UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

IN THE MATTER OF:

PUBLIC SERVICE COMPANY OF NEW MEXICO

Respondent,

and

Case Nos. 28-CA-23391
28-CA-66164

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 611, AFL-CIO,

Charging Party.

RESPONDENT PUBLIC SERVICE COMPANY OF NEW MEXICO'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Respondent Public Service Company of New Mexico ("PNM" or "Company"), pursuant to Section 102.46 of the Board's Rules and Regulations, submits the following exceptions to Administrative Law Judge ("ALJ") Eleanor Laws' June 22, 2012 Decision ("Decision") in these consolidated cases.

1. Alleged Change to Informal Step of the Grievance Procedure.

a. PNM takes exception to the ALJ's finding that the manner of processing the informal step in the internal grievance process in the collective bargaining agreement ("CBA") was a longstanding past practice that was changed unilaterally by PNM in the Summer of 2011. (Decision at 13:13-30, 14:1-11)

b. PNM further takes exception to the ALJ's refusal to construe the plain language of the collective bargaining agreement, instead finding one interpretation as establishing the past practice. (Decision 13: 40-46, 14:1-4.)

c. PNM takes exception to the ALJ's finding that the Company's interpretation of the informal grievance procedures constituted a "material, substantial and significant" change in the terms and conditions of the CBA. (Decision 15:6-11).

d. PNM takes exception to the ALJ's finding that the Company's interpretation and application of the informal grievance process resulted in a failure to process some grievances. (Decision 15: 13-20).

2. <u>Alleged Change in Tafoya's Access and Related Threats.</u>

A. ACCESS ISSUE.

a. PNM takes exception to the ALJ's decision that Ed Tafoya's access change was a material or substantial restriction on Ed Tafoya's access, thus concluding that there had been a violation of §8(a)(1) of the Act.

b. PNM takes exception to the ALJ's finding that the requirement that Ed Tafoya have an escort while on PNM property at the Electric Service Center was a unilateral removal of a "real and substantial benefit". (Decision 19: 31-38.)

B. THREATS.

a. PNM takes exception to the ALJ's finding that an unnamed security guard's statements, allegedly overheard by Bert Garcia, constituted a threat to Ed Tafoya.

3. <u>Fitzgerald's Access.</u>

a. PNM takes exception to the ALJ's finding that the changes in Shannon Fitzgerald's access to the San Juan Generating Plant Facility were a "material, substantial and significant" change from past practice. (Decision 23: 3-8).

4. <u>Alleged Refusal to Process Eric Cox's Discrimination Complaint.</u>

a. PNM takes exception to the ALJ's conclusion that the CBA, through Articles 8 and 10, mandated PNM to process Eric Cox's discrimination complaint as an internal grievance under the CBA. (Decision 27: 34-37, 28:1).

b. PNM, therefore, also takes exception to the ALJ's finding that PNM violated §8(a)(1) by conditioning investigation of Eric Cox's discrimination complaint on his being unrepresented.

5. <u>Alleged Denial of Cox's Representative of Choice by Tom Mitchell</u>

a. PNM takes exception to the ALJ's finding that Eric Cox's representational rights were violated by denying him the representative of his choice, Ed Tafoya.

6. <u>Alleged Interrogation by Smyth about Union Activities</u>.

a. PNM takes exception to the ALJ's finding that Dale Smyth's questioning of Eric Cox about "union business" was an unlawful interrogation in violation of §8(a)(1) of the act. (Decision 33:38-40).

7. <u>Allegation of Threat by Smyth telling Cox to Come to his Office.</u>

a. PNM takes exception to the ALJ's conclusion that Dale Smyth threatened Eric Cox by asking Eric Cox to come to his office to discuss the union business he was working on in the NSD crew room. (Decision 33: 46-47, 34: 1, 19-21).

8. <u>Alleged Threat of Unspecified Reprisal</u>

a. PNM takes exception to the ALJ's finding that Dale Smyth's statement that "there would be consequences" if Eric Cox refused to tell Smyth what specific union

business he was working on" was unlawful under §7 and §8(a)(1) of the Act. (Decision 35: 8-14).

9. <u>Alleged Interrogation by Gary Cash</u>

a. PNM takes exception to the ALJ's conclusion that Gary Cash asking Eric Cox what union business he had been discussing with Ed Tafoya was an unlawful interrogation. (Decision 36: 41-42, 37: 3-5, 37-9).

10. <u>Alleged Violations Related to Union Requests for Information</u>

a. PNM takes exception to the ALJ's decision that the failure to provide non-Unit employee PTO scheduling and medical appointment information was a violation of §8(a)(1). (Decision 42: 16-31, 43: 36-38, 44: 1-2).

b. PNM takes exception to the ALJ's conclusion that the Company violated §8(a)(1) by not providing non-Unit disciplinary information for non-Unit employees alleged to have violated PNM's "Do the Right Thing" policy. (Decision 44: 29-36).

c. PNM takes exception to the ALJ's conclusion that the Company violated §8(a)(1) by failing to respond to an information request seeking non-Unit employee information regarding alleged violations of the employee safety manual, or other established safety procedures. (Decision 46: 10-20, 46: 39-40).

d. PNM takes exception to the ALJ's conclusion that PNM violated §8(a)(1) by failing to respond to a request for information related to an alleged meter reader change in schedule. (Decision 39: 27-28.)

Respectfully submitted:

MILLER STRATVERT P.A.

_/s/ Paula G. Maynes_____

Paula G. Maynes
Stephen B. Waller
P.O. Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614
Pmaynes@mstlaw.com

and

K. Janelle Haught
Public Service Company of New Mexico
Alvarado Square, MD 1200
Albuquerque, NM 87158
Janelle.Haught@pnmresources.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was emailed and mailed via First Class mail, postage prepaid, on July 20, 2012, to the following:

John L. Hollis
Attorney at Law
John L. Hollis, P.A.
6020 Constitution NE #4
Albuquerque, New Mexico 87110
jhollis0@mindspring.com

IBEW
4921 Alexander Boulevard Suite A
Albuquerque, NM 87107

Frederic Roberson, Esq.
National Labor Relations Board
Frederic.Roberson@nlrb.gov;

Cornele A. Overstreet
Regional Director of the NLRB
Region 28
2600 North Central Avenue, Suite 1800
Phoenix, AZ 85004-3099

_/s/ Paula G. Maynes_____
Paula G. Maynes

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