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Re: *Kathy Torres v. Socorro Electric Cooperative, Inc., Paul Bustamante and Charles Wagner*;
D-725-CV-2011-120

Dear Counsel:

This letter is my written decision on a number of outstanding motions brought before this court. I have had an opportunity to review the pleadings, legal argument and authority.

Plaintiff's Motion for Partial Summary Judgment as to Count VI:

1. Plaintiff was a long term employee of SEC.
2. SEC members voted in April or 2010 to amend its by-laws to require the Board of Trustees (Board) to comply with the NM Open Meetings Act (OMA).
3. On August 25, 2010, the Board voted to terminate Plaintiff's employment and ceased compensating the Plaintiff.
4. The August, 2010 meeting did not comply with the OMA, and, therefore the action taken at that meeting to terminate Plaintiff's employment was invalid.
5. On August 22, 2011, nearly one year later, the Board met and attempted to retroactively ratify all of its prior actions.
6. Pursuant to the present opinion in *Palenick v. City of Rio Rancho*, 2012 N.M.C.A., the Board cannot retroactively ratify its actions as it attempted to do on August 22, 2011.



7. This Court acknowledges that the Supreme Court has granted certiorari on the Palenick case; but, the Court of Appeals case is, nevertheless, precedent at this time, and is controlling.
8. The Plaintiff's Motion for Partial Summary Judgment should, therefore, be granted as to the liability of the Board for violating the provisions of its amended by-laws relative to its invocation of the OMA. The amount of damages is yet to be determined.

Defendant's (SEC) Motion for Partial Summary Judgment (Counts V, VI, and VII) Based on Plaintiff's At Will Status

1. This Court has already dealt with the Plaintiff's Count VI above by granting Partial Summary Judgment. Therefore, the Court denies Defendants' Motion for Partial Summary Judgment as to Count VI.
2. This Court hereby denies the Defendants' Motion for PSJ as to Counts V and VII as issues of material fact exist as to the employment status of the Plaintiff. This Court acknowledges that the Plaintiff may need to make an election at trial as to her theory (theories) of recovery.

Defendant's (SEC) Motion to Dismiss Count III (sic – should be Count VI) is denied as this Court has jurisdiction over Count VI and has decided the issue as set forth above in granting PSJ in favor of Plaintiff.

Defendant's (Wagner) Motion for Protective Order:

1. As to the May 26, 2010, August 13, 2010 and August 25, 2010 portions of the tape and any transcripts, this Court grants the Defendant's Motion. I rule basically following *Hartman v. El Paso Natural Gas*, 107 NM 679 (S.Ct. 1988), following the case of *Hartford Fire Insurance Co. v. Garvey*, 109 F.R.D. 323 (N.D.Cal.1985). Considering the five factors described therein, I find that, while the precautions taken to prevent the inadvertent disclosure in view of the extent of the document production could have been better, the other four factors persuade me that the protective order should be granted. There were few inadvertent disclosures made in light of the entire request, the delay was slight, and overriding interests of justice would be served by relieving the Defendant of his error. Therefore, the Plaintiff shall return to the Defendant all tapes and transcripts which include the requested privileged information.
2. As a sanction, this Court will bar the Plaintiff's from any further use of the information. Therefore, the **Defendant's (Wagner) Motion for Sanctions** is granted as well.

Defendant SEC'S First Motion to Compel:

Granted, plaintiff shall respond accordingly, fully and completely.

Plaintiff's Motion to Compel SEC's Discovery:

To the extent Interrogatories 11-13 request information which is the subject matter of an attorney/client privileged communication, the Motion is denied. This Court wants to make clear that all other requests should be fully answered and disclosed. There was no privilege log submitted to this Court. Therefore, one should be submitted, so this Court can consider whether the particular communication is subject to the privilege. Interrogatories 4, 8 and 20 were apparently answered through supplementation, satisfactorily according to Plaintiff.

RFP 10 has been supplemented, according to Plaintiff. This Court hereby orders the Defendant to produce the items requested in RFP 8 and 21.

Plaintiff's Motion to Compel Defendant Paul Bustamante to Answer and Respond to Plaintiff's Discovery:

The Defendant, Paul Bustamante, shall answer Interrogatory 1, except for his social security number. He shall answer Interrogatories 4 and 16 in full. To this extent, Plaintiff's Motion to Compel is granted. Defendant has already supplemented Interrogatories 6 and 9.

The Motion to Compel Defendant Paul Bustamante to respond to RFP 9 is denied. Defendant has already supplemented RFP 7.

Defendant SEC's Motion for Protective Order on Inquiry into Advice of Counsel:

I only have a copy of the original Motion. I do not have a copy of the Plaintiff's Response (filed 5-24-12) or the Defendant's reply (filed 6-8-12). I have instructed my TCAA to obtain copies of those documents before I rule on this motion.

Defendant SEC's Motion to Compel Verizon Subpoena:

I am somewhat confused by the filing of this Motion on 5-1-2012, a copy of which I have received. My records show that on 4-8-2012, the Defendant withdrew a subpoena to Verizon. They may involve different requests. However, I have no other pleadings addressing this issue, so the Plaintiff may be confused as well. The docketing entries show that on 6-08-2012 a reply was filed in support of its Motion, but I do not have that pleading. I do not have the **Plaintiff's Motion to Quash Defendant SEC's Subpoena** either (filed 5-24-2012). I will not rule on these two motions until I am satisfied that I have all the pleadings and the issues remain.

*Kathy Torres v. Socorro Electric Cooperative, Inc.,
Paul Bustamante and Charles Wagner; D-725-CV-2011-120*

4 of 4 pages

Accordingly, I believe I have ruled on all pending motions made prior to June 29, 2012, except for the Defendant SEC's Motion for Protective Order and any remaining issues regarding the Verizon subpoena, as set forth above. I look forward to having my TCAA obtain all of the pleadings I need so I can address the remaining issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karen L. Parsons". The signature is fluid and cursive, with a large initial "K" and a long horizontal stroke extending to the right.

The Honorable Karen L. Parsons
District Judge, Division III
KLP/mlv