

BEFORE THE PUBLIC EMPLOYEE  
LABOR RELATIONS BOARD

RE: PETITION FOR RECOGNITION AS  
INCUMBENT LABOR ORGANIZATION  
NEA-ALAMOGORDO  
AND ALAMOGORDO PUBLIC SCHOOLS,

PELRB Case No. 303-06

05-PELRB-2006

DECISION AND ORDER

THIS MATTER came before the Public Employee Labor Relations Board (Board) on May 12, 2006 upon the appeal of the Alamogordo Public School District, requesting review of the Director's decision to permit the incumbent labor organization, NEA-Alamogordo, to demonstrate majority support under NMSA 1978, § 10-7E-24 (B) (2003) by means of a card count, instead of an election. The Board, having heard argument of counsel for NEA-Alamogordo and for the Alamogordo School District, and being otherwise fully advised, hereby upholds the decision of the Director, as well as the Director's certification of majority support for the NEA-Alamogordo based on the card count.

There is no dispute in this case that NEA-Alamogordo is the "incumbent" labor organization for purposes of Section 10-7E-24 (B), meaning the "labor organization that was recognized by a public employer [Alamogordo Public School District] as the exclusive representative of an appropriate bargaining unit on June 30, 1999."<sup>1</sup> There is no dispute in this case about the composition of and existence of the "appropriate bargaining unit." There is no dispute in this case that the results of the card count showed that a majority of the employees of the unit has designated the union, NEA-Alamogordo, as their exclusive representative for

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<sup>1</sup> See PELRB Case No. 320-05, In the Matter of Petition for Recognition Filed by Teamsters Local No. 492 (April 13, 2006) (denying the Teamsters' petition seeking to represent the custodians employed by the Public Schools; ruling that "[b]ecause the NEA-Alamogordo is the incumbent, exclusive representative of Alamogordo Public Schools, a public employer, having been recognized as such on June 30, 1999, it remains on the 2003 effective date of the Public Employee Bargaining Act (PEBA), the exclusive representative of the unit, which includes members that Teamsters seeks to represent").

purposes of collective bargaining, thus demonstrating, based on the card count, majority support in the unit for the union.

The issue in this case is whether the Alamogordo Public School District (District) is entitled to demand an election, rather than a card count, for purposes of demonstrating whether the union has majority support in the unit. The Board concludes that the District is not entitled to demand an election, and that a card count is sufficient under NMSA 1978, § 10-7E-24 (B) (2003) for the purpose of demonstrating majority support.

Section 10-7E-24 (B) provides:

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 [10-7E-1 to 10-7E-26 NMSA 1978]; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA] of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.

Implementing this statute, The Board has adopted rule 11.21.2.36 NMAC, which provides:

**CERTIFICATION OF INCUMBENT BARGAINING STATUS:** 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. Such labor organization may petition for declaration of bargaining status under Section 24 (B) of the act by submitting a petition accompanied by a showing of majority support within that unit. [S]uch a petition for certification of incumbent based on prior recognition shall not raise an issue of representation. The director shall investigate the petition and, within thirty (30) days of the filing of the petition, shall issue a report and certification, a report and dismissal, or a notice of hearing. A determination by the director certifying the petitioner or dismissing the petitioner shall be appealable to the board under the procedures set forth in Section 22, above.

"Certification of incumbent bargaining status" means: "[A] procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate

bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Section 24 (B) of the Act, NMSA 1978, Section 10-7E-24 (B)." 11.21.1.7 (B)(3) NMAC.

In this case, the union, NEA-Alamogordo, submitted to the Board's Director 143 signed membership/authorization cards from employees in the unit, which comprises 249 employees. The Director's count of those cards resulted in the Director determining that 137 employees had designated the union, NEA-Alamogordo, as their exclusive representative for purposes of collective bargaining. The Director, accordingly, certified that the union has demonstrated majority support in the unit.

The effect of this "certification of incumbent bargaining status," resulting from the determination of majority support in the unit, is to enable the union, NEA-Alamogordo, and the public employer, the District, to enter into a new collective bargaining agreement pursuant to Section 10-7E-24 (B).

The use of a card count to determine majority support in the unit is consistent with Section 10-7E-24 (B) and the implementing rule 11.21.2.36 NMAC. This rule requires the union to submit a petition "accompanied by a showing of majority support within that unit." The method permitted by the Director, namely, the submission by the union of signed membership/authorization cards from employees of the unit, which are then counted to determine "majority support," comports with the requirements of the statute and rule that require a "showing" of majority support when petitioning for bargaining status to enable the formation of a collective bargaining agreement.<sup>2</sup>

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<sup>2</sup> In other contexts "cards" suffice for a "showing of interest." When a representation case is commenced by a union that desires to represent employees of a proposed bargaining unit, the union files its petition together with "a showing of interest consisting of signed, dated statements, which may be in the form of cards or a petition, by at least thirty (30) percent of the employees in the proposed unit stating, in the case of a petition for a certification election, that each such employee wishes to be represented for the purposes of collective bargaining by the petitioning labor organization..." 11.21.2.11 NMAC.

Rule 11.21.2.36 NMAC does not state that an "election request" must be made or that "election results" must accompany the petition or that a satisfactory showing of majority support is nonetheless dependent on the results of an "ensuing election." "Elections" are not required by the language of either Section 10-7E-24 (B) or rule 11.21.2.36.

"Elections" attend initial representation proceedings, where a union does not currently exist to represent employees. Elections are extensively regulated by elaborate procedures, much like elections conducted under the Election Code, Chapter 1 NMSA 1978. See 11.21.2.24 through 11.21.2.34 NMAC. These elections are required under NMSA 1978, § 10-7E-14 (2003) whenever a "new" union wishes to represent employees of a proposed bargaining unit. That proposed "new" union must first demonstrate a 30% "showing of interest," which may be by "cards,"<sup>3</sup> and must allow other unions the opportunity to seek to intervene, intervention also requiring a 30% "showing of interest."<sup>4</sup>

Here, there is no statutory or regulatory need or requirement that the Board and its Director invoke this elaborate regulatory election machinery, when all that is required under Section 10-7E-24 (B) is a majority "showing of support" for an existing and recognized union that represents an existing and recognized appropriate bargaining unit, whose members are required to show support by at least a majority in order for a collective bargaining agreement to be entered into by and between the public employer and that union. A card count is clearly sufficient for that purpose.

Statutes are to be construed in a way that facilitates their operation and achieves their goals. See, e.g., State v. Young, 2004-NMSC-015, ¶ 9, 135 N.M. 458, 90 P.3d 477 (quoting Roberts v. Southwest Cmty. Health Servs., 114 N.M. 248, 251, 837 P.2d 442, 445 (1992));

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<sup>3</sup> See fn. 1.

<sup>4</sup> See 11.21.2.16 NMAC.

Rutherford v. Chaves County, 2003-NMSC-010, ¶ 24, 133 N.M. 756, 69 P.3d 1199; New Mexico Department of Labor v. A.C. Elec., Inc., 1998-NMCA-141, ¶ 20, 125 N.M. 779, 965 P.2d 363. Utilizing a card count both facilitates the operation of Section 10-7E-24 (B) and achieves its goal to assure that the established, recognized union enjoys majority support of the members of the represented bargaining unit before a new contract is formed with the employer that binds those employees.

The public employer District in this case argues that the language of Section 10-7E-24 (B), which references NMSA 1978 § 10-7E-14 (2003), entitles the employer to demand that an election be held instead of a card count. Section 10-7E-24 (B) provides, in part: "[T]he public employer shall not enter into a new collective bargaining agreement ... unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA 1978] of the Public Employee Bargaining Act." Section 10-7E-14 provides, in part:

C. As an alternative to the provisions of Subsection A of this section [providing for a representation election, following a 30% showing of interest, to determine whether and by which labor organization employees in the appropriate bargaining unit shall be represented], a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

(Emphasis added). The District relies on the emphasized language of Section 10-7E-14 (C) to claim entitlement to demand an election, instead of a card count, for purposes of demonstrating majority support under Section 10-7E-24 (B).

However, the plain language of the sentence relied upon in Section 10-7E-14 (C) simply states that the Board "shall not certify an appropriate bargaining unit" if the employer objects to certification without an election. Here, there is no issue of "appropriate bargaining unit." Under Section 10-7E-24 (A), that "appropriate bargaining unit" has already been established, prior to July 1, 1999, and that unit continues to be recognized as the "appropriate bargaining unit."

Moreover, the ability of the employer to demand an election, in lieu of the alternative submission of authorization cards, is in the context of determining "whether and by which" labor organization the employees may be represented, an issue that is ordinarily resolved through an election process.<sup>5</sup> Here, there is no issue of "whether and by which" labor organization the employees are to be represented. Under Section 10-7E-24 (B), NEA-Alamogordo, having been recognized by the employer on June 30, 1999, is the existing, recognized exclusive representative for employees of the District that are in the unit.

The primary indicator of legislative intent is the plain language of the statute. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599; Cadena v. Bernalillo County Bd. of County Comm'rs, 2006-NMCA-036, ¶ 7, 139 N.M. 300, 131 P.3d 687. The plain language of Section 10-7E-14 (C) does not require that the Board or its Director defer to the demand of a public employer for an election, in lieu of a card count, for purposes of determining "majority support" under § 10-7E-24 (B). Moreover, the use

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<sup>5</sup> See Section 10-7E-14 (A), which provides:

Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

of authorization cards, and the count of those cards, is acknowledged as a permitted alternative in Section 10-7E-14. Those cards and the counting of them is the procedure used for purposes of the 30% showing of interest and for purposes of the agreed alternative procedure in cases where *an election would otherwise be mandatory under Section 10-7E-14*. Thus, the card count procedure under Section 10-7E-24 (B) is both a reasonable procedure and a procedure that is contemplated by the Board's rule, 11.21.2.36 NMAC.

The Board is statutorily empowered to adopt rules necessary to accomplish and perform its functions and duties. NMSA 1978, § 10-7E-9 (2003). The Board's rule 11.21.2.36 NMAC, permitting the use of a card count for purposes of determining "majority support," reasonably implements Section 10-7E-24 (B) in a manner consistent with legislative intent and not in conflict with Section 10-7E-14 (C). Neither Section 10-7E-24 (B) nor rule 11.21.2.36 requires an election to determine "majority support" in circumstances where the public employer objects to a card count for this purpose. Rule 11.21.2.36 NMAC permits a showing of "majority support" by means of a card count. Rule 11.21.2.36 NMAC is a reasonable construction of Section 10-7E-24 (B) and a reasonable application of the agency's special expertise and policy determinations under the Public Employee Bargaining Act.

Accordingly, the Board orders that the decision of the Director to permit the incumbent labor organization, NEA-Alamogordo, to demonstrate majority support under Section 10-7E-24 (B) by means of a card count, instead of an election, is upheld. The Board, therefore, also upholds the Director's certification of majority support for the NEA-Alamogordo based on that card count.

*Martin V. Dominguez*  
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MARTIN DOMINGUEZ  
Chairman  
Public Employee Labor Relations Board

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