED**.

Date: 4-18-14



Duff Westbrook, Chair
Public Employee Labor Relations Board

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

In re:

**NEW MEXICO COALITION OF
PUBLIC SAFETY OFFICERS ASSOCIATION**

Petitioner,

COUNTY OF SANTA FE,

Respondent

**Re: PELRB Nos. 314-13, 315-13, and 316-13; 313-13, AFSCME and NMCP SO v. Santa Fe
County**

**HEARING OFFICER'S REPORT AND RECOMMENDED DECISION
REGARDING PETITION OF CERTIFICATION NAME CHANGE**

Background and Statement of the Issues

This matter comes before the appointed Hearing Officer, T. Zane Reeves regarding three Petitions for Amendment of Certification ("Amendment Petition") filed by Petitioner, the New Mexico Coalition of Public Safety Officers ("NMCP SO") on October 29, 2013, which was given the PELRB Case Numbers 314-13 ("Deputy Sheriffs"), 315-13 ("Detention Officers"), and 316-13 ("Emergency Communications").

On October 8, 2013, the American Federation of State, County, and Municipal Employees Council 18 ("AFSCME") filed a Petition for Certification, which was given the PELRB Case No. 313-13. This Petition sought an election for all non-probationary employees of Santa Fe County Corrections Department in the positions of Detention Officer, Corporal, Sergeant, Booking Clerk, Teacher, Therapist, Case Manager, Senior Case Manager/Electronic Monitoring, Life Skills Worker I, Life Skills Worker II, and YDP Assistant Shift Supervisor.

The AFSCME Petition asserted that the NMCP SO was not the properly certified bargaining representative for the petitioned-for unit, which had been originally certified as the NMCP SO-Communications Workers of America, Local 7911 (“NMCP SO-CWA Local 7911”). AFSCME contended that the change in the bargaining representative occurred without proper notice to the affected unit employees or any election on the part of these employees. Thus, the AFSCME Petition argued that the current Collective Bargaining Agreement between NMCP O and the County could not serve as a contract bar to the AFSCME Petition for election.

The AFSCME brief urges adoption by this Board of the National Labor Relations Board’s general approach to determining whether a change in affiliation presents a question concerning representation as approved by the Supreme Court in *Seattle First National Bank v. Financial Institution Employees of America*, 475 U.S. 192 (1986):

The Board’s practice has been to grant such petitions if the Board found that the affiliation satisfied two conditions. First, that union members have had an adequate opportunity to vote on affiliation...The Board ordinarily required that the affiliation election be conducted with adequate “due process” safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy...Second, that there was substantial “continuity” between the pre- and post-affiliation union. The focus of this inquiry was whether the affiliation had substantially changed the union; the Board considered such factors as whether the union retained local autonomy and local officers, and continued to follow established procedures...If the organizational changes accompanying affiliation were substantial enough to create a different entity, the affiliation raised a “question concerning representation” which could only be resolved through the Board’s election procedure...However, as long as continuity of representation and due process were satisfied, affiliation was considered an internal matter that did not affect the union’s status as the employees’ bargaining representative, and the employer was obligated to continue bargaining with the recognized union.

AFSCME argues that under the *Seattle First National Bank* rationale the NMCP SO Petition for Amendment should be dismissed but the case expressly allows that as long as “continuity of

representation and due process were satisfied,” the NLRB considered union affiliation as “an internal matter” that did not affect the union’s status as the employees’ bargaining representative.

The three Petitions for Amendment of Certification filed by NMCP SO must be processed in accordance with 11.21.2.35 NMAC, which states the following:

A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in affiliation of the labor organization. The director shall dismiss such a petition within thirty (30) days of its filing if the director determines that it raises a question concerning representation and petitioner may proceed otherwise under these rules. If the director finds sufficient facts to show that the amendment should be made, after giving the parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within thirty (30) days of the filing of the petition. The director’s decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above. [11.21.2.35 NMAC-N, 3-15-04; A, 2-28-05]

Thus, the key issue for determination by the Hearing Officer is whether these three Amendment Petitions by NMCP SO present a “question concerning representation.” If so, then an Amendment of Certification is inappropriate, and the employees should be given a voice in the selection of their exclusive representative through a Board-sanctioned election. If not, the NMCP SO should continue as the certified labor representative of the three bargaining units, unless a decertification proceeding is requested, which may be no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the Collective Bargaining Agreement.

Jurisdiction

The New Mexico Public Employee Labor Relations Board (“PELRB”) assigned T. Zane Reeves as a Hearing Officer for the four petitions, that is, the Petition for Representation Election filed by AFSCME (313-13) and the three Petitions for Amendment of Certification filed by NMCP SO (314-13, 315-13, and 316-13). Hearing Officer Reeves convened a Status and Scheduling Conference on

December 2, 2013, at which the parties were directed: (1) to file Responsive Pleadings by December 16, 2013, (2) and the County was to file a brief on the history of the relationship between NMCPSO and CWA, as it related to the three relevant bargaining units, by December 20, 2013. All parties complied with the Hearing Officer's requests.

Findings of Fact

Based on the evidence presented, the Hearing Officer finds the following facts by a preponderance of evidence:

1. Regarding the Petition for Amendment of Certification Name Change (PELRB No. 314-13) for the Sheriff's employees, initial certification was issued to the Santa Fe County Sheriff's Association, a subsidiary of the New Mexico Coalition of Public Safety Officers/CWA Local 7911 and this entity was recognized as the exclusive representative for all non-probationary certified Deputy Sheriffs, Corporals, and Sergeants employed by Santa Fe County.
2. Regarding the Petition for Amendment of Certification Name Change (PELRB No. 315-13) for Detention Officers, initial certification was issued to the Consolidated Public Safety Officers-CWA, Local 7911 on November 17, 2006 by the Deputy Director of PELRB, which recognized this entity as the exclusive representative for regular, non-probationary, non-management, non-supervisory employees of the Santa Fe County Adult Detention Center and Youth Development Program.
3. Regarding the Petition for Amendment of Certification Name Change (PELRB No. 316-13) for the bargaining unit comprised of Santa Fe County Regional Emergency Communications Center (SFCRECC) employees, initial certification was issued to the NMCPSO/CWA Local 7911 in November 2008, thereby recognizing this entity as the exclusive

representative for regular, non-probationary, non-management, non-supervisory employees of the SFCRECC.

4. On August 28, 2012, the CWA, Local 7911 and the NMCP SO entered into a Disaffiliation Agreement for all of its locals in the state of New Mexico, including Santa Fe County locals. All groups throughout the state of New Mexico affiliated with NMCP SO/CWA, Local 7911 were immediately disaffiliated, with the exception of Dona Ana Deputy Sheriffs Association, which remained with the CWA. All other locals remained with NMCP SO.

5. Santa Fe County, in accordance with the Collective Bargaining Agreement with NMCP SO-CWA Local 7911 began withholding union membership dues from the paychecks of bargaining unit employees who voluntarily signed a dues deduction authorization form. The practice of withholding union dues began as follows: (1) for the Deputy Sheriff's Association in July 2004, (2) for Corrections employees in July 2008, (3) and for the Emergency Communications Center employees in June 2009.

6. In March 2011, the address of NMCP SO/CWA 7911 was changed from the original vendor address of 7101 Jefferson NE, Suite A, in Albuquerque to 4100 Wolcott Avenue, Suite B, in Albuquerque. The paystubs provided to Santa Fe County employees of each bargaining unit making dues payments indicate that the payments are going to a vendor named "CWA". However, this reference results from the inability of the Santa Fe County financial system to accept a significantly longer vendor name such as "NMCP SO/CWA Local 7911" for inclusion on the paystubs. The County transfers the dues deduction funds to the NMCP SO office, which is currently located at the 4100 Wolcott Avenue address.

Conclusions

1. The CWA, Local 7911 and NMCP SO was a consolidated labor organization elected by the membership of each bargaining unit and certified as such by the NMPELRB. In August 28, 2012, the two labor organization signed a dissolution or "divorce" agreement and mutually divided up all assets and membership in the state of New Mexico. The NMCP SO continued to represent the three bargaining units in Santa Fe County. Thus, the membership is not currently represented by a new labor organization or one forced upon them.

2. As noted in the *Seattle First* decision, as long as continuity of representation and due process are satisfied, affiliation is considered an internal matter that does not affect the union's status as the employees' bargaining representative. There was no evidence presented to the Hearing Officer that indicates NMCP SO has failed to meet the representation requirements of the Public Employee Bargaining Act.

3. NMSA 1978, Section 10-7E-16 affords a recourse for members of a bargaining unit who are dissatisfied with the performance of their exclusive representative---a decertification petition and election. By this decertification process members may choose another representative, or no agent, to represent them. To date, no member of the bargaining unit has filed a decertification request. The option of challenging NMCP SO can occur within ninety (90) days prior to the expiration of the current contract, which will be in March 2014.

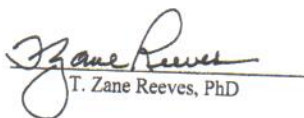
Recommendations

For reasons discussed herein, the Hearing Officer makes the following recommendations to the New Mexico Public Employee Labor Relations Board:

1. That the NMCP SO Petition for Amendment of Certification Name Change, PELRB No. 314-13, (Santa Fe County Sheriff's employees) be approved;

2. That the NMCPSO Petition for Amendment of Certification Name Change, PELRB Case No. 315-13, (Detention and Youth Development employees) be approved;
3. That the NMCPSO Petition for Amendment of Certification Name Change, PELRB Case No. 316-13, (Regional Emergency Communications Center employees) be approved;
4. That the AFSCME Petition for Certification, PELRB Case No. 313-13 (Corrections employees) be denied.

Respectfully submitted,


T. Zane Reeves, PhD

Hearing Officer
December 20, 2013