

STATE OF NEW MEXICO
COUNTY OF SAN MIGUEL
FOURTH JUDICIAL DISTRICT

AMERICAN FEDERATION OF STATE,
COUNTY and MUNICIPAL EMPLOYEES,
NEW MEXICO COUNCIL 18, AFL-CIO, LOCAL 2851,

Appellant/Appellee,
VS.

NO. D-412-CV-2015-369

CITY OF LAS VEGAS, NEW MEXICO
And CITY OF LAS VEGAS LABOR
MANAGEMENT RELATIONS BOARD,
Appellee/Appellant.

ORDER ON APPEAL

THIS MATTER came before the Court upon the Appellant (for purposes of this appeal) City of Las Vegas' appeal of the decision of the Public Employee Labor Relations Board (PELRB). The issues on appeal are:

(A) Did the PELRB abuse its discretion and act contrary to law by reversing the decision of the City of Las Vegas Labor Management Relations Board (LMRB)?

(B) Is the PELRB's decision arbitrary, capricious, not supported by substantial evidence on the record, and/or not in accordance with law under the Public Employee Bargaining Act (PEBA) in determining the positions sought for accretion are not supervisory and/or managerial employees?

1. On or about January 7, 2015, Appellee (for purposes of this appeal) (AFSCME) filed an accretion petition with the City of Las Vegas Labor Management Relations Board (LMRB) seeking to include five (5) various supervisory positions

and a superintendent position in the existing collective bargaining unit of blue collar employees.

2. On September 15, 2015, the LMRB issued its Order denying the Petition.
3. On or about September 16, 2015, the Appellee (AFSCME) filed a Notice of Appeal with the District Court.
4. On or about August 4, 2016, the Court held a hearing and issued its decision on August 15, 2016 upholding the decision of the LMRB.
5. Appellee filed a Petition for Writ of Certiorari to the Court of Appeals, which was granted.
6. On February 4, 2019, the Court of Appeals issued its Memorandum Opinion reversing the District Court's Order.
7. On August 23, 2019, the Court entered its Order of Remand to the LMRB for further proceedings, directing that the LMRB enter its Findings of Fact and Conclusions of Law. In the event the LMRB was unable to do so, a new merits hearing was to be conducted.
8. The LMRB ceased to exist pursuant to NMSA 1978, Section 10-7E-10(G)(1) (2003), causing the matter to be transferred to the State of New Mexico Public Employee Labor Relations Board (PELRB).
9. The PELRB did not conduct a new hearing. Thomas J. Griego, the Executive Director of the PELRB, acting as a hearing officer, issued a Report and Recommended Decision dated October 7, 2020.
10. An Amended Report and Recommended Decision consisting of 32 pages was issued by the Hearing Officer on December 30, 2020.

11. The Hearing Officer reviewed the entire record and applied the statutes and rules as “they now exist under which neither party bears the burden of proof in a representation proceeding. However, the burden of going forward with the evidence on the question of whether employees are excluded from collective bargaining as supervisors has been determined by this Board to be best allocated to the Petitioner.”
12. The Hearing Officer entered his Findings, Reasoning and Conclusions of Law, finding that the Water Supervisor, Utilities Superintendent, Parks Supervisor, Public Facilities Supervisor and Zoning and Licensing Supervisor are not supervisors, managers or confidential employees exempt from collective bargaining as defined by NMSA 1978, Section 10-7E-4 (2020)¹. The Hearing Officer conducted an analysis of each employee’s status in making his determination.
13. The Hearing Officer also found that the position of Water Supervisor, Utilities Superintendent, Parks Supervisor, Public Facilities Supervisor and Zoning and Licensing Supervisor share a sufficient communality of interest with others in the existing blue and white collar bargaining unit to constitute an appropriate bargaining unit under the Act.
14. The PELRB adopted the Amended Report and Recommended Decision at its meeting on January 6, 2021, and issued its Order on January 15, 2021.
15. The Hearing Officer and the PELRB’s decision essentially reversed its previous decision.

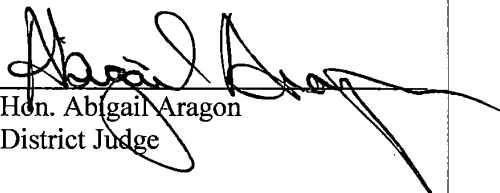
¹ Definitions of terms in NMSA 1978, Section 10-7E-4 changed effective July 1, 2020 while this case was before PELRB, but the changes were not material to resolution of this appeal.

16. Neither this Court nor the Court of Appeals explicitly vacated the decision of the LMRB. Nor did this Court or the Court of Appeals preclude the PELRB from re-evaluating the original decision of the LMRB and modifying it as it deemed appropriate after reviewing the record, testimony, evidence, and applicable law.
17. The PELRB was required to enter Findings and Conclusions supporting the decision of the LMRB. The cases cited by the Appellant did not preclude the PELRB to reverse the decision of the LMRB.
18. The Public Employee Bargaining Act (PEBA) provides that “actions taken by the board ... shall be affirmed unless the court concludes that the action is: (1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence on the record considered as a whole; or (3) otherwise not in accordance with law.” NMSA 1978, § 10-7E-23(B) (2003).
19. “A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record.” *Rio Grande Chapter of the Sierra Club*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806. “It is not the function of the trial court to retry the case ... or substitute its judgment for that of [an administrative agency].” *Id.*
20. “Substantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Gallup Westside Dev., LLC v. City of Gallup*, 2004-NMCA-010, ¶ 11, 135 N.M. 30, 34, 84 P.3d 78, 82 (citations omitted). “The question is not whether substantial evidence exists to support the opposite result, but rather whether such evidence supports the result reached.” *Las Cruces Prof'l Fire*

Fighters v. City of Las Cruces, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177.

21. This Court conducted a review of the whole record. The PELRB's decision was not arbitrary or capricious, was supported by substantial evidence on the record and was in accordance with law under PEBA.

IT IS THEREFORE ORDERED that the decision of the PELRB is Affirmed and Appellee City of Las Vegas' appeal is Denied. This matter is hereby remanded to the City of Las Vegas for further action.


Hon. Abigail Aragon
District Judge