

26-PELRB-2024

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PEÑASCO FEDERATION OF
UNITED SCHOOL EMPLOYEES,
AFT-NEW MEXICO LOCAL 4285,

Petitioner,

and

PELRB No. 308-24

PEÑASCO INDEPENDENT SCHOOL DISTRICT,

Employer.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on July 2, 2024, upon the Hearing Officer's dismissal of the Petition for Clarification filed in this case. After reviewing the file and being otherwise sufficiently informed, the Board by a vote of 3-0 hereby affirms the Dismissal issued by the Executive Director on May 29, 2024.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DocuSigned by:

Peggy Nelson

7/9/2024

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PEGGY J. NELSON, BOARD CHAIR

DATE



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MICHELLE LUJAN GRISHAM
Governor

Peggy J. Nelson, Chair
Mark Myers, Vice-Chair
Nan Nash, Member

2929 Coors Blvd. N.W. Suite 303
Albuquerque, NM 87120
(505) 831-5422
(505) 831-8820 (Fax)

THOMAS J. GRIEGO
Executive Director

May 29, 2024

Youtz & Valdez, P.C.
900 Gold Avenue S.W.
Albuquerque, New Mexico 87102
Attn: James Montalbano

Holcomb Law Office
3301-R Coors Blvd. NW, #301
Albuquerque, New Mexico 87120
Attn: Dina Holcomb

Re: *PFUSE AFT-NM Local 4285 & Peñasco ISD; PELRB No. 308-24*

Dear parties:

This letter constitutes my decision concerning the Employer's objection the Union's Petition for Unit Clarification seeking to add probationary employees into the exiting bargaining unit description.

PROCEDURAL BACKGROUND

Upon review of the Board's records concerning the certification of the bargaining unit at issue, I find that on October 6, 2021, the Petitioner in this case sought accretion of security employees, school secretaries, counselors, maintenance employees, and bus drivers working for the Peñasco Independent School District into an existing bargaining unit comprising Certified Teachers, without restricting the positions to be accreted to non-probationary employees. (PELRB No. 310-21, Appendix A hereto). The School District asked for dismissal of that Petition because the number of employees to be accreted was greater than ten percent of the existing bargaining unit, arguing that pursuant to 11.21.2.38(C), the Board must presume the inclusion raises a question concerning representation and the petitioner may proceed only by filing a petition for an election. The District's Response to PELRB No. 310-21 also raised questions concerning unit scope, inclusion, and exclusion because the Petition listed job titles that do not match those used by the District, because it did not consider it appropriate to accreting classified positions into a certified bargaining unit and because a classified bargaining unit should include all classified staff of the District, which the Petition at issue did not. The School District did not object to the Petition because it included probationary classified employees.

On December 20, 2021, the parties informed the Board via email that they had reached an agreement about the Bargaining Unit in PELRB No. 310-21, whereby the Union acknowledged that it would not proceed by an accretion petition and that the Union would add three cooks to the

proposed unit. The parties' email indicated that in consideration of their agreement, they were unsure how best to proceed. To answer that question, I conferred with the parties by telephone on December 21, 2021 where the parties acknowledged that they would seek a separate unit of classified employees apart from the unit of certified teachers and that they had agreed upon positions that would be in that classified unit. The parties further agreed that I would issue a Voluntary Dismissal of PELRB No. 310-21 based on their agreement, close that case and open a new file upon receipt of a new petition for recognition of the new unit. I received that new Petition on December 22, 2021 and assigned it PELRB case No. 317-21.

In that new Petition, the Union asserted at paragraph 3:

“The petitioned-for unit, which was agreed to by the Union and the District as part of PELRB Case No. 310-21, consists of all non-probationary employees in the following job titles: Secretary/Clerk/Technical Assistant, MS/HS School Counselor, Custodial/Maintenance Worker, Security Officer, Bus Driver/Activity Bus Driver, Custodial/Bus Driver, and Cook.”

See Petition for Certification in PELRB No. 317-21, attached hereto as Appendix B. Subsequently, I issued a Voluntary Dismissal of PELRB No. 310-21 January 11, 2022.

In PELRB No. 317-21, the Respondent filed an eligibility list on January 10, 2022, specifically identifying two individuals as excluded from the bargaining unit as probationary employees. Petitioner, by letter dated January 11, 2022, informed the Board that it had no issues of unit inclusion or exclusion and restated that the “parties previously agreed on the unit as petitioned-for”.

The parties then agreed to voluntary recognition of the bargaining unit excluding probationary classified employees. I issued a Certification of Voluntary Representation on February 7, 2022, recognizing the bargaining unit of identified classified job titles and “excluding probationary, confidential, supervisory and management employees”. On March 11, 2022, the PELRB issued an Order ratifying the Executive Director's Certification of Voluntary Recognition. The parties have engaged in negotiations since March 2022 based upon the agreed upon and certified bargaining unit and its exclusion of probationary employees, reached tentative agreements including identification of the bargaining unit as excluding probationary employees, and are proceeding to impasse arbitration with proposals based upon the agreed upon and certified bargaining unit.

PFUSE filed a Petition on March 5, 2024 seeking to amend the certification issued by this Board in PELRB 317-21 (07-PELRB-2022) in order to recognize the statutory inclusion of probationary employees in the existing bargaining unit, in accordance with NMSA 1978 § 10-7E-4(Q) (2020). Peñasco Independent School District, Answered the Petition on March 20, 2024 asserting that Petition should be denied for three reasons:

First, the PELRB, local labor boards, public employers, and unions have interpreted the exception in Section 4(Q) pertaining to probationary employees in the public schools, as being applicable only to licensed and certified employees of public schools “inasmuch as such employees' probationary status

is synonymous with non-tenured status.” As a consequence, probationary classified employees have been historically excluded from bargaining units.

Second, the Petition did not meet the requirements for an amendment of certification because it is filed as a Petition for Amendment of Certification pursuant to 11.21.2.35 NMAC. Such a petition is permitted “. . .to reflect such a change as a change in the name of the exclusive representative or employer, or a change in the affiliation of the labor organization.”¹

Third, the Petitioner is, in fact, requesting unit clarification to accrete probationary employees into the bargaining unit,² which requires a change in circumstances surrounding the creation of the bargaining unit. 11.21.2.37(A) NMAC, which the Union has not plead.

On March 26, 2024, I wrote to the parties informing them that “I found scant support for the proposition that for over 30 years PELRB’s jurisprudence has interpreted the exception for ‘regular probationary employees’ to apply only to licensed and certified employees of public schools in the cases cited by the Employer” and that before deciding whether the requested amendment should be made, I wanted to ensure that all parties have notice and an opportunity to submit their views in addition to the Petition and Answer already filed. Therefore, I requested that no later than April 26, 2024, Peñasco Independent School District fully brief its opposition to the Union’s Petition. PFUSE was directed to respond to any filed brief and file any counter affidavits or additional supporting documents not already in the file, no later than May 28, 2024. I incorporate by reference my March 26, 2024, letter to the parties and append it to this Letter Decision.

Peñasco Independent School District filed its brief as requested on April 26, 2024; PFUSE responded on May 28, 2024.

STANDARD OF REVIEW:

NMSA 1978 § 10-7E-4(Q) (2020) provides that the term “public employee”, i.e., one subject to the Public Employee Bargaining Act, means:

“...a regular nonprobationary employee of a public employer; *provided that, in the public schools, “public employee” shall also include a regular probationary employee* and includes those employees whose work is funded in whole or in part by grants or other third-party sources;”

(Emphasis added).

¹ The Employer misquotes 11.21.2.35 NMAC by leaving out the critical phrase “such a change as” preceding the phrase “a change in the name of the exclusive representative or employer, or a change in the affiliation of the labor organization,” in order to suggest that a Petition for Amendment of Certification may only be brought for either of those two reasons. See ¶15 of the Answer in which the Employer states: “The Petition does not request a name or affiliation change and, therefore, does not meet the requirements for an amendment of certification.”

² Accretion Petitions are filed pursuant to 11.21.2.38 NMAC, not 11.21.2.37(A) NMAC.

NMAC 11.21.2.35 gives the PELRB broad powers to amend certifications of exclusive representatives for public employee bargaining units:

“A petition for amendment of certification may be filed at any time by an exclusive representative or an employer *to reflect such a change as* a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. The director shall dismiss such a petition within 30 days of its filing if the director determines that it raises a question concerning representation and the petitioner may proceed otherwise under these rules. If the director finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within 30 days of the filing of the petition. The director’s decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above.”

(Emphasis added).

NMSA 1978 § 10-7E-2. (2020) Purpose of act. The purpose of the Public Employee Bargaining 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.

REASONING AND CONCLUSIONS OF LAW:

I. Statutory Construction. This Petition presents a question of first impression that is resolved by a straightforward exercise of statutory construction. When engaging in statutory construction, our guiding principle is to give effect to the intent of the Legislature. *Att’y Gen. v. N.M. Pub. Regulation Comm’n*, 2011-NMSC-034, ¶ 10, 150 N.M. 174, 258 P.3d 453. Under New Mexico jurisprudence, to determine legislative intent, we first look to the “plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” *Id.* (internal quotation marks and citation omitted). Further, provisions of a statute must be read under the presumption that the Legislature acted with full knowledge of relevant statutory and common law. *Id.* (internal quotation marks and citation omitted). See also, *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69; *State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579. (“Under the plain meaning rule, when a statute’s language is clear and unambiguous, we will give effect to the language and refrain from further statutory interpretation. We will not read into a statute language which is not there, especially when it makes sense as it is written.”). Unless ambiguity exists, this Court must adhere to the plain meaning of the language. *State v. Davis*, 2003-NMSC-022, 134 N.M. 172, 74 P.3d 1064.

Our role is to construe statutes as written and we should not second guess the legislature’s policy decisions. See *State ex rel. Helman v. Gallegos*, 117 N.M. 346, 352, 871 P.2d 1352, 1358 (1994); *State v.*

Ortega, 112 N.M. 554, 564, 817 P.2d 1196, 1206 (1991). (“We adhere to the principle that “[a] statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration.”) *Gallegos*, 117 N.M. at 352, 871 P.2d at 1358 (quoting *Perea v. Baca*, 94 N.M. 624, 627, 614 P.2d 541, 544 (1980)). See also, *Faber v. King*, 2015-NMSC-015 (“Had the Legislature intended to make the same damages available in wrongful denial cases enforceable under Section 14-2-12, it could have easily done so. Faber’s reading... violates our long-established rule of construction prohibiting courts from reading language into a statute which is not there, particularly when it makes sense as it is written.”); *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 (“Under the plain meaning rule, when a statute’s language is clear and unambiguous, we will give effect to the language and refrain from further statutory interpretation. We will not read into a statute language which is not there, especially when it makes sense as it is written.” (internal quotation marks and citation omitted)).

In addition to the plain meaning examination, New Mexico Courts will also consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect.” *Bishop v. Evangelical Good Samaritan Society*, 2009 NMSC 036, ¶ 11, 146 N.M. 473, 212 P.3d 361.

The Public Employee Bargaining Act at NMSA 1978 § 10-7E-4(Q) (2020) expressly includes regular probationary employees in the definition of “public employee”, i.e., one subject to the Public Employee Bargaining Act, when the public employer is one of the State’s public schools, as is the Employer in this case, Peñasco Independent School District.

As stated in my letter to the parties dated March 26, 2024, I do not agree that § 4(Q) limits the inclusion of probationary employees of a public school to Certified or Licensed employees only. I found nothing in the Schools’ Brief to persuade me that case law and collective bargaining agreements in New Mexico support a conclusion that the PELRB, local labor boards, public employers, and unions have interpreted the exception for regular probationary employees to apply only to licensed and certified employees of public schools. The School District’s argument violates the statutory rule of construction that prohibits reading any language into a statute that is not clearly implicated by the actual words of the statute. The Public Employee Bargaining Act at NMSA 1978 § 10-7E-4(Q) (2020) unambiguously provides that the term “public employee” means:

“...a regular nonprobationary employee of a public employer; provided that, in the public schools, “public employee” shall also include a regular probationary employee and includes those employees whose work is funded in whole or in part by grants or other third-party sources;”

The inclusion of regular probationary employees in the definition of “public employee” simply means that a probationary public school employee is subject to the provisions of the Act, by virtue of his or her status as a public school employee. The legislature did not draw any distinction based licensed and certified employee status. If the legislature wanted to draw that distinction, it certainly knew how to do so.

Accordingly, I conclude that there is no factual support for the proposition that PELRB's jurisprudence has interpreted and approved of the inclusion of regular probationary employees in the schools as being among those employees under the Act to apply only to licensed and certified employees of public schools. Further, such an interpretation of NMSA 1978 § 10-7E-4(Q) (2020) would be contrary to the rules of statutory construction, and contrary to the purpose of the Act as expressed in NMSA 1978 § 10-7E-2, to guarantee public employees the right to organize and bargain collectively with their employers.

That construction of the law, however, does not result in a determination that the Union may proceed by NMAC 11.21.2.35 to amend the certification at issue to include the absent probationary employees, for the reasons that follow.

II. Analysis of NMAC 11.21.2.35. I agree with the Union's argument that NMAC 11.21.2.35 gives the PELRB broad powers to amend certifications and that its reference to "... a change in the name of the exclusive representative or the employer, or a change in the affiliation of the labor organization" is illustrative and not a limitation. Whether those broad powers encompass amending an issued certification because employees were left off the certification by error or whether the Board has plenary authority to do so, awaits another case because I do not agree with the Union's assertion that the exclusion of probationary employees from its Petition for Recognition was a "mistake" and "not part of some bargain between the parties."

I note that the accretion Petition filed in PELRB 310-21, Appendix A hereto, was consistent with the construction of NMSA 1978 § 10-7E-4(Q) (2020) set forth above.

The Board's records of the procedural history supports the Employer's assertion that the parties agreed to exclude probationary employees from the bargaining unit petitioned for in PELRB 317-21. As the Employer argues in its brief, such agreement "...is no different than parties agreeing to exclude certain positions from a bargaining unit that may otherwise be entitled to representation." It is, after all, a union's choice under the PEBA to represent certain eligible employees but not others.

Because I conclude that the parties agreed to exclude probationary employees in PELRB 317-21 the resulting certification is not subject to amendment to correct an error under NMAC 11.21.2.35 because there was no error.

I hasten to point out that an agreement to forego representation of probationary employees in PELRB 317-21 is not evidence of the Union's acquiescence in the position taken by the Employer herein that the exception in Section 4(Q) of the Act pertaining to probationary employees in the public schools is applicable only to licensed and certified employees of public schools. Even if the Union did acquiesce in that position, such acquiescence would be immaterial under the statutory construction undertaken herein.

Furthermore, the Employer errs in its argument that an agreement reached in PELRB No. 317-21 to forego exclude probationary employees forever bars AFT from representing those employees at the

risk of being accused of renegeing on its agreement in violation of the PEBA § 10-7E-20(D). Any agreement to foreclose forever, the Petitioner seeking to represent the previously excluded probationary employees, flies in the face of those public employees' right under NMSA 1978 § 10-7E-5 (2020) to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion. Any such agreement would be illegal and unenforceable.

CONCLUSION: NMSA 1978 § 10-7E-4(Q) (2020) expressly includes regular probationary employees in the definition of "public employee", i.e., one subject to the Public Employee Bargaining Act, when the public employer is one of the State's public schools, as is the Employer in this case, Peñasco Independent School District. The inclusion of probationary employees in the public schools is not limited to certified or licensed positions. I conclude that the parties entered into an agreement whereby the employer would voluntarily recognize a unit as petitioned for in PELRB 317-21, which unit excluded probationary employees from the classified bargaining unit. Such an agreement is binding upon the parties until such time as the excluded employees seek representation by the Union. To hold those excluded employees to the parties agreement in PELRB 317-21 for all time would violate their rights under NMSA 1978 § 10-7E-5 (2020) to freely choose their exclusive representative which would require a contractual construction that results in an illegality.

The best measure of the previously excluded employees' desire to be represented by the Petitioner would be a properly supported Petition for Accretion pursuant to NMAC 11.21.2.38. If the number of employees in the group sought to be accreted is less than ten percent of the number of employees in the existing unit, the board shall presume that their inclusion does not raise a question concerning representation requiring an election, and the petitioner may proceed by filing a unit clarification petition under these rules. Such a unit clarification petition to be processed, must be accompanied by a showing of interest demonstrating that no less than thirty percent of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

Because there was an agreement between the parties to exclude probationary employees in PELRB 317-21, Petitioner cannot now proceed by amendment pursuant to NMAC 11.21.2.35, although in some other case, absent such agreement, that may be the appropriate procedure. I am obliged by that rule to dismiss the Petition for Amendment, albeit, without prejudice to any subsequently filed Petition under NMAC 11.21.2.37 or NMAC 11.21.2.38. Wherefore, this Petition for Amendment shall be, and is hereby DISMISSED.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD


Thomas J. Griego
Executive Director

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

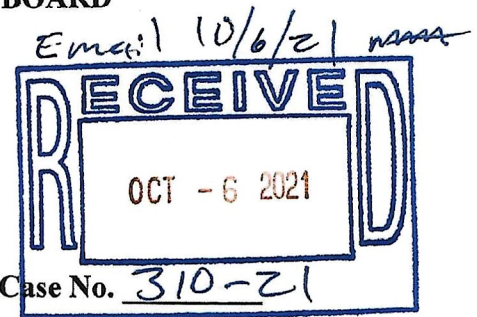
PEÑASCO FEDERATION OF UNITED
SCHOOL EMPLOYEES, AFT-NM
LOCAL 4285,

Petitioner,

and

PEÑASCO INDEPENDENT SCHOOL
DISTRICT,

Respondent.



PELRB Case No. 310-21

10-06-21 03927-EMDL

10-06-21 14:38 FILE

PETITION FOR CLARIFICATION
(ACCRETION)

COMES NOW Petitioner, Peñasco Federation of United School Employees, AFT-New Mexico Local 4285 (Union), by and through its counsel of record, Youtz & Valdez, P.C. (Shane Youtz, Stephen Curtice, James Montalbano), and hereby seeks certification as the exclusive bargaining representative for purposes of collective bargaining, for the below-described unit of public employees employed by the Peñasco Independent School District (District), and as grounds therefore states as follows:

1. The Contact information for Petitioner is:

Peñasco Federation of United School Employees
AFT-NM Local 4285
530 Jefferson St. NE
Albuquerque, NM 87108
Tel.: (505) 266-6638
Fax: (505) 266-1967
Petitioner

Shane Youtz
shane@youtzvaldez.com
Stephen Curtice
stephen@youtzvaldez.com

James Montalbano
james@youtzvaldez.com
Youtz & Valdez, P.C.
900 Gold Ave. SW
Albuquerque, NM 87102
Tel.: (505) 244-1200
Fax: (505) 244-9700
Petitioner's Representative

State or National Affiliation: AFT – New Mexico

2. The Contact information for the Peñasco Independent School District is believed to be:

Melissa Sandoval, Superintendent
Peñasco Independent School District
13 School Rd
Peñasco, NM 87553
msandoval@penascoisd.com
Respondent

3. The existing bargaining unit to be clarified comprises the following positions:
Certified Teachers.

4. Petitioner seeks to accrete the following positions into the existing bargaining unit:
security employees, school secretaries, counselors, maintenance employees, and bus drivers working for the Peñasco Independent School District.

5. The existing bargaining unit was certified as an incumbent union on or about: June 4, 2007.

6. The geographic work location of the employees in the existing unit is: Peñasco, NM.

7. The geographic work location of the petitioned-for employees is: Peñasco, NM.

8. Petitioner estimates the existing bargaining unit includes 26 employees.

9. Petitioner estimates the unit proposed for accretion includes 6 employees¹.

10. The parties are still in the process of negotiating a first CBA, which is not included at this time as it is not agreed-upon or ratified yet.

11. The required showing of interest is hereby filed contemporaneously with this Petition. Petitioner seeks a card check pursuant to NMSA 1978, § 10-7E-14(C) (2020).

12. The Petition does not present a question concerning representation.

DECLARATION

I declare that I have read the above petition and certify under penalty of perjury that the statements herein are true to the best of my knowledge and belief.

Dated: October 6, 2021

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.

/s/ Shane Youtz

Shane Youtz

shane@youtzvaldez.com

Stephen Curtice

stephen@youtzvaldez.com

James Montalbano

james@youtzvaldez.com

900 Gold Avenue S.W.

Albuquerque, NM 87102

(505) 244-1200 – Telephone

Counsel for Petitioner

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served on all parties to this action pursuant to 11.21.2.9 NMAC this 6th day of October, 2021.

Melissa Sandoval, Superintendent
Peñasco Independent School District

¹ The District currently employs two maintenance employees and one bus driver. Currently two employees fill those three positions.

13 School Rd
Peñasco, NM 87553
msandoval@penascoisd.com
Respondent

 /s/ Shane Youtz
Shane Youtz

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

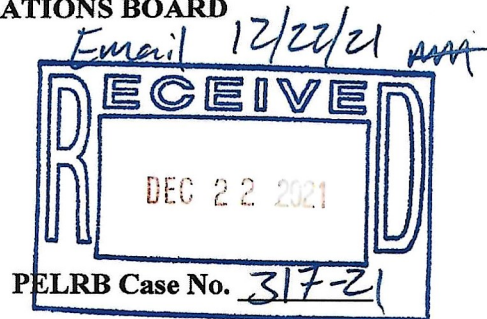
PEÑASCO FEDERATION OF UNITED
SCHOOL EMPLOYEES, AFT-NM
LOCAL 4285,

Petitioner,

and

PEÑASCO INDEPENDENT SCHOOL
DISTRICT,

Respondent.



PETITION FOR CERTIFICATION

COMES NOW Petitioner, Peñasco Federation of United School Employees, AFT-New Mexico Local 4285 (Union), by and through its counsel of record, Youtz & Valdez, P.C. (Shane Youtz, Stephen Curtice, James Montalbano), and hereby seeks certification as the exclusive bargaining representative for purposes of collective bargaining, for the below-described unit of public employees employed by the Peñasco Independent School District (District), and as grounds therefore states as follows:

1. The Contact information for Petitioner is:

Peñasco Federation of United School Employees
AFT-NM Local 4285
530 Jefferson St. NE
Albuquerque, NM 87108
Tel.: (505) 266-6638
Fax: (505) 266-1967
Petitioner

Shane Youtz
shane@youtzvaldez.com
Stephen Curtice
stephen@youtzvaldez.com
James Montalbano

james@youtzvaldez.com
Youtz & Valdez, P.C.
900 Gold Ave. SW
Albuquerque, NM 87102
Tel.: (505) 244-1200
Fax: (505) 244-9700
Petitioner's Representative

State or National Affiliation: AFT – New Mexico

2. The Contact information for the Peñasco Independent School District is believed to be:

Melissa Sandoval, Superintendent
Peñasco Independent School District
13 School Rd
Peñasco, NM 87553
msandoval@penascoisd.com
Respondent

Dina Holcomb
Holcomb Law Office
3301-R Coors Blvd. NW, #301
Albuquerque, NM 87120
Counsel for Respondent

3. The petitioned-for unit, which was agreed to by the Union and the District as part of PELRB Case No. 310-21, consists of all non-probationary employees in the following job titles:

Secretary/Clerk/Technical Assistant, MS/HS School Counselor, Custodial/Maintenance Worker, Security Officer, Bus Driver/Activity Bus Driver, Custodial/Bus Driver, and Cook.

4. The petitioned-for unit excludes all supervisory, managerial, and confidential employees.

5. The geographic work location of the petitioned-for unit is: Peñasco, NM.

6. Petitioner estimates the proposed unit includes 12 employees.

7. There is not a collective bargaining agreement covering any of the employees in the proposed bargaining unit.

8. The required showing of interest is hereby filed contemporaneously with this Petition. Petitioner seeks a card check pursuant to NMSA 1978, § 10-7E-14(C) (2020).

DECLARATION

I declare that I have read the above petition and certify under penalty of perjury that the statements herein are true to the best of my knowledge and belief.

Dated: December 22, 2021

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.

/s/ Stephen Curtice

Shane Youtz

shane@youtzvaldez.com

Stephen Curtice

stephen@youtzvaldez.com

James Montalbano

james@youtzvaldez.com

900 Gold Avenue S.W.

Albuquerque, NM 87102

(505) 244-1200 – Telephone

Counsel for Petitioner

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served on all parties to this action pursuant to 11.21.2.9 NMAC this 22nd day of December, 2021.

Melissa Sandoval, Superintendent
Peñasco Independent School District
13 School Rd
Peñasco, NM 87553
msandoval@penascoisd.com
Respondent

Dina Holcomb
Holcomb Law Office
3301-R Coors Blvd. NW, #301
Albuquerque, NM 87120
Counsel for Respondent

/s/ Stephen Curtice

Stephen Curtice

Griego, Tom, PELRB

From: Dina Holcomb <dholcomb@holcomblawoffice.com>
Sent: Monday, December 20, 2021 5:52 PM
To: Stephen Curtice; Griego, Tom, PELRB
Cc: Miguelanjel Burns; Allison Keelin; Alexis Baca
Subject: [EXTERNAL] RE: AFT and PISD, PELRB No. 310-21

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Director Griego,

The District does not believe the case attached to Mr. Curtice's email is instructive in this matter inasmuch as the San Miguel case involved an accretion of greater than 10% into an existing bargaining unit resulting in an amendment of certification of an existing bargaining unit. Conversely, this case involves the request to create a new bargaining unit separate from any existing bargaining unit. Therefore, it seems this case should be filed as a Petition for Initial Certification of a New Bargaining Unit (PELRB Form # 3) rather than a Petition for Representation pursuant to 11.21.2.38(C).

The District takes no position regarding whether this would require a new PELRB case number and/or dismissal or revision of the current petition.

Dina E. Holcomb, Esq.

HOLCOMB LAW OFFICE

Tel: (505) 831-0440 Fax: (505) 352-0096

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From: Stephen Curtice <stephen@youtzvaldez.com>
Sent: Monday, December 20, 2021 4:50 PM
To: 'Griego, Tom, PELRB' <Tom.Griego@state.nm.us>; 'Dina Holcomb' <dholcomb@holcomblawoffice.com>
Cc: 'Miguelanjel Burns' <miguelanjel@nmaft.org>; Allison Keelin <allison@youtzvaldez.com>
Subject: AFT and PISD, PELRB No. 310-21

Director Griego,

I am pleased to report that the parties have reached an agreement about the Bargaining Unit in this case. We are not sure how you would like us to proceed, however.

As part of that agreement, the Union acknowledges that this cannot be an accretion petition, because the number of employees is greater than 10%. The Union has also agreed to the District's proposal to add the 3 cooks to the proposed

unit. (Dina might have a more official job title). Lastly, although education units including certified and non-certified are somewhat common, the Union will agree to having this be a separate bargaining unit from the existing unit.

Based on the Eligibility List provided by the District, the Stipulated Bargaining Unit would include the following eligible employees: Shannon Cordova, Pauline Laumbach, Anthony Mondragon, Norman Rodriguez, Elberta Rodriguez, Sheila Sanchez, James Sanchez, Anthony Sandoval, Devin Tafoya and the three cooks (sorry, I don't know their names).

Although this was initially filed as an accretion petition, the petition noted that "Petitioner seeks a card check pursuant to NMSA 1978, § 10-7E-14(C) (2020)." It is my position, based on the attached letter decision, that the proper procedural vehicle is for the Union to submit an amended petition under this case number. Since the issues are not disputed, we would then proceed to a card check. I am not certain that Dina agrees, but I told her I would email you to see how to proceed. She can respond to this email with her proposal.

Thank you for your consideration,

Steve

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