

STATE OF NEW MEXICO
COUNTY OF TAOS
EIGHTH JUDICIAL DISTRICT COURT

PEÑASCO INDEPENDENT SCHOOL
DISTRICT,

DG

Appellant-Respondent,

v.

Case No. D-820-CV-2021-00029

PEÑASCO FEDERATION OF UNITED
SCHOOL EMPLOYEES LOCAL 4285, AFT-NM,

and

MARISSA SANDOVAL,

Appellees-Complainants.

**ORDER DENYING APPEAL AND AFFIRMING DECISION OF THE PELRB IN PART
AND REVERSING IN PART**

THIS MATTER having come before the Court on Appellant-Respondent's Notice of Appeal, having been fully briefed by the parties and heard in oral argument on August 5, 2021, and the Court being otherwise fully apprised, the Court hereby FINDS:

1. This matter involves Appellant-Respondent's appeal of a decision of the Public Employee Labor Relations Board ("PELRB"), *Peñasco Federation of United School Employees, Local 4285, AFT-NM v. Peñasco Independent School District*, 5-PELRB-2021, PELRB Case No. 108-20 (Jan. 15, 2021).

2. The Court reviews the decision of the PELRB pursuant to the standard of review set forth in the Public Employee Bargaining Act ("PEBA") and Rule 1-074(R) NMRA. Pursuant to the PEBA, "[a]ctions taken by the board or local 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.”

3. On the record considered as a whole, the Court affirms the PELRB’s finding that Appellant-Respondent violated the following provisions of the PEBA:

a. NMSA 1978, § 10-7E-19(A) (2003, prior to 2020 amendment) (making it a prohibited practice for a public employer to “discriminate against a public employee with regard to terms and conditions of employment because of the employee’s membership in a labor organization”);

b. NMSA 1978, § 10-7E-19(B) (2003, prior to 2020 amendment) (making it a prohibited practice for a public employer to “interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act...”);

c. NMSA 1978, § 10-7E-19(D) (2003, prior to 2020 amendment) (making it a prohibited practice for a public employer to “discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization”); and

d. NMSA 1978, § 10-7E-19(E) (2003, prior to 2020 amendment) (making it a prohibited practice for a public employer to “discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization”).

4. The Court reverses the decision of the PELRB discussing and finding a violation of interfering, restraining, or coercing Ms. Sandoval for engaging in “concerted activities” under

NMSA 1978, § 10-7E-5(B) (2020), because Subsection B of Section 5 of the PEBA was not effective until July 1, 2020, after the events in question and does not provide for retroactive application. Inasmuch as the PELRB found a violation of § 10-7E-19(G) based upon its inappropriate retroactive application of § 10-7E-5(B), such decision is also reversed.

5. With respect to Section 10-7E-19(A), the Court specifically finds that the record supports a violation through the application of the *Wright Line* test because (1) Appellee-Complainant Marissa Sandoval did engage in protected union activity by participating in School Board meetings and addressing the School Board; (2) the employer, and in particular Superintendent Hamilton, knew of this protected union activity, as demonstrated by Superintendent Hamilton's and Ms. Sandoval's presence at these school board meetings, the fact that Ms. Sandoval sat with members of the Union, and the fact that she was listed as an officer of the union on an email (Exhibit F, at RP 383) sent to Superintendent Hamilton; (3) Superintendent Hamilton demonstrated anti-union animus against Ms. Sandoval's union activity; and (4) there is a causal connection between Superintendent Hamilton's anti-union animus and her decision to terminate the employment of Marissa Sandoval as it was contrary to the Principal's recommendation.

6. With respect to Section 10-7E-19(B), the Court specifically finds that the record supports a violation because the District terminated Marissa Sandoval's employment because of her union activities and union membership; such an action "interfere[s] with, restrain[s] or coerce[s]" her right to engage in those activities and join and assist the union.


7. With respect to Section 10-7E-19(D), the Court specifically finds that the record supports a violation because Ms. Sandoval was terminated which constitutes discrimination. This

is shown by the fact that Superintendent Hamilton did not follow the recommendation of the school principal regarding retention of Ms. Sandoval when she decided to terminate her employment.

8. With respect to Section 10-7E-19(E), the Court specifically finds that the record supports a violation because Ms. Sandoval spoke to the School Board seeking redress and was terminated, which shows that the Employer “discharge[d] or otherwise discriminate[d] against a public employee because the employee ... is forming, joining or choosing to be represented by a labor organization.”

It is therefore ORDERED that the appeal filed by Appellant-Respondent is denied and the decision of the PELRB in this case is affirmed in part and reversed in part.

Dated: September 10, 2021



Hon. Jeffrey A. Shannon,
District Court Judge

Respectfully Submitted,

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