

**UNIVERSITY OF NEW MEXICO
LABOR MANAGEMENT RELATIONS BOARD**

UNITED ACADEMICS OF THE)	
UNIVERSITY OF NEW MEXICO,)	
-AMERICAN ASSOCIATION OF)	
UNIVERSITY PROFESSORS/AMERICAN)	
FEDERATION OF TEACHERS, AFL-CIO,)	
)	
PETITIONER,)	
)	UNM LMRB CASE NO.
vs.)	R-19-01
)	
BOARD OF REGENTS OF)	
THE UNIVERSITY OF NEW MEXICO)	
)	
RESPONDENT.)	

**EMPLOYER’S POSITION REGARDING THE
APPROPRIATENESS OF THE PETITIONED-FOR BARGAINING UNIT**

COMES NOW, by and through counsel (Loretta P. Martinez, Chief Legal Counsel, the University of New Mexico), Respondent Board of Regents of the University of New Mexico (“UNM”), pursuant to Rule 2.5 of the University of New Mexico Labor Management Relations Board Rules and Regulations (“the Rules”), and hereby submits its position regarding the appropriateness of the bargaining unit as set forth by Petitioner United Academics of the University of New Mexico – AAUP/AFT (“the Union”) in its Petition for Initial Certification of a New Bargaining Unit (“the Petition”).

Introduction

The Union filed the Petition with the University of New Mexico Labor Management Relations Board (“the Board”) on February 13, 2019. On February 15, 2019, the Board, through

its agent, notified UNM that the Petition had been filed, and set a March 1, 2019 date for UNM to submit this Position and an alphabetical list of the employees who would be eligible to vote if the unit was determined to be appropriate. UNM timely submitted the employee list on March 1, 2019. UNM and the Union agreed to extend the time for UNM to submit this Position to March 18, 2019 in order to allow UNM's newly appointed Regents to consider the Petition. This Position is therefore also timely filed. UNM recognizes that the filing of this Position will be followed by an opportunity for University leadership to dialogue with leadership of the proposed bargaining unit to determine whether there can be agreement on matters in dispute. University leadership welcomes this opportunity and is committed to a reasoned dialogue and a fair and productive process going forward.

Argument

UNM generally denies all allegations in the Petition that are not explicitly admitted. UNM explicitly denies that the petitioned-for bargaining unit is appropriate. Rather, UNM affirmatively states that there are significant issues of unit scope and inclusion as presented in the petitioned-for bargaining unit.

In the Petition, the Union identifies for inclusion in the proposed bargaining unit employment positions that are explicitly excluded from inclusion in a bargaining unit by the Public Employees Labor Relations Act, NMSA 1978, § 10-7E-1 *et seq.* (“the Act”) and the University of New Mexico Labor Management Relations Resolution (“the Resolution”). Moreover, UNM asserts that, as between the employment positions identified in the Petition that are not explicitly excluded under the Act and Resolution, there is an insufficient community of interest among them that would support a single appropriate bargaining unit and inherent conflicts of interest within the proposed bargaining unit. Accordingly, the Board should dismiss the Petition because it proposes

an inappropriate bargaining unit. Alternatively, the Board should order the Union to identify separate proposed bargaining units comprised of those positions not excluded by the Act or Resolution that have a sufficient community of interest with each other, and then present a showing of interest of at least 30% of employees holding those positions from each proposed bargaining unit.

I. The Petitioned-For Bargaining Unit Includes Employment Positions that Are Explicitly Excluded from Inclusion in a Bargaining Unit by the Act and Resolution

The Act and Resolution provide that public employees other than management, supervisory, confidential, and probationary employees “may form, join or assist a labor organization for the purpose of collective bargaining.” NMSA 1978, § 10-7E-5; Resolution, § 5. “Public employee” is defined in the Act as “a regular non-probationary employee of a public employer” and more specifically in the Resolution as “a regular, non-probationary employee of the University of New Mexico.” NMSA 1978, § 10-7E-4(R); Resolution, § 4(G) (emphasis added). The Act and the Resolution explicitly prohibit the inclusion of probationary, supervisory, managerial, and confidential employees. NMSA 1978, § 10-7E-13(C); Resolution, § 10(C).

a. The Petition includes employment positions that are not “regular” employment positions as required by the Act and Resolution

As provided above, under the Act and Resolution, in order for an employee to be eligible for inclusion in a bargaining unit, his or her employment must be “regular.” Notwithstanding this requirement, the Union includes in its Petition several employment positions that by their very nature do not meet this baseline requirement. These inappropriately included positions include the following temporary, non-recurring employment positions:

- i. Professor of Practice

- ii. Adjunct Professor
- iii. Research positions funded by extramural, non-recurring funding (soft money):
 - 1. Research Professor
 - 2. Research Assistant Professor
 - 3. Research Associate professor
 - 4. Research Lecturer, I, II, and III
- iv. Visiting Lecturer I, II, and III
- v. Visiting Assistant Professor
- vi. Visiting Associate Professor
- vii. Visiting Professor
- viii. Visiting Professor of Practice
- ix. Working Emeritus

Accordingly, these positions should be stricken from the Petition as inappropriate, and any showing of interest associated with individuals holding these non-regular employment positions should be disregarded when determining whether the required 30% showing of interest threshold has been met.

b. The Petition includes employment positions that are probationary, supervisory, managerial, and/or confidential

As provided above, the Act and Resolution explicitly exclude from any petitioned-for bargaining unit employees who are probationary, supervisory, managerial, or confidential. Notwithstanding this explicit prohibition, the Union in its Petition includes several positions that

by their very nature are probationary, supervisory, managerial, or confidential. These positions include:

- i. Department Chair
- ii. Department Director
- iii. Division Chair
- iv. Senior Instructor
- v. Instructor

Accordingly, these positions should be stricken from the Petition as inappropriate, and any showing of interest associated with individuals holding these probationary, supervisory, managerial, or confidential positions should be disregarded when determining whether the required 30% showing of interest has been met.

II. There Is Insufficient Community of Interest Among the Petitioned-For Employment Positions to Be Appropriate for Inclusion in a Single Bargaining Unit

The Act and Resolution authorize the Board to designate appropriate bargaining units that are established on the basis of clear and identifiable communities of interest in employment terms, employment conditions, and related personnel matters among the public employees involved. NMSA 1978, § 10-7E-13(A); Resolution, § 10(A). Notwithstanding this requirement, the Union proposes that an election be held, the results of which may consolidate multiple employment positions with no clear and identifiable community of interest into one single bargaining unit. For this reason, the Board should dismiss the Petition because it proposes an inappropriate bargaining unit. Alternatively, the Board should order that appropriate bargaining units comprised of employment positions that are eligible for inclusion under the Act and Resolution and that have a

clear community of interest with each other be identified, and that a 30% showing of interest from each of those proposed bargaining units be presented.

- a. There is insufficient community of interest in employment terms and employment conditions between tenured/tenure-track positions and non-tenured/tenure-track positions.**

“Tenure” is the concept that, after the expiration of a probationary period, faculty should have permanent or continuous employment. This permanent or continuous employment means faculty can only be terminated for adequate cause, as determined both by the governing institution and by a committee of a faculty member’s peers. However, only certain faculty employment positions are eligible for tenure. These positions are referred to as “tenured/tenure-track.” Of the employment positions listed in the Petition, these positions are:

- i. Assistant Professor
- ii. Associate Professor
- iii. Professor
- iv. Distinguished Professor

Conversely, multiple faculty employment positions are not eligible for tenure. These are referred to as “non-tenured/tenure-track positions.” As to the employment positions listed in the Petition, these positions include¹:

- i. Lecturer, I, II, and III
- ii. Principal Lecturer, I, II, and III
- iii. Senior Lecturer, I, II, and III

¹ All instructor titles, visiting titles, research titles, adjunct titles, and Professor of Practice titles are also defined as non-tenured/tenure-track positions and therefore also do not share a sufficient community of interest with the tenured/tenure-track positions. However, as provided above, such titles should be excluded from the proposed bargaining unit because they are by their very nature not regular employees eligible for inclusion therein under the Act and Resolution.

Tenure is a unique permanent employment term or condition with certain rights, protections and responsibilities that are not shared among the other faculty positions identified in the Petition for inclusion in the proposed bargaining unit. Markedly, tenured and tenure-track faculty differ from other faculty in their responsibilities for teaching, research and service. Lecturers almost exclusively teach and do not perform research while research faculty almost uniformly do not teach and do not perform service. Neither category has eligibility for a permanent contract of employment with UNM. Notwithstanding these core distinctions, the Union consolidates tenured/tenure-track positions with non-tenured/tenure-track positions in the same proposed bargaining unit, when they are more appropriately identified as separate bargaining units based on tenure status and/or tenure eligibility. Because the Petition does not identify separate bargaining units based on tenure status or tenure eligibility that reflect a clear shared community of interest among the positions in those proposed units, the Board should dismiss the Petition because it fails to state an appropriate bargaining unit. Alternatively, the Board should order the Union to identify separate proposed bargaining units based on tenure eligibility, and further order it to present a showing of interest of 30% from employees holding employment positions that are eligible for inclusion under the Act and Resolution from each proposed bargaining unit and from each appropriate geographic region, as discussed more fully below, that are eligible for inclusion.

b. There is insufficient community of interest in employment terms and employment conditions between Adjunct Faculty and all other faculty.

As stated above, Adjunct Faculty positions are part-time temporary positions and therefore not eligible for inclusion in a bargaining unit due to the strict requirement in the Act and Resolution that bargaining units must be composed of positions that are “regular.” For this reason, all Adjunct Faculty positions should be stricken from the Petition.

In the alternative, should the Board deem Adjunct Faculty positions appropriate for bargaining, inclusion thereof as proposed by the Union is inappropriate. Faculty holding the titles Adjunct Lecturer, Adjunct Instructor, Adjunct Assistant Professor, Adjunct Associate Professor, and Adjunct Professor (“Adjunct Faculty”) have a primary professional responsibility that is outside UNM, or are UNM staff who may teach on an occasional, limited, course-by-course basis. This makes the employment conditions of Adjunct Faculty distinct from all other faculty included in the Petition because the primary professional responsibility of those faculty members is to UNM. In addition, unlike the rest of the faculty who are paid on a salary basis, Adjunct Faculty are paid on a course-by-course basis. Moreover, unlike other members of the faculty the Union seeks to represent, Adjunct Faculty are not eligible to vote in faculty governance matters. Therefore, the Board should dismiss the Petition because it fails to state an appropriate bargaining unit. Alternatively, the Board should order that appropriate bargaining units comprised of Adjunct Faculty employment positions that are eligible for inclusion under the Act and Resolution and that have a clear community of interest with each other be identified, and that a 30% showing of interest from each of those proposed bargaining units and from each appropriate geographic region (as provided more fully below) that are eligible for inclusion be presented.

c. There is insufficient community of interest in employment terms and employment conditions between Research Faculty and all other faculty.

As provided above, Research Faculty positions are primarily funded by external grants and contracts awarded to UNM (“soft money”) and are temporary positions not eligible for inclusion in a bargaining unit due to the strict requirement in the Act and Resolution that bargaining units must be composed of positions that are “regular.” For this reason, all soft-money funded Research Faculty positions should be stricken from the Petition.

Should the Board deem any Research Faculty positions appropriate for bargaining, inclusion thereof as proposed by the Union is inappropriate. Faculty holding the titles Research Lecturer, Research Assistant Professor, Research Associate Professor, and Research Professor (“Research Faculty”) are engaged primarily in research and only occasionally teach classes. In this regard their employment conditions are vastly different than those of all other faculty who spend a substantial portion of their time engaged in teaching students. In addition, Research Faculty primarily have extramural funding as the source of their compensation. None of the other positions the Union identifies in the Petition are compensated through extramural funds, the continuation of which are not guaranteed. Unlike other members of the faculty the Union seeks to represent, Research Faculty are not eligible to vote in faculty governance matters. For these reasons, Research Faculty do not share a clear and identifiable community of interest with the other faculty identified in the Petition. Therefore, the Board should dismiss the Petition because it fails to state an appropriate bargaining unit. Alternatively, the Board should order that appropriate bargaining units comprised of Research Faculty employment positions that are eligible for inclusion under the Act and Resolution, and that have a clear community of interest with each other be identified, and that a 30% showing of interest from each of those proposed bargaining units from each appropriate geographic region, as provided more fully below, that are eligible for inclusion be presented.

- d. There is insufficient community of interest in employment terms and employment conditions between employees at UNM’s Main Campus in Albuquerque and those working at the Branch Campuses in other geographic areas of the state.**

The Union also consolidates those positions whose employees work on UNM’s Main Campus in Albuquerque, NM with those positions whose employees work at the Branch Campuses in Gallup, Taos, Los Alamos, and Los Lunas (“Valencia”), NM. All of UNM’s branch campuses

are organized as two-year community colleges unlike the four-year or advance degree granting main campus. Branch campus faculty do not share the same terms and conditions of employment as those who work at Main Campus. UNM branch campus faculty generally do not perform research and branch faculty are subject to very different promotion and tenure guidelines. The terms and conditions of employment that differ include geography; supervisory structure²; and governing structure. The proposed employment positions at the Branch Campuses therefore do not share a sufficient community of interest with those at Main Campus. As such, the Board should dismiss the Petition because it fails to state an appropriate bargaining unit. Alternatively, the Board should order that the Union present a showing of interest of 30% from employees in each appropriate bargaining unit (based on tenure eligibility, adjunct status, and/or research status as provided above) from each of the Branch Campuses in addition to the same from Main Campus to verify that the Union has met its threshold showing.

III. There Is a Conflict of Interest in Composing the Bargaining Unit as Proposed by the Union that Is Inherently Inimical to a Collective Bargaining Relationship.

The Union's proposed representation of tenured/tenure-track positions and non-tenured/tenure-track positions and full and part-time positions in the same unit would create a conflict of interest that is inherently inimical to the collective bargaining relationship. The Union will not be able to fully and fairly represent the competing interests of these groups of employees who have different terms and conditions of employment and dissimilar interests in relation to the same limited College/School resources.

² Statutorily, each branch campus is required to maintain a local community college board that acts in an advisory capacity to the Board of Regents, enters into written agreements on behalf of the Board of Regents, approves an annual budget for the branch, certifies to county commissioners the tax levy, and conducts the elections for the tax levy.

For example, at an R1 university such as UNM, how could the proposed faculty groups rely upon the Union to simultaneously adequately advocate for the desire of adjunct faculty to teach an unlimited number of courses and enjoy protection from fluctuating needs for courses to be taught based upon enrollment, for full-time non-tenured/tenure-track faculty to secure desired overload courses, and for tenured/tenure-track faculty to teach the courses of their choosing within their desired schedules? Furthermore, for faculty members dependent on research funding, it is unlikely a tenured faculty member serving as a Principal Investigator will want to divert resources used to conduct research to increase the amount paid out of a grant or contract for temporary faculty assistance, which is a position temporary faculty may want the Union to take.


Because of significant actual and potential conflict of interest among the proposed members of the bargaining unit, the Board should dismiss the Petition as failing to state an appropriate bargaining unit. Alternatively, the Board should order that the Union present a showing of interest of 30% from employees in each appropriate bargaining unit (based on tenure eligibility, adjunct status, part-time/full-time status, and/or research status as provided above) from each campus to verify that the Union has met its threshold showing.

CONCLUSION

For all of the foregoing reasons, the Board should dismiss the Petition for failure to state an appropriate bargaining unit. Alternatively, the Board should order the Union to identify appropriate bargaining units with a clear community of interest with each other and submit a showing of interest of 30% of all employees who occupy eligible positions from within each proposed bargaining unit.

Respectfully submitted,

UNIVERSITY OF NEW MEXICO



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was mailed electronically and via first class mail this 18th day of March, 2019, to the following:

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