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STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

HOBBS PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 4384,
Appellant,
v.

CITY OF HOBBS, **D-202-CV-2024-07148**

and

NEW MEXICO PUBLIC EMPLOYEES LABOR RELATIONS BOARD,

Appellees.

OPINION and ORDER
on Appellee's Motion to Dismiss for Improper Venue

This matter is before the Court on Appellee City of Hobbs' motion to dismiss the appeal of Appellant Hobbs Professional Firefighters Association, Local 4384, for improper venue pursuant to Rule 1-012(B)(3) NMRA. Appellee New Mexico Public Employees Labor Relations Board (the Board) takes no position. The Court grants the motion without a hearing.

Facts and Background

Appellant, a labor organization representing firefighters in Hobbs, New Mexico, brought this appeal of an adverse decision of the Board, an administrative agency, in favor of Appellee. The appeal follows the Board's decision after a hearing conducted in Hobbs.

Discussion

NMSA 1978, § 10-7E-23(B) (2003) of the Public Employee Bargaining Act (PEBA) authorizes "[a] person or party, including a labor organization affected by a final rule, order or decision of the board may appeal to the district court for further relief." As a result, the appeal is

taken pursuant to Rule 1-074(A) NMRA ("This rule governs appeals from administrative agencies to the district courts when there is a statutory right of review to the district court, whether by appeal, right to petition for a writ of certiorari, or other statutory right of review."). "After the filing of the notice of appeal, at the option of a party, the following matters may be raised by motion: . . . improper venue . . . ." Rule 1-074(P)(3) (providing that such a motion does not stay proceedings unless otherwise ordered by the court).

Appellee argues that the venue statute, NMSA 1978, § 38-3-1 (1988), requires this case to be filed in the Fifth Judicial District Court.

> All civil actions commenced in the district courts shall be brought and shall be commenced in counties as follows and not otherwise:
>
> A. First, . . . all transitory actions shall be brought in the county where either the plaintiff or defendant, or any one of them in case there is more than one of either, resides; or second, in the county where the contract sued on was made or is to be performed or where the cause of action originated or indebtedness sued on was incurred; or third, in any county in which the defendant or either of them may be found in the judicial district where the defendant resides. . . .
>
> G. Suits against any state officers as such shall be brought in the court of the county in which their offices are located, at the capital or in the county where a plaintiff, or any one of them in case there is more than one, resides . . . .

Id.

Observing that it is a political subdivision of the State, Appellee contends the venue for this appeal is appropriate in Lea County, where its offices are located. Appellee further observes that both it and Appellant are located in Lea County, conduct business in that county, the employer-labor relations occur there, the collective-bargaining agreement between the parties was made and performed in Lea County, the cause of action originated in that county and the hearing on the

merits before the administrative agency occurred there. Thus, Appellee argues the appropriate venue is not Bernalillo County.

In response, Appellant contends that it brought a representation petition to the Board in Albuquerque, the only venue in which to bring the petition. Appellant argues that, although the Board delegated its hearing duties to a hearing officer, the Board issued its ruling from Bernalillo County, resulting in proper venue in the Second Judicial District.

Relying on Section 10-7E-23(B)'s use of the phrases, a person or party "affected" by a final decision as authorized to appeal "for further relief," Appellant argues that this is a broader grant of authority than is otherwise typical for appeals from administrative agencies. It contrasts this language with NMSA 1978, § 39-3-1.1 (1999) (appeal of final agency decisions to district court), inapplicable to the present matter, as it applies, under Subsection (A), "only to judicial review of agency final decisions that are placed under the authority of this section by specific statutory reference." Appellant points out that Section 39-3-1.1(C) references "a person aggrieved," as compared to Section 10-7E-23(B)'s phrase, "affected." The Court concludes that the differing phrases in these statutes does not suggest any particular appropriate venue.

Appellant argues that Section 38-3-1 does not apply, observing that this statute falls under the heading of "Trials," specifically titled, "Venue, Change of Judge," and that Section 38-3-1 begins, "All civil actions commenced in district court." It contends that this case was not so commenced, as it was instead brought before the Board in Bernalillo County. Appellant further argues that, in any case, Section 38-3-1 provides that "transitory actions" are to be brought in either the county where one of the parties resides or in which the cause of action originates, defining such

an action as one that can be brought in any venue where the defendant can be personally served with process, but that this matter could only be filed with the Board. It further contends that, because the cause of action originated at the Board in this county, the wording of Section 38-3-1 supports venue in the Second Judicial District.

Asserting that there was never a challenge to the Board's jurisdiction in deciding the matter, Appellant appears to conflate venue and jurisdiction. Appellant further argues that the Fifth Judicial District lacks appellate jurisdiction over this appeal, relying on our Constitution as well as a case discussing the provision.

> The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law, and appellate jurisdiction of cases originating in inferior courts and tribunals in their respective districts as provided by law, and supervisory control over the same. . . .

N.M. Const., Art. VI, § 13.

In *State ex rel. ENMU Regents v. Baca*, an unsuccessful bid contractor, pursuant to the Procurement Code, filed both an administrative protest, which would allow judicial review in the Ninth Judicial District where the governmental entity, ENMU, was located, as well as a complaint in the Second Judicial District, its own place of residence, seeking a declaratory judgment and injunctive relief. 2008-NMSC-047, ¶ 1, 144 N.M. 530, 189 P.3d 663 (per curiam). Unlike the present matter, the Procurement Code at issue in that case contained specific reference to Section 39-3-1.1, which would vest exclusive jurisdiction in the Ninth Judicial District over an administrative appeal. *See id.* ¶ 5.

The Supreme Court explained:

> Contrary to the argument made by [the contractor] that the grant of jurisdiction in the New Mexico Constitution is limited only by the venue statute, the jurisdiction and venue authorized by statute are confined by the limitations of our state constitution, which restricts district courts' appellate jurisdiction to "cases originating in inferior courts or tribunals in their respective districts."

2008-NMSC-047, ¶ 9 (quoting Art. VI, § 13). It further explained that Section 39-3-1.1, consistent with the constitutional mandate, "creates a comprehensive scheme for appealing final decisions of certain administrative agencies" for appeals to be taken to the district court for the county where the agency has its principal office or the district court of any county where a hearing on the matter was conducted by the agency. *Id.* ¶ 10.

Appellant emphasizes that the Court rejected the argument that the venue provisions of Section 39-3-1.1 could be read to allow "an administrative appeal to be brought in any district court," as such a reading "would render the provision unconstitutional." *ENMU*, 2008-NMSC-047, ¶ 10 (rejecting the argument "that the legislature could have intended the general jurisdiction and venue statutes, Section 38-3-1.1 and Section 38-3-1, to unconstitutionally expand the appellate jurisdiction of the district court provided for in Article VI, Section 13"). In reply, Appellee agrees with Appellant that Section 39-3-1.1 does not apply to this matter, as Section 10-7E-23 of PEBA does not make specific statutory reference to Section 39-3-1.1.

Appellee argues that Article VI, Section 13, addressing jurisdiction, is not applicable to venue, and further contends that *ENMU* supports its motion to dismiss. Relying on the same quotation from *ENMU* above, as well as its discussion of Section 39-3-1.1, Appellee observes that our Supreme Court rejected the contractor's "argument that the use of the word 'may' in Section 39-3-1.1(C) permits an administrative appeal to be brought in any district court;" rather, it "mean[s] that the appeal itself is permissive and not mandatory." 2008-NMSC-047, ¶ 9. Appellee

argues that the case supports the requirement that the present matter be filed in the location of the Hobbs' offices, the contractual relations, the parties to the labor relationship, and the cause of action, Lea County.

Article VI, § 13 of our state constitution addresses jurisdiction of district courts, not venue. As *ENMU* discussed the venue only with regard to Section 39-3-1.1, the case does not suggest a proper venue for the present matter.

Appellant disputes Appellee's position that the cause of action originated in Lea County. It points out that Article VI, Section 13 provides for district courts' "appellate jurisdiction of cases originating in inferior courts and tribunals in their respective districts," not appellate jurisdiction if the dispute arose in the particular judicial district. Appellant argues that the question is whether this case originated in an inferior tribunal in the Fifth Judicial District, rather than this District.

In reply, Appellee argues that Appellant's position ignores the fact that the Board is a State administrative agency serving all areas of New Mexico, and that it conducted the hearing on the merits in this matter in Hobbs. Appellee further contends that Appellant's position that the matter originated in Bernalillo County ignores the fact that both parties are located in Lea County, making venue appropriate in that county. The Court agrees, as discussed further below.

As to Appellant's assertion that the cause of action arose in this county because Appellant filed its petition with the Board, Appellee contends that the cause of action is not the filing of the petition but is instead the action underlying the petition itself, which is to revise the bargaining unit of City of Hobbs firefighters to include additional positions. Relying on Black's Law Dictionary's definition, a cause of action is based on "[f]acts which give rise to one or more

relations of right-duty between two or more persons," Appellee argues that the relations between itself and Appellant are based on their contractual collective bargaining relationship existing within Hobbs, as the public employer, and the public employees represented by Appellant. Appellee explains that the labor relationship between them is what provided Appellant the ability to file a petition, which asserted the geographic work location for the petitioned-for employees is Hobbs, and acknowledged the existing collecting bargaining agreement between them.

In reply, Appellee again relies on Section 38-3-1 and, additionally, NMSA 1978, § 38-3-2 (1939) ("All civil actions not otherwise required by law to be brought in the district court of Santa Fe county, wherein any municipality . . . is a party defendant, shall be instituted only in the district court of the county in which such municipality is located . . . ."), as supporting the venue in Lea County. It argues that Section 38-3-2's reference to "civil actions" necessarily includes an administrative appeal brought against a municipality, which requires that such an action be brought only in the district court of the county in which such municipality is located. *Cf. Williams v. Bd. of County Comm'rs of San Juan County*, 1998-NMCA-090, ¶¶ 29-32, 125 N.M. 445, 963 P.2d 522 (concluding that Section 41-4-18(B) of the Tort Claims Act is mandatory regarding venue actions against governmental entities other than the State, so San Juan County is the proper venue for tort claims against County defendants, and that, additionally, Section 38-3-2 also mandates that San Juan County was the proper venue).

Appellant argues that this case originated with a petition it filed with the Board in Albuquerque because the Board is located and the decision was rendered in Albuquerque, requiring venue in the Second Judicial District. As Appellee points out in reply, the Board is a state administrative agency serving all areas of New Mexico. Appellant's position would require

this Judicial District to act as the appellate court for all Board orders and decisions, despite the fact that proceedings before the Board are local to the areas where the parties reside, concerning a contract made and enforced there.

Appellee relies on *United Nuclear Corp. v. Fort* for the proposition that the statute's provisions requiring venue in the county in which Hobbs is located is controlling. 1985-NMCA-049, 102 N.M. 756, 700 P.2d 1005. In that case, a corporation appealed from a district court order dismissing its complaint, which sought appellate review of administrative proceedings by the Environmental Improvement Division as well as damages for property taking, declaratory and injunctive relief, and mandamus, on the basis of improper venue in McKinley County. *Id.* ¶ 1. The statute controlling the agency specifically provided: "Any person who is or may be affected by licensing action of the agency may appeal for further relief to the district court in which the subject facilities or activities are located." *Id.* ¶ 9 (quoted authority and emphasis omitted).

"In determining venue, the court must look to the complaint and the character of the judgment which may be rendered." *Fort*, 1985-NMCA-049, ¶ 17. The Court of Appeals explained that venue should not be equated with jurisdiction, because, "unlike jurisdiction, venue can be waived if not timely or properly raised before the trial court." *Id.* ¶ 16. Recounting that the complaint included judicial review of an agency's administrative action, that the agency and its director were named as defendants, and the party requested declaratory and injunctive relief or mandamus, the Court concluded that the version of Section 38-3-1(G) at that time applied to claims made against the division and director. *Id.* ¶ 17. With regard to the administrative appeal claims, the specific venue required such claims be brought in the county where the facilities or activities were located, McKinley County. *Id.* ¶ 20. "The issue of what statute is controlling as to venue

when multiple or inconsistent claims are alleged, each governed by separate venue statues, is a matter of first impression in New Mexico." *Id.* ¶ 19. The Court noted the "general rule" that, "[i]f venue is proper in the principal claim, it continues to be proper with respect to other pendant claims," *id.* ¶ 21, as well as that the public policy favors avoiding multiplicity of suits, *id.* ¶ 22.

"A plaintiff may not . . . by combining different causes of action having different venues, manipulate venue where a statute specifically mandates that a particular action must be heard in a particular county." *Fort*, 1985-NMCA-049, ¶ 23. The Court of Appeals explained: "In order to remove a case from the application of a general venue statute there must be a cause of action which falls within an exception to the statute or is governed by a separate mandatory venue statute. A permissive venue statute must yield to a mandatory venue provision." *Id.* The Court concluded that Section 38-3-1(G) was "a mandatory venue statute" "controlling as to the proper venue for plaintiff's claims against state officials." *Id.* ¶ 24 (affirming the district court's order determining that venue does not exist in McKinley County, because the party "joined its claim seeking administrative review with other claims against a state officer").

Conclusion

In the present matter, the applicable statute, Section 10-7E-23(B), provides that "[a] person or party, including a labor organization affected by a final rule, order or decision of the board, may appeal to the district court for further relief." Unlike many other statutes governing administrative appeals, it neither specifies venue nor references Section 39-3-1.1.

Section 39-3-1.1(C) provides: "The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a

hearing on the matter was conducted." Thus, had Section 10-7E-23 made specific statutory reference to Section 39-3-1.1, then Appellant would be authorized to take its appeal to this Court, as the county in which the Board maintains its principal office is Bernalillo County.

While the Court agrees with Appellant that Section 38-3-1 is placed under Chapter 38, Trials, and is headed, "County in which civil action in district court may be commenced," it appears that no other specific statute sets the proper venue for this case. Under Subsection A, assuming that this is a "transitory action,"[1] it

> shall be brought in the county where either the plaintiff or defendant . . . resides;[2] or second, in the county where the contract sued on was made or is to be performed or where the cause of action originated . . .; or third, in any county in which the defendant . . . may be found in the judicial district where the defendant resides.

As Appellee argues, both it and Appellant reside in Lea County and the collective bargaining agreement was made and to be performed in that county. Although the Board is the proper agency to determine Appellant's petition, the Court rejects the argument that the cause of action "originated" in Bernalillo County. Rather, the petition originated in Lea County, where the parties reside, the collective bargaining agreement was made and to be performed, and where the hearing on this matter occurred. *Cf.* Section 10-7E-23(B) ("All such appeals shall be based upon the record made at the board or local board hearing."). Otherwise, as mentioned above, all administrative hearings under Section 10-7E-23(B) would be required to be heard in the Second Judicial District.

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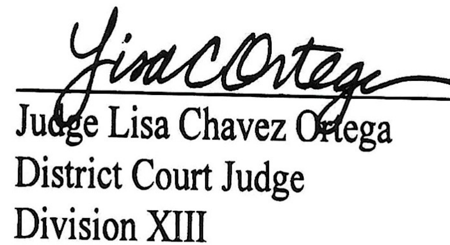
[1] "[P]roper venue for a transitory action depends on the residence of the defendant." *Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 5, 132 N.M. 382, 49 P.3d 61.

[2] Appellant acknowledges that "naming of the PELRB as a party has no bearing on the jurisdiction of this Court to hear the appeal as a valid venue." Response, at 7-8.

The Court further concludes that Section 38-3-2 supports the venue in "the district court of the county," Lea County, "in which" Hobbs, "a party defendant," "is located." This is consistent with Section 38-3-1(G) ("Suits against any state officers as such shall be brought in the court of the county in which their offices are located, at the capital or in the county where a plaintiff . . . resides . . . ."). *Cf. Williams*, 1998-NMCA-090, ¶¶ 29-32,

Appellee's motion is **GRANTED**. This matter is **DISMISSED** without prejudice, for improper venue.

IT IS SO ORDERED.



Judge Lisa Chavez Ortega
District Court Judge
Division XIII