

June 20, 2017

Dr. Denise Montoya
Human Resources/Payroll Director
New Mexico Highlands University
Box 9000
Las Vegas, NM 87701
montoyad@nmhu.edu

Re: Response to Letter of May 1, 2017 (Union Business)

Dear Dr. Montoya:

Our office represents the NMHU Faculty Association. I am in receipt of a letter you sent to Dr. Kathy Jenkins, Mario Romero and Margaret Gonzalez on May 1, 2017. I disagree with the assessment made and respectfully request that New Mexico Highlands University (the University) retract the letter and discontinue the requirement to request annual leave or leave without pay.

First, a definition of "union business" is necessary. The PELRB Executive Director explained it best in the following excerpt:

"[The school district] explained that the complaint was prompted by union representative [employee] having 'solicited grievances' when she asked a fellow employee at work whether she needed union assistance with a workplace dispute. [The school district] considered that to be improperly conducting union business during work hours. ... If [employee] had been engaged in union organizing or expressing her views in support of the union or distribution union materials I would have little doubt that the District has a legitimate concern over making sure that employees' work time is not disrupted by those kinds of activities commonly understood to be 'conducting union business.' I would have to weigh whether her so-called 'solicitation of grievances' occurred during a break time when employees' time is theirs to use as they wish without unreasonable restraint. See generally Developing Labor Law, 6th Edition at 131-139; See also, Las Cruces Prof. Fire Firefighters v. City of Las Cruces, 1997 NMCA 31, 123 NM 239 (Ct. App. 1996) (Firefighters II).

O. RUSSELL JONES (1912-1978)
JAMES E. SNEAD (Retired)

JERRY WERTHEIM
JERRY TODD WERTHEIM
CAROL A. CLIFFORD

ROXIE P. DE SANTIAGO
SAMUEL C. WOLF
JENNY F. KAUFMAN
JIADAI LIN

ATTORNEYS AT LAW

But [employee] was not doing any of the things commonly understood to be 'union business.' She was engaged in protecting employee rights guaranteed under PEBA and enforcing the CBA as it pertains to those protected rights by asking a member of the bargaining unit whether union assistance was needed. That is not 'union business' but the mutual obligation of both the District and the Union. The Union is obliged by NMSA 1978 §10-7E-15 to '...be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.' See, NMSA 1978 §10-7E-15(A). There are few things more essential to protecting employee rights under PEBA and essential to enforcement of its contract than for union stewards to be free to ascertain the truth and viability of rumored workplace grievances and that in turn requires the ability to talk to co-workers about potential or actual grievances in the workplace. That principal is embodied in Article 6 of the CBA. If the District imposes a work rule ... that interferes with employees' rights under PEBA, rather than for legitimate business purposes, for example, imposing limits on general fraternization during work times, it risks violating several subparagraphs of [NMSA 1978, §10-7E-]19. See Horton Automatics, 289 NLRB 405, 409 (1988); Capital EMI Music, Inc., 331 NLRB 997, 997 n.4 and 1006 (1993). See also, Michaels v. Anglo Am. Auto Auctions, 117 NM 91, 94 (1994) (Circulation of petition concerning leave usage, overtime and safety was protected concerted activity for mutual aid and protection because it was peaceful and concerned improvement of employees' conditions of employment). See, also Developing Labor Law, 6th Edition at 239-240 regarding processing of grievances." Hearing Officer's Report and Recommended Decision, PELRB 101-13, Adopted by PELRB Board.

I recognize that Director Griego remarks were about the processing of grievances, but applies equally to all actions taken by the union that are for the mutual aid and protection of all employees in the bargaining unit. These include not only processing of grievances, but also collective bargaining, representing employees in disciplinary meetings, meeting with administration and/or employees to address concerns raised by employees, and any other activity in which the union is advancing an action for the mutual aid of all employees. See generally, Developing Labor Law, 6th Edition, Ch. 6.I.B.3, pgs. 83-88, and Ch. 6.III.A, pgs. 209-259. For a discussion on the limits of these activities, see Ch. 6.III.C, pgs. 259-277.

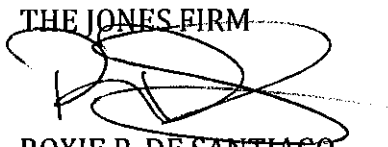
Because these actions are protected both by PEBA and the collective bargaining agreement of the parties, there is no violation of the anti-donation clause and no potential for violation of PEBA's restriction with regard to domination or interference with a union.

Dr. Denise Montoya
June 20, 2017
Page 3

THE JONES FIRMSM

I would be happy to discuss this matter in greater detail if you have any questions. If not, please note that the union will continue to abide by its duty to represent all employees in the bargaining unit as it is required to do so by law.

Sincerely,

THE JONES FIRM

ROXIE P. DE SANTIAGO

cc: Dr. Kathy Jenkins
Margaret Apodaca
Ignacio Sanchez, NEA UniServ
Dr. Sam Minner, President NMHU