IN THE NEW MEXICO COURT OF APPEALS

CITY OF ALBUQUERQUE,

Petitioner-Appellee,

vs.

No. 28,846
Bernalillo County
Honorable William F. Lang
District Judge

JUAN B. MONTOYA, Director
of the PUBLIC EMPLOYEES
LABOR RELATIONS BOARD and
the PUBLIC EMPLOYEES LABOR
RELATIONS BOARD,

Respondents-Appellants,

and

AFSCME COUNCIL 18 and
LOCAL 624,

Real Parties In Interest-Cross Appellants.

APPELLEE'S RESPONSE TO BRIEF IN CHIEF

ROBERT M. WHITE
City Attorney
Shelley B. Mund
Assistant City Attorney
P.O. Box 2248
Albuquerque, New Mexico 87103
(505)768-4500
Attorneys for Appellee

TABLE OF CONTENTS

SUMMARY OF THE PROCEEDINGS

1. STATEMENT OF THE NATURE OF THE CASE.....1
2. STATEMENT OF THE COURSE OF PROCEEDINGS, DISPOSITION BELOW AND SUMMARY OF RELEVANT FACTS.....2

ARGUMENT.....6

POINT ONE

THE DISTRICT COURT WAS CORRECT IN DECIDING THAT THE CITY'S LABOR BOARD IS ELIGIBLE TO BE GRANDFATHERED UNDER NMSA 10-7E-26 BECAUSE PELRB HAS NO JURISDICTION OVER THE PROHIBITED PRACTICES COMPLAINT AT ISSUE.....6

A. Standard of Review
B. Argument

POINT TWO

THE DISTRICT COURT WAS CORRECT IN ISSUING THE WRIT OF PROHIBITION AND/OR SUPERINTENDING CONTROL BECAUSE THE PELRB LACKED JURISDICTION OVER THE PPC AT ISSUE HEREIN 12

A. Standard of Review
B. Argument

POINT THREE

THE DISTRICT COURT PROPERLY EXERCISED ITS JURISDICTION IN THIS CASE, AND EXHAUSTION OF ADMINISTRATIVE REMEDIES WAS NOT REQUIRED PRIOR TO THE ISSUANCE OF THE WRIT OF PROHIBITION AND SUPERINTENDING CONTROL, BECAUSE PELRB LACKS JURISDICTION OVER PPCs THAT ARISE UNDER AND ARE GOVERNED BY THE CITY OF ALBUQUERQUE'S LABOR MANAGEMENT RELATIONS ORDINANCE.....19

A. Standard of Review
B. Argument

POINT FOUR

THE DISTRICT COURT PROPERLY EXERCISED ITS JURISDICTION IN THIS CASE, BECAUSE THE ISSUES PRESENTED IN THE WRIT FOR SUPERINTENDING CONTROL WERE RIPE FOR ADJUDICATION.....23

A. Standard Of Review
B. Argument

POINT FIVE

THE DISTRICT COURT PROPERLY ISSUED THE EMERGENCY WRIT OF PROHIBITION AND/OR SUPERINTENDING CONTROL BECAUSE SUBSTANTIAL IMMINENT HARM WOULD HAVE OCCURRED IF PELRB CONTINUED TO ASSERT JURISDICTION OVER A PPC THAT AROSE UNDER AND, WAS GOVERNED BY, THE CITY'S LABOR MANAGEMENT RELATIONS ORDINANCE.....26

A. Standard Of Review
B. Argument

POINT SIX

THE DISTRICT COURT DID NOT DENY APPELLANTS THE RIGHT TO FILE AN ANSWER, AND, EVEN IF THE DISTRICT COURT MADE A PROCEDURAL ERROR, THE ERROR WAS HARMLESS BECAUSE IT DID NOT HARM APPELLANTS' SUBSTANTIAL RIGHTS OR PREJUDICE APPELLANTS.....29

A. Standard Of Review

B. Argument

CONCLUSION.....32

TABLE OF AUTHORITIES

New Mexico Constitution

Article VI, Section 13 of the New Mexico Constitution 1, 14

Statutes

NMSA 10-7E-1, et seq. 1
NMSA 10-7E-2.....18
NMSA Section 10-7E-26(A) 7,8
NMSA Section 10-7E-10 23
NMRA, Rule 1-061 30

New Mexico Cases

Bustos v. Bustos, 2000-NMCA-40, 128 N.M. 842, 999 P.2d 1074 .....7, 13, 20, 24, 26
Chavez v. Lovelace Sandia Health System, Inc. 2008-NMCA-104, 144 N.M. 578, 189 P.3d 711.....7, 13, 21, 25, 27
City of Deming v. Deming Firefighters Local 4521, 2007-NMCA-069, 141N.M.686, 160 P.3d, 595.....8, 9, 12, 17
District Court of the Second Judicial District v. McKenna, 118 N.M. 402, 881 P.2d 1387 (1994).....19
In re Eastburn, 121 NM 531, 914 P.2d 1028, (1996).....19
Edens v. Edens, 2005-NMCA-033, 137 N.M. 207, 109 P.3d. 295.....7, 13, 20, 24, 27
Gilmore v. District Court of the Fifth Judicial District, 35 N.M. 157, 291 P. 295 (1930) 15
Jaramillo v. Fisher Controls Co., Inc., 102 N.M. 614, 698 P.2d 887 (Ct. App. 1985) 6, 13, 20, 24, 26
Jewell v. Seidenbers, 82 N.M. 120, 477 P.2d 296 (1970) 30
Matter of Estate of Heeter, 113 N.M. 691, 831 P.2d 990 (Ct. App. 1992) 30
McDowell v. Napolitano, 119 N.M. 696, 700, 895 P.2d 218 (1995).....22
Meiboom v. Watson, 2000-NMSC-004, 128 N.M. 536, 994 P.2d 1154 .....7, 13, 20, 24, 26
Moriarity Public Schools v. NM Public Schools Insurance Authority, et al., 2001, NMCA-096, 131 N.M. 180 16
Sims v. Ryan, 1998-NMSC-019, 125 N.M. 357, 961 P.2d, 782, ...6, 13, 20, 24, 26

Southern Cal. Petroleum Corp v. Royal Indem., 70 N.M. 24, 369 P.2d 407 (1962) 30
Regents of UNM v. Federation of Teachers, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236 .....8, 11, 23
Roselli v. Rio Communities Service Station, Inc., 109 N.M. 509, 787 P.2d 428 (1990) 6, 13, 20, 24, 26
Specter v. Specter, 85 N.M. 112, 509 P.2d 879 (1973) 30
State v. Elinski, 1997-NMCA-117, 124 N.M. 261, 948 P.2d 1209.....7, 13, 20, 24, 27
State ex rel. Transcontinental Bus Serv., Inc. v. Carmondy, 53 N.M. 367, 378, 208 P.2d 1073, 1080 (1949).....19
State ex rel. Board of Com'rs of State Bar v. Kiker, 33 N.M. 6, 261 P. 816 (1927).....14, 16
State ex rel. Harvey, County Clerk v. Medler, 19 N.M. 252, 142 P. 376 (1914) 15, 19, 21
State ex rel. Heron v. District Court of First Judicial District, et al., 46 N.M. 296, 128 P.2d 454 (1942) 15
State ex rel. State Corporation Commn v. Zinn, 72 N.M. 29, 36, 380 P.2d 182 (1963).....19
Wright v. Brem, 81 N.M. 410, 467 P.2d 736 (1970) 30

Other Authorities

LMRO, R.O.A., Section 3-2-1, et seq. 2, 11
LMRO, R.O.A., Section 10-7E-26A.....11
Section 3-2-1 R.O.A. 1974 2
Section 3-2-15 R.O.A. 1974 2
Section 3-2-15 (D).....3,9

SUMMARY OF THE PROCEEDINGS

STATEMENT OF THE NATURE OF THE CASE

This appeal concerns the Second Judicial District Court's issuance of a Writ of Prohibition and or Superintending Control (the "Writ") and a permanent stay of proceedings against the Public Employees Labor Relations Board ("PELRB"), which prohibited the PELRB from assuming or exercising jurisdiction over a prohibited practices complaint ("PPC") that was originally filed and pending before the City of Albuquerque's Labor Management Relations Board (the "Labor Board"), on the basis that the City's Labor Board is entitled to be grandfathered under the provisions of the Public Employee's Bargaining Act ("PEBA"), NMSA 10-7E-1, et seq. In this appeal, this Honorable Court must decide whether the District Court's actions were a proper exercise of the jurisdiction conferred upon it under Article VI, Section 13 of the New Mexico Constitution. The City respectfully submits that the issuance of the Writ was an appropriate exercise of the District Court's jurisdiction under the extraordinary circumstances presented, while Appellants argue that the District Court's actions were improper and premature.

For the reasons discussed below, Appellee urges that the District Court did not err when it issued the Writ because the PELRB lacks

jurisdiction to hear the PPC at issue herein. Because the PELRB lacks jurisdiction to hear the PPC, Appellants argument that exhaustion of administrative remedies and/or deference to the administrative agency is without merit. In this instance, where the PELRB is wholly lacking jurisdiction, the petition for a writ of prohibition and/or superintending control was not used to circumvent the established procedures for seeking review of an administrative decision. Therefore, it was proper for the District Court to assert its jurisdiction over the cause, to prevent PERLB from improperly usurping the function of the City's Labor Board.

STATEMENT OF THE COURSE OF PROCEEDINGS, DISPOSITION AND SUMMARY OF RELEVANT FACTS

The facts adduced below show that as early as 1974, the City enacted a Labor-Management Relations Ordinance ("LMRO"), which governs collective bargaining within city government. Section 3-2-1 R.O.A. 1974. (RP 14) The LMRO establishes the City's Labor Board to oversee administration of the LMRO. (RP 23) The Labor Board consists of an appointee of labor by a committee of union representatives, an appointee of management by the mayor and a neutral appointed by the two other board members. Section 3-2-15 R.O.A. 1974. (RP 23) Pursuant to the LMRO, "during the absence of a member of the Board, the President of the City Council shall appoint an interim Board member from the public at large *with*

due regard to the representative character of the Board." Section 3-2-15(D) R.O.A. 1974. (*Emphasis added*). (RP 23)

On June 15, 2007, AFSCME filed the PPC at issue herein before the Labor Board, LB 07-21. (RP 28) The Labor Board conducted a full evidentiary hearing on the PPC. (RP 3) At the conclusion of the hearing before the Labor Board, the neutral board member recused himself from deciding the case. (RP 3) The two other Labor Board members failed to reach consensus to resolve the PPC. (RP 3)

Rather than permit the Labor Board to fill the position of the third board member through the process provided from under the LMRO, to hear the PPC at issue, on October 18, 2007, the union filed a new PPC before the PELRB because of the Labor Board's failure to reach consensus. (RP 32, 34) Thereafter, on November 9, 2007, the City moved to dismiss the PPC before the PELRB arguing that the PELRB lacked jurisdiction over the claim. (RP 38)

The PPC filed with the PELRB was set for hearing before the PELRB on January 2, 2008. (RP 81) In the meantime, PELRB was provided copies of the orders entered by the Labor Board, which provided an acceptable means to appoint a third member (neutral) to re-hear the PPC that was still pending before Labor Board (LB-07-21). (RP 83) Notwithstanding the fact

that the Labor Board was ready to proceed with a resolution of the PPC at issue herein, PELRB issued findings of fact and conclusions of law wherein it assumed jurisdiction over the PPC before the Labor Board, on February 7, 2008. (RP 91)

The City requested that the District Court grant the Writ, whether it be designated as a writ of prohibition or superintending control, to prevent PELRB from asserting its jurisdiction over a matter that was pending before the Labor Board, in contravention of the PEBA, which recognizes and requires grandfathering of the City's LMRO and City Labor Board. (RP 1) An immediate stay of the proceedings pending before the PELRB was necessary to prevent PELRB from proceeding to hear and, presumably, resolve LB 07-21. (RP 10) As indicated in PELRB's scheduling order, PELRB had already imposed pre-hearing deadlines and intended to conduct a hearing on the merits of the PPC at issue.[1] (RP 97) If the PELRB was permitted to hear LB 07-21, there was a very real possibility that results, which are inconsistent generally with other decisions of the Labor Board would occur. (RP 9) The City would have no meaningful opportunity to have the jurisdiction of the PELRB reviewed prior to its hearing of the PPC

[1] The City asserted, and the District Court agreed, that the City Labor Board is in the best position to hear and consider PPCs arising under the provisions of the LMRO. The PELRB is not in a position to know the city's labor ordinance or how it has been administered.

at issue herein because of the expiration of the established pre-hearing deadlines. (RP 9) Thus, a preemptory stay of proceedings before the PELRB was properly granted pending judicial resolution of the issues presented. (RP 102-103)

Under the circumstances presented, the District Court was correct to make the Writ permanent to avoid a disruption of the City's Labor Board. The Labor Board meets at least one time each month and conducts hearings on and resolves prohibited practices complaints pending before it. (RP 10) Without clarification as to the appropriate jurisdiction of the PELRB, any actions of the Labor Board could be called into question. (RP 10) It was, therefore, necessary and proper for District Court to settle the issues of the jurisdiction of the Labor Board so that no decision by that board is in question. (RP 10) In addition, if the PELRB was not prevented from asserting its jurisdiction in this case, then there was a very real possibility that other city PPC's would be filed with PELRB, a situation which would lead to multiple cases being filed in disparate forums (the Labor Board or the PELRB) leading to additional inconsistent results and, potentially, numerous appeals. (TR 4) If the PELRB had been permitted to proceed, the same issues would subsequently be raised on appeal, but the parties and the PELRB would have been required to expend substantial amounts of time and

resources in having a decision rendered. (RP 10) Under the circumstances presented, the District Court was correct in deciding that PELRB lacks jurisdiction over PPCs that arise under the City's LMRO, thereby preventing the wasting of resources with no substantial benefit gained by a lengthy administrative proceeding. (TR 15) The issues presented in this case needed to be resolved in a prompt manner by the judiciary, and the District Court's decision to make the preemptory Writ permanent should be affirmed.

ARGUMENT

POINT ONE

THE DISTRICT COURT WAS CORRECT IN DECIDING THAT THE CITY'S LABOR BOARD IS ELIGIBLE TO BE GRANDFATHERED UNDER NMSA 10-7E-26 BECAUSE PELRB HAS NO JURISDCITION OVER THE PROHIBITED PRACTICES COMPLAINT AT ISSUE

A. STANDARD OF REVIEW

On appeal, the court reviews the granting of a writ of superintending control or prohibition for an abuse of discretion. *Sims v. Ryan*, 1998-NMSC-019, ¶ 4, 125 N.M. 357, 961 P.2d, 782. An abuse of discretion occurs when the trial court's decision is contrary to logic, reason, and effect of facts. *Roselli v. Rio Communities Service Station, Inc.*, 109 N.M. 509, 512, 787 P.2d 428, 431 (1990); *Jaramillo v. Fisher Controls Co., Inc.*, 102

N.M. 614, 623, 698 P.2d 887, 896 (Ct. App. 1985); *Bustos v. Bustos*, 2000-NMCA-40, ¶ 24, 128 N.M. 842, 999 P.2d 1074. In order to reverse the trial court, the appellant must show that the court's decision is outside the bounds of reason or that the court's action is arbitrary, fanciful, or unreasonable. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154; *Edens v. Edens*, 2005-NMCA-033, ¶ 13, 137 N.M. 207, 109 P.3d. 295. A trial court abuses its discretion when it exercises its discretion based on a misunderstanding of the law. *See State v. Elinski,* 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Chavez v. Lovelace Sandia Health System, Inc.* 2008 -NMCA- 104, ¶ 7, 144 N.M. 578, 586-587, 189 P.3d 711, 719 - 720 (internal quotation marks and citations omitted).

B. ARGUMENT

In the case at bar, the lower court's decision to issue the Writ was necessarily premised upon the legal finding that the City's labor management relations system is grandfathered under the PEBA, NMSA 10-7E-26(A). Pursuant to the PEBA:

> A public employer other than the state that prior to October 1, 1991 adopted by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives may continue to operate under those provisions and procedures. Any substantial change after January 1, 2003 to any ordinance, resolution or charter amendment shall subject the public employer to full compliance with the provisions of Subsection B of Section 26 [10-7E-26 NMSA 1978] of the Public Employee Bargaining Act.

NMSA, Section 10-7E-26A.

The intent of the grandfather clause is to allow something new while preserving something old. *Regents of UNM v. Federation of Teachers,* 1998-NMSC-020, ¶ 25-26, ¶ 47, 125 N.M. 401, 962 P.2d 1236. In determining whether an existing provision of a local collective bargaining system is eligible for grandfathering under PEBA, the court will review specific provisions of the local body's policy to determine if that part of the local system comports with the overall intent of the PEBA. *City of Deming v. Deming Firefighters Local 4521,* 2007-NMCA-069; *Regents of UNM v. Federation of Teachers*, 1998-NMSC-020, ¶ 35-36.

The decision in *Deming* teaches that it is not necessary for an existing labor relations system to be identical to the PEBA in order for a system to be grandfathered. *Deming, supra,* at ¶ 23. The grandfather clause "does not

provide for a minimal requirement with respect to the quality of the [old] system or provide any qualitative measure as to the effectiveness of the collective bargaining." *Deming, supra,* at ¶ 20. At issue in this case is the provision in the City's LMRO that calls for the President of the City Council to appoint a member of the Board in the absence of a regular member, bearing in mind the representative character of the Board.[2]

At the time the City sought the Writ, and continuing to the present time, the City Labor Board is in the process of resolving the issues raised in LB 07-21, by seeking appointment of a member to fill the position of the absentee board member in a manner that is consistent with the representational character of the Board. Contrary to Appellants' assertions, the relevant provisions of the LMRO do not give management an unfettered right to place two representatives of management on the Board in the case of an absence of a Board member. Rather, the LMRO provides that the City Council President must defer to the representational nature of the Board if, and when, a substitute Board member is appointed. The City, therefore, contends that the LMRO meets the requirements of the PEBA because under Section 3-2-15(D) R.O.A., the representational character of the Labor Board is preserved even if the City Council President appoints a Board member in

[2] LMRO Section 3-1-15 (D)

the event of the absence of a member. Under these circumstances, there was no reason for the PELRB to assume jurisdiction over the PPC pending before the City's Labor Board. The unions were being provided with the full and fair opportunity to have LB 07-21 heard and resolved by a fair and impartial Labor Board at all stages of the proceedings. (RP 9) At every juncture, the unions were provided with the opportunity to participate in the process of selecting the neutral member of the Labor Board. (RP 9) The fact that the unions declined to participate in selecting a neutral third member should not vest jurisdiction in the PELRB. (RP 9)

The question of whether the City's labor relations system is entitled to be grandfathered under PEBA is a question of law that was properly decided by the District Court. The City argued, and the District Court necessarily agreed, that the grievance process established by the LMRO was adequate under PEBA, and thus entitled to be grandfathered. The District Court was correct in deciding that the grievance process provided to City employees is sufficient under the grandfather clause.

Given that the question of the intent and scope of the grandfather clause was a purely legal issue, deference to the statutory adjudicative agency was not required in this case: to wit, in this case the District Court correctly determined that it had the prerogative to decide the question of law

underlying the jurisdictional issue presented, without deference to the agency's determination of the jurisdictional question presented. As the Supreme Court said in *Regents*:

> If an agency decision is based upon the interpretation of a particular statute, the court will accord *some* deference to the agency's interpretation, especially if the legal question implicates agency expertise. However, **the court can always substitute its interpretation of the law for that of the agency's 'because it is the function of the courts to interpret the law.'**

Regents, *supra*, 1998-NMSC-020 at ¶ 16 - 17 (emphasis added).

The authority of the Labor Board arises from the fact that the City is a home rule municipality, there is no dispute that the City of Albuquerque has enacted its system of provisions that allow for its employees to participate in collective bargaining prior to October 1, 1991, and there has been no substantial change to the LMRO since 2003. See, LMRO, R.O.A., Section 3-2-1, et seq. Pursuant to the grandfathering provision in § 10-7E-26A, the LMRO is the only applicable provision. As required by PEBA, the City's LMRO establishes an effective system of provisions that permits employees to form, join or assist any labor organization for the purpose of collective bargaining through exclusive representatives. As discussed herein, PEBA does not provide that the LMRO is applicable only in the absence of a

difference between the provisions of the LMRO and PEBA. Rather, under *Deming* and its progeny, PEBA provides that if the LMRO was in existence prior to 1991, the labor board of the home rule municipality may continue to operate without reference to PEBA so long the local board is not inconsistent with the overall intent of PEBA. *Deming, supra,* 2007-NMCA-069, at ¶ 12. Under *Deming*, it is clear that the City's labor system, which was in existence prior to 1991, is entitled to be grandfathered even if it is not identical to the PEBA system, again, so long as it is consistent with the overall intent of PEBA. The City asserts, and the District Court agreed, that the relevant provisions of the LMRO meet PEBA's grandfather requirements, so that PEBA is not applicable to the PPC and, therefore, the PELRB lacked jurisdiction over any proceeding under the City's LMRO. The District Court correctly concluded that there was no legal authority under PEBA which gives the PELRB any authority over the City of Albuquerque's LMRO.

POINT TWO

THE DISTRICT COURT WAS CORRECT IN ISSUING THE WRIT OF PROHIBTION AND/OR SUPERINTENDNING CONTROL BECAUSE THE PELRB LACKED JURISICTION OVER THE PPC AT ISSUE HEREIN

A. STANDARD OF REVIEW

On appeal, the court reviews the granting of a writ of superintending control or prohibition for an abuse of discretion. *Sims v. Ryan*, 1998-NMSC-019, ¶ 4, 125 N.M. 357, 961 P.2d, 782. An abuse of discretion occurs when the trial court's decision is contrary to logic, reason, and effect of facts. *Roselli v. Rio Communities Service Station, Inc.*, 109 N.M. 509, 512, 787 P.2d 428, 431 (1990); *Jaramillo v. Fisher Controls Co., Inc.*, 102 N.M. 614, 623, 698 P.2d 887, 896 (Ct. App. 1985); *Bustos v. Bustos*, 2000-NMCA-40, ¶ 24, 128 N.M. 842, 999 P.2d 1074. In order to reverse the trial court, the appellant must show that the court's decision is outside the bounds of reason or that the court's action is arbitrary, fanciful, or unreasonable. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154; *Edens v. Edens*, 2005-NMCA-033, ¶ 13, 137 N.M. 207, 109 P.3d. 295. A trial court abuses its discretion when it exercises its discretion based on a misunderstanding of the law. *See State v. Elinski,* 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Chavez v. Lovelace Sandia Health System, Inc.* 2008 -NMCA- 104, ¶ 7, 144

N.M. 578, 586-587, 189 P.3d 711, 719 - 720 (internal quotation marks and citations omitted).

B. ARGUMENT

The New Mexico Constitution grants broad jurisdiction to the District Courts in the state. Specifically, Art. VI, Section 13 of the New Mexico Constitution provides:

> The district court shall have **original jurisdiction in all matters and causes not excepted in this constitution**, and such jurisdiction of special cases and proceedings as may be conferred by law, and appellate jurisdiction of all cases originating in inferior courts and tribunals in their respective districts, and **supervisory control over the same. The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo waranto, certiorari, prohibition and all other writs, remedial or otherwise in the exercise of their jurisdiction**; provided, that no such writs shall issue directed to judges or courts of equal or superior jurisdiction.

(Emphasis added). For the purpose of the exercise of their jurisdiction of whatever kind or nature, the district courts are specifically authorized to issue various writs, including the writ of prohibition. See, *State ex rel. Board of Com'rs of State Bar v. Kiker*, 33 N.M. 6, 261 P. 816, 816 (1927).

The parties agree that PELRB is a quasi-judicial tribunal that is inferior to the District Court. As discussed in the previous section (Point One), the City asserts that the PELRB lacked jurisdiction to hear the PPC.

Because the PELRB lacked such jurisdiction, the issuance of the Writ was proper. The proposition that a writ of prohibition will issue against an inferior tribunal when the inferior tribunal lacks jurisdiction is well settled. See, *State ex rel. Harvey, County Clerk v. Medle*r, 19 N.M. 252, 142 P. 376 (1914); *Gilmore v. District Court of the Fifth Judicial District*, 35 N.M. 157, 291 P. 295, 297 (1930); *State ex rel. Heron v. District Court of First Judicial District, et al.,* 46 N.M. 296, 128 P.2d 454 (1942). Where an inferior tribunal is about to do some act wholly unauthorized by law, or in excess of its jurisdiction, a writ of prohibition may issue to prevent the inferior tribunal from asserting jurisdiction. "If the inferior court or tribunal has jurisdiction of both the subject matter and of the person where necessary, the writ of prohibition will not issue, but lacking such jurisdiction the writ will issue as a matter of right." *Id.*. That is exactly what happened in the case at bar. The City argued, and the District Court agreed, that the PERLB had no jurisdiction over a PPC filed before the City's Labor Board. (TR15) Therefore, the issuance of the Writ was proper, as a matter of right. *Id.*

The City urges that the District Court's issuance of the Writ of Prohibition in this matter was a proper exercise of the Court's plenary jurisdiction over a lower tribunal. In this case, the issuance of the Writ of Prohibition and/or Superintending Control was not an exercise of the district

court sitting in its appellate capacity but rather, either the second class of jurisdiction (supervisory control), or the third class of jurisdiction (power to issue writs). Accord, *Kiker, supra*, 33 N.M. at 7 (a district court is authorized to issue writs in exercise of original jurisdiction, its appellate jurisdiction as well as independently through its third class of jurisdiction).

Appellants argue that the District Court could not issue the writ of prohibition because "no 'inferior tribunal' has yet acted." According to Appellants, PERLB's ability to adjudicate the underlying PPC was "improperly truncated" by the District Court's issuance of the Writ prohibiting adjudication by the PERLB. Appellant's argument misses the point, as it rests solely upon the fact that the PELRB had not issued a final decision on the jurisdictional/PEBA grandfather clause issues that are raised in this case. Appellants focus upon the fact that PELRB had not issued a final appealable decision reveals that it does not distinguish between the district court's original plenary jurisdiction, its appellate jurisdiction or it's inherent jurisdiction to issue writs. As in the case of *Moriarity Public Schools v. NM Public Schools Insurance Authority*, et al., 2001-NMCA-096, ¶ 31, 131 N.M. 180, "[t]he distinctions among the original, appellate and writ jurisdiction have significance in this case." *Moriarity Public Schools, supra*, 131 N.M. at 186. Appellant's argument that the court's action was

premature, insofar as it asserts that appellate jurisdiction did not lie until there was a final resolution at PERLB is without merit.

Finally, Appellants rely upon *City of Deming v. Deming Firefighters Local 4521*, *supra*, to support its position that the PELRB should make the initial determination of its jurisdiction. *Deming* is inapposite, however, because the jurisdictional conflict in *Deming* involved a jurisdictional conflict between the PELRB and the City of Deming's labor board. *Deming*, *supra,* at ¶ 15. The *Deming* court decided that PELRB, and not the City, should initially make the decision regarding PELRB's jurisdiction. *Id*,. at ¶ 15-17. In this very distinguishable case, the jurisdictional conflict lies between the PELRB and the District Court, and the District Court appropriately exercised its prerogative to make the jurisdictional determination at issue. The resolution of the jurisdictional question presented in this case required a determination as to whether the City's labor management system is eligible to be 'grandfathered' under PEBA, a question that the District Court decided in the affirmative.

Appellants correctly point out that exceptional circumstances are required for extraordinary writs. The City argued, and the District Court agreed, that exceptional circumstances justified the issuance of the extraordinary Writ. (RP 102-103) Specifically, there was a substantial risk

of confusion and disruption to the City's labor management relations system if the PERLB was allowed to assert its jurisdiction over a PPC that was not within its jurisdiction, as well as the risk of undue burden, expense and inconsistent results. (RP 10) If PELRB were permitted to wrest control of the City's Labor relations system in this case, an appeal would not provide plain, speedy or adequate remedy. And, if PELRB was permitted to assert jurisdiction in this case, it is reasonably foreseeable that some future PPC cases will be filed before PELRB, while others continue to be filed through the City's system.[3] An appeal under these circumstances is not adequate. Had the issue of jurisdiction not been settled swiftly confusion, delay and inconsistent results would surely follow, a result contrary to the purpose of PEBA to protect public interest by ensuring the orderly operation and functioning of the state and its political subdivisions. NMSA 10-7E-2. Therefore, it was proper for the Court to provide a prompt resolution of the legal issue presented, particularly when one considers the alternative, i.e.,

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[3] The city maintains collective bargaining relationships with seven (7) collective bargaining units. At this juncture, only one bargaining unit, AFSCME Council 18, Local 624 seeks to have its cases heard by the PELRB. All tolled there are approximately 65 PPC cases currently pending before the Labor Board. In 2009, as of May 20, 2009 there have been 27 PPCs filed with the Labor Board (nearly 5 PPCs per month). One can easily foresee that a prolonged uncertainty regarding the jurisdiction and power of the Labor Board could result in a backlog of cases in one or both agencies.

that cases would be filed in both agencies, leading to the possibility of needless delay, confusion and inconsistent result. The need to preserve and maintain the integrity of the City's Labor Board process was a sufficiently exceptional circumstance to support the issuance of the Writ. See, e.g., *District Court of the Second Judicial District v. McKenna*, 118 N.M. 402, 405, 881 P.2d 1387 (1994); *State ex rel. Transcontinental Bus Serv., Inc. v. Carmondy,* 53 N.M. 367, 378, 208 P.2d 1073, 1080 (1949); *State ex rel. State Corporation Commn v. Zinn,* 72 N.M. 29, 36, 380 P.2d 182 (1963).

Furthermore, the City's right to appeal does not preclude relief by superintending control. *In re Eastburn*, 121 N.M. 531, 537, 914 P.2d 1028, 1029 (1996) (recognizing that the availability of an appeal in an individual case does not necessarily preclude relief by writ of superintending control if the appeal is inadequate to address the harm) . *See, also Harvey*, *supra*, 142 P. at 378 (if it is manifest that an appeal would afford an inadequate remedy, the right of appeal does not, of itself, afford sufficient ground for refusing relief by prohibition.)

POINT THREE

THE DISTRICT COURT PROPERLY EXERCISED ITS JURSDICTION IN THIS CASE, AND EXHAUSTION OF ADMINISTRATIVE REMEDIES WAS NOT REQUIRED PRIOR TO THE ISSUANCE OF THE WRIT OF PROHIBITION AND

SUPERINTENDING CONTROL, BECAUSE PELRB LACKS JURISDICTION OVER PPCs THAT ARISE UNDER AND ARE GOVERNED BY THE CITY OF ALBUQUERQUE'S LABOR MANAGEMENT RELATIONS ORDINANCE

A. STANDARD OF REVIEW

On appeal, the court reviews the granting of a writ of superintending control or prohibition for an abuse of discretion. *Sims v. Ryan*, 1998-NMSC-019, ¶ 4, 125 N.M. 357, 961 P.2d, 782. An abuse of discretion occurs when the trial court's decision is contrary to logic, reason, and effect of facts. *Roselli v. Rio Communities Service Station, Inc.*, 109 N.M. 509, 512, 787 P.2d 428, 431 (1990); *Jaramillo v. Fisher Controls Co., Inc.*, 102 N.M. 614, 623, 698 P.2d 887, 896 (Ct. App. 1985); *Bustos v. Bustos*, 2000-NMCA-40, ¶ 24, 128 N.M. 842, 999 P.2d 1074. In order to reverse the trial court, the appellant must show that the court's decision is outside the bounds of reason or that the court's action is arbitrary, fanciful, or unreasonable. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154; *Edens v. Edens*, 2005-NMCA-033, ¶ 13, 137 N.M. 207, 109 P.3d. 295. A trial court abuses its discretion when it exercises its discretion based on a misunderstanding of the law. *See State v. Elinski,* 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted

de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Chavez v. Lovelace Sandia Health System, Inc.* 2008 -NMCA- 104, ¶ 7, 144 N.M. 578, 586-587, 189 P.3d 711, 719 - 720 (internal quotation marks and citations omitted).

B. ARGUMENT

Another related issue raised by Appellants is the issue of exhaustion of remedies. According to Appellants, the District Court should have allowed the PPC filed before the PELRB to proceed to full hearing before the Board, and then into the appeal process provided for under the PEBA, if necessary. The jurisprudence of this State, as discussed above and incorporated herein, does not support Appellants' position. For example, in *Harvey* the Court said the "if it is manifest that an appeal would afford an inadequate remedy, the right of appeal does not, of itself afford sufficient ground for refusing relief by prohibition." *Harvey*, supra, 142 P. at 378.

If, arguendo, the PELRB lacked jurisdiction to hear the PPC in the first instance, then the cases relied upon by Appellant do not support Appellants' position. Clearly, none of the cases relied upon by Appellant support the proposition that exhaustion of administrative remedies is

required when the administrative body completely lacks jurisdiction over the cause (as in the case at bar).

As discussed in Point One and Point Two, above, Appellant's assertion that "PELRB's jurisdiction to first hear and decide the PPC at issue ...is absolute" is not correct. See, Appellants' Brief in Chief at p. 16. As the *McDowell v. Napolitano* case cited by Appellants clearly states, "exhaustion of administrative remedies is absolute 'where a claim is cognizable in the first instance by an administrative agency alone...judicial interference is withheld until the administrative process has run its course.'" *McDowell v. Napolitano*, 119 N.M. 696, 700, 895 P.2d 218 (1995). Such is not the case at bar because the PPC filed with PERLB was not 'cognizable in the first instance.' In this case, the PELRB lacked jurisdiction to hear the PPC in the first instance. Where PELRB lacked jurisdiction over the PPC, as it did in this case, judicial interference was warranted and appropriate. Therefore, exhaustion for administrative remedies was not required prior to District Court hearing and deciding the City's petition for Writ.

Arguing further, Appellee asserts that this is not a case involving special agency expertise and, therefore, exhaustion is not required prior to

seeking redress from the District Court.[4] In this instance, the Court was called upon to decide a legal issue of first impression, to wit, whether the grandfather clause applies to the City's LMRO. Where the question to be decided is a legal issue, deference to administrative expertise is not required. See, *Regents*, *supra*, 1998-NMSC-020, at ¶ 16-17 (emphasis added). In this case, the issues presented were issues of law that required judicial resolution. If the PELRB was permitted to proceed, the same issue would have subsequently been raised in an appeal, but the parties and the PELRB would have expended substantial amounts of time and resources in having a decision rendered. If the PELRB was subsequently determined to lack jurisdiction, those resources would have been wasted with no substantial benefit gained by the administrative proceedings. Prompt judicial oversight was required because it was impracticable to wait until PELRB heard and considered the PPC.

POINT FOUR

THE DISTRICT COURT PROPERLY EXERCISED ITS JURISDICTION IN THIS CASE, BECAUSE THE ISSUES PRESENTED IN THE WRIT FOR SUPERINTENDING

[4] Appellee notes that Appellant incorrectly cites NMSA Section 10-7E-10 as applicable in this case. NMSA Section 10-7E-10 does not apply to local boards that are entitled to be grandfathered under NMSA 10-7E-26(a), but, rather, NMSA 10-7E-10 applies only to local boards created pursuant to the authority provided in PEBA (e.g., local boards created after 1991).

CONTROL WERE RIPE FOR ADJUDICATION

A. STANDARD OF REVIEW

On appeal, the court reviews the granting of a writ of superintending control or prohibition for an abuse of discretion. *Sims v. Ryan*, 1998-NMSC-019, ¶ 4, 125 N.M. 357, 961 P.2d, 782. An abuse of discretion occurs when the trial court's decision is contrary to logic, reason, and effect of facts. *Roselli v. Rio Communities Service Station, Inc.*, 109 N.M. 509, 512, 787 P.2d 428, 431 (1990); *Jaramillo v. Fisher Controls Co., Inc.*, 102 N.M. 614, 623, 698 P.2d 887, 896 (Ct. App. 1985); *Bustos v. Bustos*, 2000-NMCA-40, ¶ 24, 128 N.M. 842, 999 P.2d 1074. In order to reverse the trial court, the appellant must show that the court's decision is outside the bounds of reason or that the court's action is arbitrary, fanciful, or unreasonable. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154; *Edens v. Edens*, 2005-NMCA-033, ¶ 13, 137 N.M. 207, 109 P.3d. 295. A trial court abuses its discretion when it exercises its discretion based on a misunderstanding of the law. *See State v. Elinski,* 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law."

Chavez v. Lovelace Sandia Health System, Inc. 2008 -NMCA- 104, ¶ 7, 144 N.M. 578, 586-587, 189 P.3d 711, 719 - 720 (internal quotation marks and citations omitted).

B. ARGUMENT

Appellants assertion to the contrary, the case at bar was ripe for decision by the District Court when the Writ issued. As discussed in the preceding sections, the PELRB was about to improperly assert its jurisdiction over the PPC at issue. Therefore, it was necessary and appropriate for the Second Judicial District Court to assume jurisdiction over the case in order to prevent PELRB's undue wresting of jurisdiction from the City's Labor Board. In this instance, where the PERLB is wholly lacking in jurisdiction *ab initio*, the cases relied upon by Appellants are distinguishable: in each of the cases cited by Appellant, the administrative agency involved properly had jurisdiction over the underlying cause at issue.

Appellants' contention that the PELRB should be permitted to resume its proceedings and to ultimately decide the jurisdictional and other issues in this case misses the point. This was not a case of 'premature interference' by the Second Judicial District Court. This is not a case that involved judicial entanglement in an 'abstract disagreement.' This case involved a

live conflict, the resolution of which was necessary in order to prevent harm to and disruption of the functioning of the Labor Board.

POINT FIVE

THE DISTRICT COURT PROPERLY ISSUED THE EMERGENCY WRIT OF PROHIBITION AND/OR SUPERINTENDING CONTROL BECAUSE SUBSTANTIAL IMMINENT HARM WOULD HAVE OCCURRED IF PELRB CONTINUED TO ASSERT JURISDICTION OVER A PPC THAT AROSE UNDER AND, WAS GOVERNED BY, THE CITY'S LABOR MANAGEMENT RELATIONS ORDINANCE

A. STANDARD OF REVIEW

On appeal, the court reviews the granting of a writ of superintending control or prohibition for an abuse of discretion. *Sims v. Ryan*, 1998-NMSC-019, ¶ 4, 125 N.M. 357, 961 P.2d, 782. An abuse of discretion occurs when the trial court's decision is contrary to logic, reason, and effect of facts. *Roselli v. Rio Communities Service Station, Inc.*, 109 N.M. 509, 512, 787 P.2d 428, 431 (1990); *Jaramillo v. Fisher Controls Co., Inc.*, 102 N.M. 614, 623, 698 P.2d 887, 896 (Ct. App. 1985); *Bustos v. Bustos*, 2000-NMCA-40, ¶ 24, 128 N.M. 842, 999 P.2d 1074. In order to reverse the trial court, the appellant must show that the court's decision is outside the bounds of reason or that the court's action is arbitrary, fanciful, or unreasonable. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154;

Edens v. Edens, 2005-NMCA-033, ¶ 13, 137 N.M. 207, 109 P.3d. 295. A trial court abuses its discretion when it exercises its discretion based on a misunderstanding of the law. *See State v. Elinski,* 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. Accordingly, we may characterize as an abuse of discretion a discretionary decision that is premised on a misapprehension of the law." *Chavez v. Lovelace Sandia Health System, Inc.* 2008 -NMCA- 104, ¶ 7, 144 N.M. 578, 586-587, 189 P.3d 711, 719 - 720 (internal quotation marks and citations omitted).

B. ARGUMENT

In Point Four of Appellant's Brief in Chief, Appellant argues that the Court should not have issued the Writ because there was no showing of an "emergency." Appellee disagrees, because the disruption that would have been engendered by the PERLB's improper assumption of jurisdiction over the PPC at issue would have caused a substantial disruption to the Labor Board process. (RP 9)

As described above, the City's Labor Management Relations Ordinance has been in existence since 1974. An immediate stay of the proceedings pending before the PELRB was necessary to prevent the

PELRB from proceeding to hear and, presumably, resolve LB 07-21. As indicated in PELRB's scheduling order, PELRB had already imposed pre-hearing deadlines and intended to conduct a hearing on the merits of the PPC at issue. [5] If the PELRB was permitted to hear LB 07-21, there was a very real possibility that results, which are inconsistent generally with other decisions of the Labor Board, may occur. (RP 9) The City would have no meaningful opportunity to have the jurisdiction of the PELRB reviewed prior to its hearing of the PPC at issue herein because of the expiration of the established pre-hearing deadlines. (RP 9) Thus, a stay of proceedings before the PELRB was properly granted pending judicial resolution of the issues presented.

Until the jurisdiction of the Labor Board was settled by the Court, any decision by that board is in question. (RP 10) The Labor Board meets at least one time each month and conducts hearings on and resolves prohibited practices complaints pending before it.[6] (RP 10) Without clarification as to

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[5] The City asserted, and the District Court agreed, that the City is in the best position to hear and consider PPCs arising under the provisions of the LMRO. The PELRB is not in a position to know the city's labor ordinance or how it has been administered.

[6] The Labor Board oversees relations between the City and seven (7) bargaining units. There are approximately 65 cases currently cases pending before the Labor Board. In 2008, forty-seven (47) PPC cases were filed with the Labor Board. This year, twenty-seven (27) cases had been filed as of May 20, 2009.

the appropriate jurisdiction of the PELRB, any actions of the Labor Board may be invalidated. (RP 9) That is to say, if the PELRB was not prevented from asserting its jurisdiction in this case, then there is a very real possibility that other city PPC's would be filed with PELRB, a situation which would lead to multiple cases being filed in disparate forums (the Labor Board or the PELRB) leading to additional inconsistent results and, potentially, numerous appeals. Again, if the PELRB was permitted to proceed, the same issues would have subsequently been raised on appeal, but the parties and the PELRB would have been required to expend substantial amounts of time and resources in having a decision rendered. If the PELRB was subsequently determined to lack jurisdiction, those resources would have been wasted with no substantial benefit gained by proceeding. The issue presented in this case needed be resolved in a prompt manner by the judiciary.

POINT SIX

THE DISTRICT COURT DID NOT DENY APPELLANTS THE RIGHT TO FILE AN ANSWER, AND, EVEN IF THE DISTRICT COURT MADE A PROCEDURAL ERROR, THE ERROR WAS HARMLESS BECAUSE IT DID NOT HARM APPELLANTS' SUBSTANTIAL RIGHTS OR PREJUDICE APPELLANTS

A. STANDARD OF REVIEW

Appellate courts review a procedural error by the lower court on appeal under the harmless error standard of review. NMRA, Rule 1-061; *Southern Cal. Petroleum Corp v. Royal Indem.,* 70 N.M. 24, 369 P.2d 407 (1962). The burden is on the complaining party to demonstrate they were prejudiced by the claimed error or that their substantial rights have been harmed. *Jewell v. Seidenbers*, 82 N.M. 120, 124, 477 P2d 296, 300 (1970); *Specter v. Specter,* 85 N.M. 112, 113, 509 P2d 879, 880 (1973). On appeal, a procedural error will not be corrected if the correction will not change the result. *Wright v. Brem,* 81 N.M. 410, 411, 467 P.2d 736, 737 (1970); *Matter of Estate of Heeter,* 113 N.M. 691, 695, 831 P.2d 990, 994 (Ct. App. 1992).

B. ARGUMENT

Appellants' POINT FIVE suggests that the District Court denied Appellants the right to file an answer before issuing its order. However, Appellants were allowed (and encouraged) by the court to file an answer. While the court verbally denied the Appellant's motion to dismiss and made the writ sought by the City permanent at the May 1, 2008 hearing, the final order was not issued until after Appellants' Answer was filed. Furthermore, the court was not hostile to providing another hearing after the Appellants'

Answer was filed, if necessary. If the court erred by issuing its decision verbally before receiving the Appellants' Answer, such error was harmless.

The relevant timeline is outlined in the "SUMMARY OF PROCEEDINGS" section of Appellants' Brief-In-Chief. On February 29, 2008, the District Court issued the Writ of superintending control, which stayed all proceedings before the PELRB. On May 1, 2008 a hearing was held to decide if the Writ would be made permanent and to hear Appellants' Rule 12(B) Motion To Dismiss. Appellants presented their arguments to the court (T.R. 7-14), and the court denied Appellants' 12(B) motion. (RP 213-214) Appellants filed an Answer on May 12, 2008 and the Court's final order was issued June 26, 2008. (RP 169-177)

After the denial of the 12(B) Motion in the hearing on May 1, 2008, Appellants sought clarification from the court regarding their procedural right to file an Answer. (T.R. 16:1-4.) The Court instructed Appellants to: "File an answer." (T.R. 16:5.) To make sure Appellant knew the Court's position, the judge reiterated: "File whatever it is you need to file, then, that's fine. Thank you. You're right, file what you need to file." (T.R. 17:1-2.) Finally, the Court acknowledged that if issues were raised in the answer that were worthy of another hearing, the Court would schedule a hearing. (T.R. 18:3-4.)

Appellants' argument that the District Court denied their opportunity to file an Answer is undercut by the record that shows the Court encouraged Appellants to file an Answer, Appellants filed their Answer, and the Court was not hostile to holding a hearing based on their Answer. Appellants have not met their burden by showing that they were prejudiced by perceived technical errors made by the District Court. Therefore, this Honorable Court should find that if the District Court erred, such error was harmless.

CONCLUSION

For the reasons discussed herein, Appellee asks this Honorable Court to affirm the District Court's decision to assert its jurisdiction over the cause, to prevent PERLB from improperly usurping the function of the City's Labor Board.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, Esq.

Shelley B. Mund
Assistant City Attorney
Attorney for Petitioner City of Albuquerque
P.O. Box 2248
Albuquerque, N.M. 87103
(505) 768-4500

I hereby certify that on the
21st day of May, 2009,
a true and correct copy of the
foregoing pleading was served,
by U.S. Mail, to:

Shane Youtz, Esq.
Attorney for AFSCME Council
18 and Local 624
900 Gold S.W.
Albuquerque, N.M. 87102

Andrea R. Buzzard, Esq.
Assistant Attorney General
State of New Mexico
Attorney for Respondents
P.O. Drawer 1508
Santa Fe, N.M. 87501

Shelley B. Mund
Assistant City Attorney