

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
OFFICE OF THE DIRECTOR**

Gene Barrett,)
Petitioner,)
)
and)
)
New Mexico State)
University Police Officers')
Association, Fraternal)
Order of Police,)
)
Exclusive Representative.)

Case No. DCP 2-97(O)

**Report of the Director
and
Dismissal of Petition**

Pursuant to the authority of the Public Employee Labor Relations Board (PELRB or Board) under the Public Employee Bargaining Act of 1992 (PEBA or Act), NMSA 1978, §§ 10-7D-1 to 10-7D-26 (Repl. Pamp. 1993), and in accordance with PELRB rules and regulations, 11 NMAC 21.1 (July 15, 1996), the petition filed by Gene Barrett for decertification of the exclusive representative New Mexico State University Police Officers' Association was processed and investigated under Rule 2.

The rule requires the Director to determine the facial validity of a petition and "...shall dismiss a petition...that is otherwise facially improper, in which case he shall explain his reasons in writing."

Findings of Fact

Petitioner Gene Barrett is a "public employee" as that term is defined in the PEBA at § 4(P) and employed by the Police Department at New Mexico State University, a public employer. The exclusive representative, New Mexico State University Police Officers' Association, is a "labor organization" as defined in PEBA at § 4(J) and affiliated with the Fraternal Order of Police (FOP). Since August 8, 1995, the labor organization has been the exclusive representative for a bargaining unit composed of approximately twenty (20) positions such as telecommunicator, sergeant, patrol officer, and investigator.

At the time the petition was filed (December 11, 1996) petitioner Barrett was not a dues paying member of the labor organization and exclusive representative. PEBA § 16(A) states that “[a]ny member of a labor organization...may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board[.]”

In its role as a labor organization FOP provides collective bargaining services to affiliates such as the New Mexico State University Police Officers’ Association. These services, provided through the FOP labor council, require the payment of dues.

Petitioner Barrett was provided copies of all correspondence submitted by New Mexico State University and the exclusive representative during the investigation and accorded an opportunity to reply. No responses were received.

Conclusions

To have a valid decertification petition under PEBA § 16(A), it must be filed by a “member of a labor organization.” PEBA does not define the terms for membership in a labor organization. There is a reference, however, to a criterion for determining a member in a labor organization in PEBA at § 17(C) wherein payment of dues--”membership dues”--to an exclusive representative and the payroll deduction thereof is noted as a mandatory subject of bargaining.¹ At the time the petition was filed petitioner Barrett was not paying dues to the labor organization in its role as exclusive representative for purposes of collective bargaining and, therefore, would not be considered a “member of a labor organization” within PEBA § 16(A).

Prior decertification petitions processed, investigated, and adjudicated at the PELRB have been filed by public employees who are dues paying members of the labor organizations certified as the exclusive representatives in those proceedings. (*Barber et al. and Mountainair Public Schools*, Case No. DCP 1-95(SD)(May 1995) and *Brown et al. and Luna County Sheriffs’ Association*, Case No. DCP 1-97(C)(November 1996)).

Finally, the investigation shows that FOP, as a labor organization, exists for the purpose under the PEBA of providing collective bargaining services to its affiliates. The provision of those services requires the payment of dues to the labor organization FOP. In this regard, a labor organization, in determining its affiliates, may set its own rules for membership. See generally Martin H. Malin, *Individual Rights Within the Union* (1988). The investigation reveals that petitioner is not paying dues to the labor organization FOP.

¹PEBA (9(G)) contains another reference to the payment of monies to a labor organization certified as an exclusive representative; however, that section is not pertinent to this proceeding because § 9(G) precludes such payments “as a condition of continuous employment” and the issue here is whether payment of dues is a criterion for determining membership in a labor organization.

In sum, the petition is facially invalid because the petitioner is not a dues paying "member of a labor organization" as required by PEBA § 16(A). Because the petition is facially invalid, it shall be dismissed.

Recommended Disposition

The petition is dismissed.

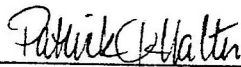
Request for Review

Section 22, paragraph 1, in Board Rule 2 states, in relevant part, that:

any party may file a request for Board review of the...Director's recommended disposition within ten (10) workdays after service of the report. The request shall state the specific portion of the...recommended disposition to which exception is taken and the factual and legal basis for such exception. The request may not rely on any evidence not presented to the...Director. The request must be served on all other parties.

Paragraph 2 in section 22 of Board Rule 2 states that "any other party may file and serve on all parties a response to the request for review" within ten (10) workdays after service of such a request."

Board Rule 1 at section 27 states "[r]eview by the Board shall be based on the evidence presented or offered at the earlier stages of the proceeding, and shall not be de novo."



Patrick J. Halter
Director, PELRB

March 14, 1997
Albuquerque, New Mexico