STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

NEW MEXICO COALITION OF PUBLIC SAFETY OFFICERS,

Appellant,

v. **D-202-CV-2018-01350**

PUBLIC EMPLOYEES LABOR RELATIONS BOARD, RIO RANCHO POLICE AND DISPATCH ASSOCIATION And CITY OF RIO RANCHO,

Appellee.

OPINION

Appellant New Mexico Coalition of Public Safety Officers appeals from an adverse decision of Appellee Public Employees Labor Relations Board. The request for a hearing is denied. The Court affirms the decision.

As an initial matter, the Court addresses Appellee City of Rio Rancho's motion to dismiss the appeal based on the argument that Appellant's Statement of Appellate issues was filed late. *Cf.* Rule 1-074(X)(1) NMRA ("If an appellant fails to file a statement of appellate issues in the district court as provided by these rules, such failure may be deemed sufficient grounds for dismissal of the appeal by the district court."). Appellant recounts that the record on appeal was filed and served March 13, 2018, and that Appellant filed its statement April 16, 2018, in accordance with the thirty-day period allowed with the addition of three days as provided by Rule 1-006(C) NMRA. *Compare* Rule 1-074(E) (generally providing for a thirty-day period within which to file an appeal from the date of the final agency decision, and stating that "[t]he three (3)-day mailing period set forth in Rule 1-006 NMRA does not apply to the time limits set forth in this paragraph") *with* Rule 1-074(J) (requiring

appellant's statement of appellate issues be filed and served within thirty days from the date of service of the notice of filing of the record on appeal without reference to the three-day mailing period of Rule 1-006). The Court denies the motion.

I. Facts and Background

On October 12, 2017, Appellant filed a Petition for Severance with the Board, "seek[ing] to sever a group of employees from an existing bargaining unit, for the purpose of forming a separate, appropriate bargaining unit." **[RP Vol. I, at 67]** The Petition for Severance stated that the group of employees for the unit proposed for severance, "[a]ll dispatchers, call takers, and dispatch supervisors," were part of the existing bargaining unit that is comprised of "[a]ll police officers, sergeants, corporals, detectives, dispatchers, call takers, and dispatch supervisors employed by the City." **[*Id.*]** The Petition for Severance estimated that the existing unit included approximately 150 employees, and that the unit proposed for severance included approximately thirty-four employees. **[*Id.* at 68]**

The Board's director issued a decision October 31, 2017, dismissing the petition. **[RP Vol. I, at 52-53]** Following arguments from the parties on the matter, the Board issued an order January 17, 2018, adopting and ratifying the director's decision. **[*Id.* at 10, 13]** Appellant timely appealed to this Court.

II. Discussion

Pursuant to the Public Employee Bargaining Act, this Court must affirm the decision of the Board unless the Court concludes that the decision was arbitrary, capricious, or an abuse of discretion, not supported by substantial evidence on the record considered as a whole, or otherwise not in accordance with the law. *See* NMSA 1978, § 10-7E-23(B) (2003). "The court views the

evidence in a light most favorable to the Board's decision and employs a deferential standard to the decision concerning areas within the [Board's] expertise." *San Juan College v. San Juan College Labor Mgmt. Relations Bd.*, 2011-NMCA-117, ¶ 3, 267 P.3d 101. Review of the Board's decision as to whether it was in accordance with law is de novo. *Id.*

Appellant sets out two issues. First, Appellant argues that the Board erred in its decision that the petition for severance did not comply with the Board's rules for representation proceedings where the petition sought to represent a group of public employees who share a community of interest, constituting a prima facie showing of appropriateness. Second, Appellant contends that the Board's interpretation of its rules that severance petitions are limited to the eight occupational groups identified by statute was in error because such statutory construction is contrary to the assurance that public employees be afforded the fullest freedom in exercising their right to bargain collectively through representatives of their choosing without interference, restraint or coercion.

The Legislature has declared the multiple purposes of the Act.

> The purpose of the . . . Act is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

NMSA 1978, § 10-7E-2 (2003).

NMSA 1978, § 10-7E-13(A) (2003) provides for designation by the Board of appropriate bargaining units by petition for representation.

> The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate 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. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the . . . Act.

Id. Thus, Section 10-7E-13(A) provides for designation of bargaining units based on enumerated occupational groups or units based on communities of interest, and allows for further consolidation, or combining, of groups.

Section 10-7E-13(A) is silent, however, with regard to severing employees from a group. In fact, Section 10-7E-13(A) authorizes "further consolidate[ion of] occupational groups" and makes no mention of severance of such groups into smaller constituents.

The Legislature grants the Board certain powers and duties. Relevant here, "[t]he board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the . . . Act, including the establishment of procedures for . . . the designation of appropriate bargaining units . . . ." NMSA 1978, §10-7E-9(A)(1) (2003). Consistent with this authorization, the Board promulgated a severance rule. "A severance petition is a representation petition filed by a labor organization that seeks to sever or slice a group of employees who comprise one of the occupational groups listed in 10-7E-13 NMSA from an existing unit for the purpose of forming a separate, appropriate unit." 11.21.2.41 NMAC (2004). Rule 11.21.2.41 plainly allows only severance of employees that comprise an occupational group enumerated by statute.

Thus, as the director determined in this matter, **[*id.* at 53],** Rule 11.21.2.41 allows a severance petition which severs a group of employees who comprise the enumerated occupational groups set out by Section 10-7E-13(A), blue-collar, secretarial-clerical, technical, professional,

paraprofessional, police, fire and corrections. Appellant makes no argument that the employees it seeks to represent, dispatchers, call takers, and dispatch supervisors, comprise one of these occupational groups enumerated by Section 10-7E-13(A).

Instead, Appellant argues that the dispatchers, call takers, and dispatch supervisors constitute an appropriate bargaining unit based on "clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved." Section 10-7E-13(A). As explained above, however, Section 10-7E-13(A) is silent as to petitions for severance. Petitions for severance are specifically governed by 11.21.2.41, which expressly limits severance to one of the enumerated occupational groups.

Appellant argues that "the Board's rules should not be interpreted in a manner that is inconsistent with the Board's precedent concerning the prima facie appropriateness of any petitioned-for bargaining unit where the public employees sought to be represented share clear and identifiable communities of interest." **[Appellant's SAI, at 9]** However, as Appellees point out, these decisions are inapplicable to this matter as they concern the formation of an initial bargaining unit and do not address Rule 11.21.2.41 and a petition to sever. *Cf. San Juan*, 2011-NMCA-117, ¶ 2 (addressing a petition to represent full-time faculty, and affirming the board's decision as to the appropriate bargaining unit); *NEA-Belen & Belen Fed'n of Sch. Emps.& Belen Consol. Schs. Emp'r*, 1 PELRB No. 2, 1994 WL 16779416, at *1, *5 ("adopt[ing] an anti-fragmentation policy to avoid unnecessary and needless proliferation of bargaining units" which "could have a deleterious effect on the efficient administration of government" and applying the factors for determining community of interest set out in *Kalamazoo Paper Box Corp,* 136 NLRB 134 (1962), in a matter concerning representation petitions which predated adoption of Rule 11.21.2.41).

Appellant further argues that the Board's decision was in error because it did not hold a hearing to determine the objections of the Employer and Appellee Rio Rancho Police and Dispatch Association concerning the composition of the petitioned-for bargaining unit. The Court agrees with Appellees that no hearing on the objections was required because Appellant's Petition for Severance, on its face, failed to meet the first factor required under Rule 11.21.2.41, severance of "a group of employees who comprise one of the occupational groups listed in [Section] 10-7E-13."

Finally, Appellant argues that the Board interpreted its administrative rules in a manner contrary to the purpose and spirit of its enabling legislation. The Court rejects this argument. The Board simply applied the plain language of Rule 11.21.2.41, a rule promulgated for severance petitions to address a matter in which the Act is silent.

III. Conclusion

The decision is **AFFIRMED.**

IT IS SO ORDERED.

VICTOR S. LOPEZ
DISTRICT COURT JUDGE

A copy of the foregoing document was e-filed
this ____ day of _____, 2018.

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