STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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1-PELRB-2004

OPINION

Laura Chamas-Ortega vs. 2nd Judicial District Court
PELRB Case number 103-04

FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2004, Laura Chamas-Ortega (Petitioner) filed an prohibited practice complaint with the New Mexico Public Employee Labor Relations Board (the "Board"), alleging that her employer, the Second Judicial District Court (Respondent), interfered with Petitioner's right under the Public Employee Bargaining Act (PEBA or Act). *See* NMSA 1978, § 10-7E-1, *et seq.* At the time of at least some of the acts complained of, and at the time of the filing of her complaint, Petitioner had been a full-time non-probationary employee in the Criminal Division of the Second Judicial District Court. However, on February 20, 2004, after giving notice, Petitioner resigned from her employment with the Second Judicial District Court.

In her Brief in Support of Complaint, Petitioner alleged that she "was an employee of the State of New Mexico working within the Second Judicial District Court. *See* Brief at 1. Respondent filed a motion to dismiss the prohibited practice complaint for lack of jurisdiction, arguing that the Second Judicial District Court is not a "public employer" and Petitioner is not a "public employee" under PEBA. Alternatively, the Respondent has argued that the separation of powers doctrine prohibits the PELRB from exercising jurisdiction over employees of the Second Judicial District. On August 12, 2004, a hearing on the

issue of jurisdiction was held before the Board's Executive Director, who acted as the hearing examiner. On August 20, 2004, on the basis of the parties' pleadings and the hearing record, the Director issued a written report concluding that the Board may properly exercise jurisdiction over judicial employees.

Thereafter, having been timely placed on the agenda and publicly noticed, this matter came before the full Board at the Board's regularly scheduled meeting on October 19, 2004 by interlocutory appeal, leave for which was granted on written motion of the Respondent at the September 7, 2004 regularly scheduled meeting. Prior to the October hearing, Respondent filed with the Board a brief including its prior arguments to the Director and a mootness argument in light of Petitioner's resignation.

At the October hearing, the parties made oral arguments and the Board questioned Petitioner, who appeared *pro se*, and the attorney for the Respondent. Based on the pleadings and oral argument, the Board has unanimously concluded that PEBA does apply to the Second Judicial Court and its employees, and adopted the Director's recommended decision.

ARGUMENT

I. Mootness.

Because Petitioner is no longer employed with the Second Judicial District Court, the Board must first address the issue of mootness.

> One of the underlying precepts of the doctrine of mootness is a limitation upon the jurisdiction or decrees in cases where no actual controversy exists. As a general rule, an action will be dismissed if the issues therein are or have become moot. There are, however, certain well defined exceptions to that general rule . . . involve[ing] issues of 'substantial public interest,' and issues 'capable of repetition, yet evading review.'"

Mowrer v. Rusk, 95 N.M. 48, 51 (1980).

In *Mowrer*, the Court recognized that "[t]he parameters of the separation of powers doctrine presents" exactly such

"a recurring problem of great public interest." *Id.* at 52. Accordingly, on the authority of *Mowrer* the Board concludes that this is an appropriate case for application of this exception to the mootness doctrine. This appeal raises the issues of the application of PEBA to judicial employees and the doctrine of separation of power. It is an issue which this Board will inevitably be faced with again.

II. Jurisdiction.

The Respondent contends PEBA cannot be applied to the courts of this State because of the separation of powers doctrine. The questions presented to the Board are whether PEBA can be applied to the relationship between the courts and judicial employees and whether application of PEBA to the judicial branch violates the separation of power doctrine. These are both issues of first impression under PEBA. Analysis of the plain language of PEBA and analysis of the separation of powers doctrine, leads the Board to conclude the separation of powers does not prevent the application of PEBA to the judicial branch in this case.

A. PEBA Applies to the Judicial Branch.

"The principal command of statutory construction is to … effectuate the intent of the legislature." *State v. Ogden*, 118 N.M. 234, 242. In determining legislative intent, "the plain language of the statute [is] the primary indicator of legislative intent." *Whitely v. New Mexico State Personnel Board*, 115 N.M. 308, 311 (1993)

Here, as noted by the hearing examiner, the express purpose of PEBA is "to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all time, the orderly operation and functioning of the state and its political subdivisions." *See* NMSA 1978, §10-7E-3. Moreover, as the Court of Appeals noted in *Regents of the Univ. of New Mexico v. N.M. Federation of Teachers*, 1998-NMCA-020, ¶ 48, 125 N.M. 401, "the Act makes clear that its very function is to extend the right to organize and bargain collectively to *all* "public employees" as they are defined by PEBA." *Id.* (emphasis added).

"Public employer" is defined as "the state or a

political subdivision thereof," and "public employee" is defined as "a regular non-probationary employee of a public employer." *See* NMSA 1978, §§ 10-7E-4(R), 10-7E-4(S). Although the definition of "public employer" specifically includes certain municipalities and excludes governments of Indian nations, tribes or pueblos, and contains a specific proviso regarding state educational institutions, it does not specifically exclude judicial employees. *See* NMSA 1978, § 10-7E-4(S). Similarly, the definition of "public employee" includes a specific proviso concerning employees of public schools but does not specifically exclude judicial employees. *See* NMSA 1978, § 10-7E-4(R). The Board concludes the Act applies to the judiciary, as it is not specifically excluded from the Act's definitions of public employers or public employees. *See County of Kane v. Carlson*, 507 N.E.2d 482, 488 (Ill. 1987) (concluding that the judiciary is governed by the Illinois Public Labor Relations Act under the "plain meaning of the term 'State of Illinois,'" because the definition of 'public employer,' does not include a "direct expression of an intent to exclude the judicial branch from the Act").

Respondent counters that reference made within PEBA to the New Mexico Personnel Act, NMSA 1978, § 10-9-1, *et seq.*, application of which has been specifically limited to employees within the executive branch of government, *Whitely*, 115 N.M. at 310, evidences a legislative intent to exclude PEBA's application to the judicial branch. *See* NMSA 1978, § 10-7E-3 (that in the event of conflict, PEBA shall not supersede the provisions of the Personnel Act, or five other enumerated statutes). However, the Respondent does not explain how application of PEBA to the judiciary conflicts with an Act governing personnel matters of the executive branch. The conclusion urged by the Respondent does not follow from the argument and authority cited.

Accordingly, the Board holds that the Legislature intended PEBA to apply to the judicial branch; that the Second Judicial District Court is a public employer under the meaning of the Act; and that judicial employees are public employees under the meaning of the Act.

B. The Separation of Powers Doctrine Does Not Prevent PEBA's application to the Judicial Branch.

Because the constitutional separation of powers doctrine is raised, however, the Board's analysis does not stop there. The next step is to determine whether there are constitutional grounds for prohibiting application of PEBA to the judicial branch in spite of the legislative intent that the Act apply to the judiciary.

"Article III, Section 1 of the New Mexico Constitution prohibits any branch of government from usurping the power of the other branches," *State ex rel. Taylor v. Johnson*, 1998 NMSC 15, ¶ 20, 125 N.M. 343, and "[i]t is a basic precept of our constitutional form of republican government that the judiciary is an independent and coequal branch of government." *Mowrer*, 95 N.M. at 53 (1980). That said, the "line of separation or demarcation" between the branches of government "is difficult to definitely and specifically define," and "[t]he constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function." *Id.* Indeed, as noted by the Illinois Supreme Court in addressing a similar matter under their public employee bargaining act, "[i]n large part, the three branches of government must be considered interdependent," and "the three departments are parts of a single operating government." *See Kane*, 507 N.E.2d at 490.

Moreover, the New Mexico Supreme Court has "recognized the unique position of the Legislature in creating a developing public policy," *Taylor*, *supra*, at ¶ 21, and that "it is the particular domain of the legislature, as the voice of the people, to make public policy." *Torres v. State*, 119 N.M. 609, 612 (1995). Not surprisingly, the public policy identified in a statute of general applicability will on occasion have a permissible impact on the judiciary. *Cf. Spokane County v. State*, 966 P.2d 314, 318 (Wash. 1998) (observing that "[t]he fact that an administrative forum to resolve employment disputes in the judicial branch of government exists is not unique to [the Public Employment Relations Commission]," and that other administrative laws, such as those regarding industrial insurance, minimum wages and discrimination "apply to the judicial branch and are administered by the executive branch"). "Nonetheless, . . . [c]ourt[s] will give effect to Art. III, Sec. 1, and will not be reluctant to intervene where one branch of government unduly encroaches or interferes with the authority of another branch." *Taylor*, *supra*, at ¶ 23.

In this case, the New Mexico Legislature has passed an act reflecting a public policy in favor of the freedom of all state employees, except those whose public employers are specifically excluded from coverage of the Act, to "form, join or assist a labor organization for the purpose of collective bargaining . . . without interference, restraint or coercion." *See* NMSA 1978, § 10-7E-5; *see also Regents, supra,* at ¶ 48. However, the legislative grant of right to judicial employees to collectively bargain over the terms and conditions of employment, by itself, cannot be said to "infringe upon 'the essence'" of judicial authority—the construction of laws. *Cf. Taylor, supra,* at ¶ 24 (citing *State ex rel. Clark v. Johnson,* 1995-NMSC-051, 120 N.M. 562, 573); *State v. Fifth Judicial Dist.,* 36 N.M. 151, 153 (1932) (that the Legislature makes, the executive executes, and the judiciary construes the laws). Significantly, this fact has been recognized in other jurisdictions with public employee bargaining acts. *See, e.g., Spokane,* 966 P.2d at 317 (that "personnel policy and management . . . is essentially an administrative or executive function rather than a function historically or traditionally resting with the judicial branch of government").

Thus, the question becomes whether the grant of right to judicial employees to collectively bargain over the terms and conditions of employment nonetheless unduly infringes upon the "inherent power[] of the judiciary . . . to hire, fire and discipline . . . court employees and to control the day-to-day administrative functions of the . . . court." *Aquilar v. City Commission of the City of Hobbs,* 1997-NMCA-45, ¶ 9, 123 N.M. 333, 335 (citing *Mowrer, supra,* at 54). For example, in *Aquilar,* the Court of Appeals concluded that the city ordinance in question, which simply gave the City Commission a role in selecting a temporary municipal judge, did not "go this far" in regulating municipal courts, because the ordinance

> does not give the City Commissioner the power to interfere with the municipal court's control over its employees or its day-to-day administrative functions, *nor does the ordinance in any way preclude the Supreme* Court or the district court from exercising their superintending or supervisory authority over the municipal court.

Id.

In contrast, in *Mowrer*, the Supreme Court found that "the ordinance, as amended, places broad discretion, authority and power in the executive relating to the hiring, supervising and discharging of personnel working for the municipal court." *Id.*, 95 N.M. at 54. Specifically, under the ordinance in that case municipal judges were given no voice in the hiring of the court administrator, and the court administrator was charged with ultimate responsibility to hire, fire and supervise most court personnel. *Id.* at 54-55.

Clearly, the case presented here is more like that presented in *Aguilar* than in *Mowrer*. The mere grant of right to judicial employees to collectively bargain over the terms and conditions of employment similarly does not in and of itself impermissibly interfere with the courts' inherent power to hire, fire and discipline court employees and to control the day-to-day administrative functions of the court. As noted by the Supreme Court of Washington regarding its own public employee bargaining scheme, "[u]ntil and unless such a scheme interferes with the court's functioning, no separation-of-powers problem exists." *See Zylstra v. Piva*, 539 P.2d 823, 827 (Wash. 1975). Significantly, however, "[u]nder the Act, the district court, not another branch, retains the power to collectively bargain and contract over working conditions." *See Spokane*, 966 P.2d at 318; *disting. Appeal of the House Legislative Facilities Subcom.*, 685 A.2d 910, 912 (N.H. 1996) (concluding that application of the New Hampshire Public Employee Labor Relations Act is restricted to the executive branch because the act specifically vests exclusive control over collective bargaining in the executive rather than in the particular "public employer," as is done under other state public employee bargaining acts upholding application beyond the executive branch).

The Board finds additional support for the conclusion that PEBA's grant of right to judicial employees to collectively bargain does not in and of itself impermissibly interfere with the courts' inherent powers in the fact that application of similar public employee bargaining acts to judiciary employees has survived facial challenge in the majority of cases from other jurisdictions with such acts. *See, e.g., Spokane*, 966 P.2d at 318 ("we cannot conclude that the statutory scheme of the Act violates the separation of powers doctrine, per se"); *Com.*

ex rel. Gallas v. PLRB, 636 A.2d 253, 261 (Pa. Commw.1993) (rejecting the argument "that collective bargaining over financial terms for *any* court employees would interfere with the administration of justice") (emphasis added); *Kane*, 507 N.E.2d at 491 (holding that inclusion of judicial employees within that state's act "does not by itself trench on the separation of powers principle or on the general administrative and supervisory authority granted by the Constitution to the judicial branch"); *see also Chief Justice for Admin. and Mgmt. [CJAM] of the Trial Court v. Office and Prof. Employees Int'l Union, Local 6, AFL-CIO*, 807 N.E.2d 814, 818 (Mass. 2004) (concluding that although the Chief Justice for Administration and Management of the Trial Court could not under the state laws surrender his authority to transfer employees, "there is no reason why the CJAM may not bind [himself] to follow certain procedures precedent to the making of any such decision"); *but see Administrative Office of the Illinois Courts v. State*, 657 N.E.2d 972 (Ill. 1995).

Based on the forgoing, the Board unanimously holds that application of the New Mexico Public Employee Bargaining Act to the judicial branch does not violate the separation of powers doctrine. The Board recognizes that there may be cases in which the particular application of PEBA *does* arguably violate the inherent judicial authority over hiring, firing and disciplining its employees, and thus violate the doctrine of separation of powers. *See, e.g., Gallas*, 636 A.2d at 262 (concluding that inclusion of a judge's personal staff in a collective bargaining unit would greatly increase the probability that the collective bargaining process will infringe upon judicial authority); *CWA Local 1044 v. Chief Justice*, 572 A.2d 613 (N.J. 1989) (expressing a preference for statewide, unmixed bargaining units for the judiciary to avoid separation of powers issues). However, this is not such a case.

ISSUED this 9th, day of November, 2004.

Martin V. Dominguez

Martin Dominguez, Chairperson
Public Employee Labor Relations Board