

BEFORE THE PUBLIC EMPLOYEE  
LABOR RELATIONS BOARD

IN RE:

APPLICATION OF THE UNIVERSITY  
OF NEW MEXICO FOR APPROVAL  
OF LOCAL BOARD

04-PELRB-2006  
PELRB case no. 201-06

DECISION AND ORDER

THIS MATTER came before the Public Employee Labor Relations Board (Board) on May 12, 2006, for decision with respect to the application of the University of New Mexico (UNM), pursuant to 11.21.5.8 NMAC,<sup>1</sup> for approval to establish and operate a local public employee labor relations board. UNM requests, pursuant to 11.21.5.10 NMAC,<sup>2</sup> certain variances from the Board-approved template.

In dispute before the Board, is whether to grant UNM's requested variance to add the phrases "or allocation," "or re-allocation," "or allocating," "or allocate" and "or re-allocate" following the template's phrases "appropriation," "re-appropriation," "appropriating," "appropriate" and "re-appropriate." The effect of the requested variance is to clarify that the existing contingency that applies to the "specific appropriation of funds," in the context of expenditure of funds, currently in NMSA 1978, § 10-7E-17 (E) (2003) and the Board's template, contemplate both the "appropriation" of funds and the "allocation" of funds, the latter being more appropriate terminology to address UNM's situation.

The Board adopts the Director's recommendation to grant the above-described variance for the reason that the variance promotes statutory clarity, avoids disharmony, is consistent with

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<sup>1</sup> 11.21.5.8 NMAC provides: "Any public employer other than the state that wishes to create a local public employee labor relations board shall file an application for approval with the state board."

<sup>2</sup> 11.21.5.10 (A) NMAC provides: "In certain instances variances from the board approved templates may be required by the unique facts and circumstances of the relevant local public employer, to effectuate the purpose of the act."

legislative intent and places UNM on an equal footing with the other governmental entities to which the Public Employee Bargaining Act (PEBA), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended through 2005), applies.

The thrust of Section 10-7E-17 (E) is to limit enforceability of a public-sector collective bargaining agreement, insofar as it requires the expenditure of funds, by the amount of money appropriated, either by the legislature, with respect to the state, or by the appropriate governing body, with respect to other public employers.<sup>3</sup> Section 10-7E-17 (E) provides, in part:

An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds.... An arbitration decision shall not require the reappropriation of funds.


UNM is not, as defined by PEBA, the "state." See NMSA 1978, § 10-7E-4 (S) (2003) ("state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than the state for collective bargaining purposes only"). For purposes of § 10-7E-17 (E), therefore, UNM is a "public employer other than the state," whose agreement provisions, to the extent they require the expenditure of funds, are contingent on the specific appropriation of funds by the governing body.

UNM's Board of Regents "allocates," rather than "appropriates," funds. This unique fact and circumstance warrants granting this variance, which tailors the structure and intent of the statute, as well as the template, to UNM's governing body, which allocates resources rather than appropriates them.

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<sup>3</sup> In the case of public schools, "[a]n agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body."

Accordingly, the requested variance that adds, where appropriate, the term "allocate" in its various forms is allowed, and the Director is authorized to proceed in processing UNM's application. Any other requested variances that have not been approved by the Board are not permitted by this Decision and Order.

  
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MARTIN DOMINGUEZ  
Chairman  
Public Employee Labor Relations Board

  
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DATE