STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

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

v.

D-202-CV-2017-07924

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS,
Appellant.

ORDER

THIS MATTER is before the Court on *Appellant's Amended Motion for Oral Argument and Reconsideration*. The motion is **DENIED.**

BACKGROUND

The Court issued a Memorandum Opinion and Order affirming an order of the Public Employee Relations Board (Board) which determined that Appellant committed a prohibited labor practice in violation of the Public Employee Bargaining Act (PEBA). The prohibited practice consisted of unilaterally, *i.e.*, without bargaining, increasing the number of inspections Labor Law Administrators (LLAs) are required to perform from twenty inspections per month to twenty-five inspections per month.

Appellant's position is that changing the inspection quota is a management right that is not subject to bargaining. The hearing officer and the Board disagreed. The Board, accepting the recommendation of the hearing officer, determined that the number of inspections the LLAs are required to perform is a term or condition of employment—a subject of mandatory bargaining under section 10-7E-17(A)(1). Applying an appellate standard of review, this Court found that the Board's decision was not arbitrary or capricious and is supported by substantial evidence.

DISCUSSION

Appellant increased the LLAs' inspection quota by 25%. On reconsideration, Appellant argues there is no evidence to support the finding that the increased quota resulted in an increased workload for the LLAs. According to Appellant, the overall workload did not increase by 25% because inspections comprise only a portion of the workload.

Appellant's argument misapprehends the basis of the decision. The decision was not based on a finding that the workload increased by 25%. The overall workload may have increased by less than 25%. For LLAs who were already performing twenty-five inspections per month, the workload increased not at all. The decision, and this Court's affirmance, were based on the conclusion that the number of inspections LLAs are required to perform per month is a term or condition of employment.

Appellant argues Article 42 of the collective bargaining agreement has no application to this case. This Court's affirmance did not rely on Article 42 of the collective bargaining agreement.

Appellant argues that increasing the quota is a management right under Article 18 of the collective bargaining agreement. Appellant claims the Court did not address the management rights issue. Appellant is mistaken. Both the Court and the Board acknowledged the existence of an employer's right under the collective bargaining agreement to direct employees' work and to determine the methods, means, and personnel by which an employer's operations are to be conducted. Management rights do not include the right to unilaterally change the terms and conditions of employment. Appellant's characterization of the increase in the performance quota as "simple and mundane" does not address the issue of whether the inspection quota is a term or condition of employment.

Appellant argues the Court's deference to the Board's determination is misplaced. The Court's opinion sets forth the legal authority and reasons for affording deference to the Board's determination that the inspection quota constitutes a term or condition of employment. Appellant has not directed the Court to any contrary authority.

Appellant argues the "record does not a support a conclusion that management loses its rights to control the methods or means of employer operations if those methods or means of operation are required in any way to be implemented by an employee." [Mot. ¶ 14.] The Court made no such ruling and neither did the Board. The issue presented is considerably narrower and limited to whether the quota increase Appellant implemented in this case is a subject of mandatory bargaining.

CONCLUSION

Appellant's motion identifies no point of law or fact the Court has overlooked. Accordingly, the motion is denied. Oral argument is unnecessary.

IT IS SO ORDERED.

CLAY CAMPBELL
DISTRICT COURT JUDGE

This is to certify that a true and correct copy of the foregoing document was mailed and/or otherwise delivered to the following on date of filing + acceptance by electronically., 2018

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