

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

NEA-LOVING,

Petitioner,

and

PELRB No. 313-12

LOVING MUNICIPAL SCHOOL DISTRICT,

Respondent.

ORDER

THIS MATTER comes before the Board for review and ratification of the Decision by the Executive Director (designated as the Hearing Officer for this case) regarding the existence of a fully functional local board. There has been no appeal of the Director's Decision by either party and their acceptance of the Decision for all practical purposes disposes of the merits of the case. By this Order the Board clarifies any ambiguity that may exist with regard to the operative facts.

WHEREFORE, the Board accepts as its own the following facts as found by the Hearing Officer:

1. On November 13, 2012, Petitioner, NEA-Loving, filed with the PELRB a Petition for Certification of a Bargaining Unit consisting of employees of the Respondent, Loving Municipal School District.
2. After a preliminary review of the Petition by the Executive Director for facial adequacy, notice of the petition was sent to the Employer and on December 13, 2012 the School District responded to the Petition informing the Board's Executive Director that the District had an approved local board resolution for collective bargaining. The District requested that the Petition be transferred to the local board for further action. The Board affirms the Executive Director, serving as the designated Hearing Officer, in taking administrative notice of this Board's approval of a local Labor-Management Resolution for the Loving School District dated July 2, 2009 and appearing in

the Board's records in PELRB No. 201-09. Notwithstanding reference to any other date for approval by this Board or the local board in the Hearing Officer's decision, July 2, 2009 is found to be the date of this Board's approval of the local resolution submitted by the School District.

3. While acknowledging that a local board resolution was approved by this Board for the Respondent School District, Petitioner asserts that the local board created thereunder is not fully functional primarily because its board is not duly constituted, has not met since its creation and has not passed procedural rules. The Executive Director scheduled a Preliminary Hearing January 22, 2013 to take evidence and hear argument on the question of whether the State Board should exercise jurisdiction in this case in preference to the local board.
4. At the Preliminary Hearing Petitioner was represented by Attorney Roxie De Santiago, the District was represented by Attorney Dina Holcomb and the following additional facts were established:
 - a. On March 3, 2010, Mark Cota, a representative of United Steelworkers, Local 8507 nominated in writing Alisa Ogden for appointment to the Loving School District Labor-Management Relations Board. (Exhibit 1). I take administrative notice of the fact that United Steelworkers Local 8507 is a labor organization with its principle place of business in Carlsbad, New Mexico.
 - b. On March 16, 2010 the Loving Municipal School Board met and approved the appointment of Alisa Ogden as well as management's appointment of Mario Carrasco as Labor Management Board members. (Exhibit 2).
 - c. Public Notice issued as required by the Open Meetings Act announcing a meeting of the Loving School Labor-Management Relations Board on December 17, 2012 for the purpose of "adoption/discussion of rules and consideration of nominees for a third Board member. (Exhibit 3; Testimony of Dr. Kristina Baca.) Ms. Ogden and Mr. Carrasco met as noticed and recommended the appointment of Mike Valdez as a third member of the local board and adopted the State Board's procedural rules on an interim basis. (Exhibits 4 and 5; Testimony of Dr. Kristina Baca.)
 - d. On December 18, 2012 the School Board met and approved the recommendation of Mike Valdez as a third member of the local board proposed by the other two members. (Exhibit 7; Testimony of Dr. Kristina Baca).
 - e. Public Notice issued as required by the Open Meetings Act announcing a meeting of the Loving School Labor-Management Relations Board

scheduled for February 4, 2013 for the purpose of "adoption/discussion of rules". (Exhibit 8; Testimony of Dr. Kristina Baca).

- f. Following approval of a local bargaining resolution and appointment of two out of three of the local board members in March of 2010, the local board did not thereafter meet to adopt rules or appoint a third member until December 17 and 18, 2012 – approximately a month after the instant petition was filed with the PELRB. (Testimony of Dr. Kristina Baca).

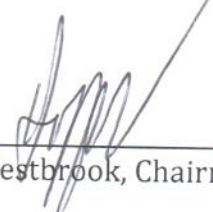
The Board further adopts as its own the rationale followed by the Hearing Officer and adopts the conclusions that Loving Municipal School District's local board is fully functional and that there is insufficient evidence to establish that the employer is utilizing the process of establishing the local board to delay processing pending matters.

On a vote of 3-0 during the Board's regularly scheduled March Board meeting;

IT IS HEREBY ORDERED:

- A. The Union's Petition for Certification of a Bargaining Unit consisting of employees of the Loving Municipal School District shall be, and hereby is, remanded to the local board for processing as prayed for by the Respondent.
- B. This Order is limited to the facts in this case to date. Under other facts and circumstances, this Board may find justification for its exercise of concurrent jurisdiction as requested by the Petitioner.

Dated: 4-22-13



Duff Westbrook, Chairman