STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

BOARD OF EDUCATION FOR THE DEMING PUBLIC SCHOOLS,

Appellant,

v.

D-202-CV-2017-06276
(Consolidated with CV-2018-5580)

NATIONAL EDUCATION ASSOCIATION-DEMING,

and

STATE OF NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD,

Appellees.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes to the Court's attention as a result of Appellant, Board of Education for the Deming Public Schools' (the "School Board's"), appeal of the August 15, 2017 Order of Appellee, State of New Mexico Public Employee Labor Relations Board (the "Labor Board"). The Labor Board upheld its Executive Director's recognition of Appellee National Education Association-Deming (the "Union"), as an incumbent labor organization. The School Board also appeals the Labor Board Executive Director's August 27, 2018, denial of a motion for summary judgment relating to a Prohibited Practices Complaint filed by the Union. The Court has reviewed the record and the pleadings and **AFFIRMS** the Labor Board's August 15, 2017, Order and **DISMISSES** the portion of the appeal related to the Executive Director's August 27, 2018, denial of the motion for summary judgment. The Court also hereby **DENIES** the Labor Board's Motion for Reconsideration and to Lift Stays, or Alternatively for an

Expedited Hearing on the Merits, filed on November 11, 2018, **DENIES** the School Board's Motion for Rule 11 Sanctions and to Enjoin Appellees, filed on July 11, 2018, and **DENIES** the Labor Board's Opposed Counter-Motion for Recovery of Costs and Fees, filed on July 30, 2018.

I. FACTS AND BACKGROUND

The Union filed a Petition for Recognition as Incumbent Labor Organization with the Labor Board on May 31, 2017, and an Amended Petition for Recognition as Incumbent Labor Organization on July 4, 2017. [Record on Appeal ("ROA") 284-287, 52-53] Both Petitions include a copy of a "Certification of Exclusive Representation," issued by the Labor Board on May 3, 1994, certifying the Union[1] as the exclusive collective-bargaining unit for Deming Public Schools. [*Id.* 82-83, 286-287] In support of its Amended Petition, the Union also provided numerous affidavits and exhibits. [*Id.* 68-247] On July 12, 2017, the Board's Executive Director issued a letter decision granting the Union's Amended Petition. [*Id.* 18-20] The Director also placed his decision on the agenda for the August 1, 2017, meeting of the Labor Board. [*Id.*]

On August 1, 2017, the Labor Board heard oral arguments from the School Board and the Union and upheld the Executive Director's letter decision, thus recognizing the Union as the incumbent labor organization for employees of Deming Public Schools. [*Id.* 1-2] The Labor Board concluded, in relevant part, that "[t]here is sufficient evidence demonstrating continuity of representation between NEA-Deming and Deming Public Schools from 1994 when NEA-Deming was known as 'Deming Education Association' and the present[.]" [*Id.*] It also concluded that "[c]ontinued recognition of the existing wall-to-wall bargaining unit is mandated

[1] The Certification of Exclusive Representative names "Deming Education Association" as the exclusive collective-bargaining unit. It was later determined, and it is not disputed on appeal, that Deming Education Association changed its name to National Education Association – Deming. Thus, the Deming Education Association and the National Education Association – Deming, are the same entity.

by NMSA 1978, Section 10-7E-24(A) which allows bargaining units established prior to July 1, 1999 to continue to be recognized as appropriate bargaining units" and "[t]he Board's rule NMAC 11.21.2.37 expressly exempts bargaining units under Section [10-7E-24(A)] . . . from being subject to unit clarification except in limited circumstances not applicable here." [*Id.*] The School Board then filed its timely Notice of Appeal.

As discussed in the Court's previous Order dated October 10, 2018, the parties filed cross-motions concerning the enforceability of the Labor Board's Order during the pendency of this appeal. While those motions were pending, the Union filed a Prohibited Practices Complaint (PPC) with the Labor Board, alleging that the School Board violated the Public Employee Bargaining Act by refusing to bargain with Union. The School Board filed a motion seeking to dismiss the PPC, and the Labor Board's Executive Director issued a letter decision denying the motion to dismiss. The School Board then filed a separate Notice of Appeal, appealing the Executive Director's denial of its motion to dismiss. The School Board later filed an Amended Notice of Appeal, appealing a subsequent letter decision of the Executive Director which denied the School Board's motion for summary judgment. The two appeals have since been consolidated. [*See* Order of Consolidation, filed Oct. 10, 2018]

II. STANDARD OF REVIEW

The Labor Board will be affirmed unless the Court concludes that the Labor Board's action is:

> (1) arbitrary, capricious or an abuse of discretion;
> (2) not supported by substantial evidence on the record considered as a whole; or
> (3) otherwise not in accordance with law.

§ 10-7E-23(B) (2003).

III. DISCUSSION

On appeal the School Board argues that there is no evidence in support of the determination that the Union was the exclusive bargaining representative of employees of Deming Public Schools on June 30, 1999, and that approval of a "wall-to-wall" bargaining unit is contrary to law.

Existing Labor Organizations

The Public Employee Bargaining Act (PEBA), provides, in relevant part, that

> [a] labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act[.]

NMSA 1978, § 10-7E-24(B) (2003); 11.21.2.36 NMAC. The School Board argues that the Union failed to submit any evidence that it was the exclusive bargaining unit on June 30, 1999. It contends that the Union's production of the "Certification of Exclusive Representation," issued by the Labor Board on May 3, 1994, certifying the Union as the exclusive collective-bargaining representative for Deming Public Schools, only establishes that the Union was the exclusive bargaining representative on May 3, 1994, and not on June 30, 1999. The School Board contends, without citation to authority, that the Union's other "circumstantial evidence" does not constitute sufficient evidence and that the Union's failure to produce a collective bargaining agreement between the parties is dispositive.

However, "[s]ubstantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Gallup Westside Development, LLC v. City of Gallup*, 2004-NMCA-010, ¶ 11, 135 N.M. 30, 84 P.3d 78. As the Union points out, in addition to the Certification of Exclusive Representation issued in

1994, it also provided evidence in support of its continued representation of employees of Deming Public Schools from 1994 to the present. For example, the Union provided the affidavit of John Steven Black, who was involved in the Union as either the president or a bargaining team member between 1987 and 2009. [ROA, 68-72] Mr. Black averred that the School Board and the Union bargained regularly between 1995 and 1999, that the parties established a collective bargaining agreement around 1995, and that the agreement was later ratified and in effect on June 30, 1999. [*Id.*] The Union also provided a draft collective bargaining agreement dated January 13, 1997 [*id.* 84-133], and minutes from meetings of the Deming Board of Education from 1997 through 2001 [*id.* 134-239]. The minutes generally reflect that the Union regularly presented collective bargaining updates at the meetings and referred to a collective bargaining agreement. [*Id.*] For example, the minutes from the November 18, 1999, School Board Meeting provide that Mr. Black stated at the meeting that the bargaining agreement had been ratified. [*Id.* 155-158] It is entirely reasonable to conclude, based on this evidence, that there was a continuity of representation between the Union and Deming Public Schools from 1994 to the present. The determination that the Union was recognized by the School Board as the exclusive representative on June 30, 1999, and is therefore the incumbent labor organization for Deming Public Schools, is therefore affirmed.

Appropriate Bargaining Units

The School Board argues that the Labor Board's approval of the Union as an incumbent labor organization is contrary to Section 10-7E-13(A) of PEBA. Section 10-7E-13(A) provides that "[a]ppropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved." The parties agree that the Union is

what is referred to as a "wall-to-wall" bargaining unit. As the School Board explains, a wall-to-wall bargaining unit is a bargaining unit that includes as its members all employees of an employer regardless of occupation or of sharing a common community of interest. The School Board thus contends that the Union is not an appropriate bargaining unit pursuant to Section 10-7E-13(A).

However, a separate provision of the PEBA, Section 10-7E-24(A), provides that "[b]argaining units established prior to July 1, 1999 *shall continue to be recognized as appropriate bargaining units* for the purposes of the Public Employee Bargaining Act. (Emphasis added). The School Board argues that this provision conflicts with Section 10-7E-13(A), but as the Union points out, the provisions serve two different purposes and can thus be read harmoniously. *See Starko, Inc. v. New Mexico Human Services Dept.*, 2014-NMSC-033, ¶ 18, 333 P.3d 947 (providing that courts are to avoid construing a statute in a way that would lead to a contradiction). As discussed previously, Section 10-7E-24(B) permits labor organizations that were recognized as the exclusive representative of a bargaining unit on June 30, 1999, to continue to be recognized as the exclusive representative on the effective date of the PEBA. Correspondingly, Section 10-7E-24(A) provides that bargaining units established prior to July 1, 1999 "shall continue to be recognized as appropriate bargaining units." Section 10-7E-24 is thus clearly applicable to *existing* bargaining units and in fact is titled "Existing collective bargaining units." It is a grandfather provision and thus applies to the "grandfathering" of bargaining units. *See American Federation of State County v. Albuquerque Bernalillo County Water Utility Authority*, No. 31, 365, 2013 WL 5309924, at *1 (10th Cir. 2013) (referring to Section 10-7E-24 as a "grandfather clause").

Section 10-7E-13, in contrast, applies to newly established bargaining units. It speaks in terms of filing a "petition for a representation election," rather than of being "recognized" as an already established bargaining unit. The requirement of designating appropriate bargaining units on the basis of occupational groups or communities of interest thus applies to bargaining units outside of the grandfather provision. The Labor Board's approval of the Union as an incumbent labor organization is therefore not contrary to Section 10-7E-13(A) of PEBA.

IV. CONCLUSION

Based on the foregoing, the August 15, 2017, Order of the State of New Mexico Public Employee Labor Relations Board is **AFFIRMED**. In light of the Court's affirmance, the issues between the parties in the School Board's appeal of the Executive Director's August 27, 2018, denial of a motion for summary judgment, appear to be moot. *See Republican Party of N.M. v. N.M. Taxation and Revenue Dep't*, 2012-NMSC-026, ¶ 10, 283 P.3d 853 ("When no actual controversy exists for which a ruling by the court will grant relief, an appeal is moot and ordinarily should be dismissed."). In addition, the Executive Director's denial of the School Board's motion for summary judgment is not a final, appealable order. *See* NMSA 1978, § 10-7E-23(B) ("A person or party, including a labor organization affected by a *final* rule, order or decision of the board . . . may appeal to the district court for further relief.") (emphasis added). The School Board's appeal of the Executive Director's August 27, 2018, denial of the motion for summary judgment is therefore **DISMISSED**.

The Labor Board's Motion for Reconsideration and to Lift Stays, or Alternatively for an Expedited Hearing on the Merits, filed on November 11, 2018, the School Board's Motion for Rule 11 Sanctions and to Enjoin Appellees, filed on July 11, 2018, and the Labor Board's

Opposed Counter-Motion for Recovery of Costs and Fees, filed on July 30, 2018, are all **DENIED**.

IT IS SO ORDERED.

BENJAMIN CHAVEZ
DISTRICT COURT JUDGE

I swear or affirm that the foregoing
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