

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

3 Filing Date: March 23, 2015

4 **NO. 33,706**

5 **AMERICAN FEDERATION OF STATE,**  
6 **COUNTY & MUNICIPAL EMPLOYEES,**  
7 **COUNCIL 18, AFL-CIO, LOCALS 1461,**  
8 **2260, AND 2499,**

9           Plaintiffs-Appellants,

10 v.

11 **BOARD OF COUNTY COMMISSIONERS**  
12 **OF BERNALILLO COUNTY,**

13           Defendant-Appellee.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
15 **Valerie A. Huling, District Judge**

16 Youtz & Valdez, P.C.  
17 Shane C. Youtz  
18 Stephen Curtice  
19 James A. Montalbano  
20 Albuquerque, NM

21 for Appellants

1 Bernalillo County Legal Department  
2 Randy M. Autio, County Attorney  
3 Michael I. Garcia, Assistant County Attorney, Sr.  
4 Albuquerque, NM  
5 for Appellee

1 **OPINION**

2 **FRY, Judge.**

3 {1} Plaintiffs, the exclusive bargaining representatives for unionized public  
4 employees of Bernalillo County, appeal the district court’s order denying their request  
5 for declaratory and injunctive relief against the Board of County Commissioners of  
6 Bernalillo County. Plaintiffs sought a declaration that Bernalillo County was not  
7 entitled to “grandfather” status under the Public Employee Bargaining Act (PEBA),  
8 NMSA 1978, § 10-7E-26(A) (2003), and that they were therefore not required to  
9 adjudicate labor disputes before the Bernalillo County Labor-Management Relations  
10 Board (the Labor Board) because the structure in place for dispute resolution does not  
11 provide a fair tribunal for employees. Because we conclude that the County’s dispute  
12 resolution procedures do not violate Plaintiffs’ due process rights to a fair and  
13 impartial tribunal, we affirm.

14 **BACKGROUND**

15 {2} Section 10-7E-26(A) of the PEBA is typically referred to as the “grandfather  
16 clause,” which exempts public employers who qualify from the PEBA’s requirements.  
17 Section 10-7E-26(A) (“A public employer other than the state that prior to October  
18 1, 1991[,], adopted by ordinance, resolution[,], or charter amendment a system of

1 provisions and procedures permitting employees to form, join[,] or assist a labor  
2 organization for the purpose of bargaining collectively through exclusive  
3 representatives may continue to operate under those provisions and procedures.”);  
4 *see also AFSCME, Council 18 v. City of Albuquerque*, 2013-NMCA-012, ¶ 10, 293  
5 P.3d 943 (“[T]he effect of grandfather clauses is to narrow, qualify, or otherwise  
6 restrain the scope of [a] statute or to remove from the statute’s reach a class that  
7 would otherwise be encompassed by its language.” (internal quotation marks and  
8 citation omitted)). Consistent with the text of the grandfather clause, our  
9 determination of whether a public employer is within the clause’s purview focuses  
10 on whether “(1) . . . a public employer [has in place] a system of provisions and  
11 procedures permitting employees to form, join[,] or assist a labor organization for the  
12 purpose of bargaining collectively through exclusive representatives and (2) . . . the  
13 public employer [adopted the system of procedures before] October 1, 1991.” *Id.* ¶  
14 8 (internal quotation marks and citation omitted).

15 {3} At first glance, the County appears entitled to the protections of the grandfather  
16 clause. The Bernalillo County Labor-Management Relations Ordinances (LMRO)  
17 were enacted in 1975 with the purpose to “allow county employees to organize and  
18 bargain collectively with the county government.” Bernalillo County, N.M.,  
19 Ordinances § 2-201 (1975). Thus, having in place a system of procedures for

1 collective bargaining well before 1991, the County appears to be a “grandfathered”  
2 entity under the PEBA.

3 {4} Plaintiffs’ argument centers on the LMRO’s dispute resolution procedures. The  
4 contested procedures for alleged violations of the LMRO’s prohibited practices are  
5 found at Bernalillo County, N.M., Ordinances § 2-210 (1975). In the event there is  
6 an allegation that the County or an employee or employee organization has committed  
7 a prohibited practice violation, the Labor Board must hold a hearing. *Id.* § 2-210(f).  
8 Upon making its determination, the Labor Board “shall request that the county  
9 commission enter an order against the party guilty of the violation.” Bernalillo  
10 County, N.M., Ordinances § 2-211(a) (1975). The LMRO state that in entering the  
11 order, “[t]he county commission is not bound to accept either the majority or minority  
12 report of the [Labor Board], but shall exercise independence based on the record and  
13 arguments presented before it.” *Id.*

14 {5} Plaintiffs petitioned the district court for declaratory and injunctive relief,  
15 arguing that these procedures were unfair to county employees. Plaintiffs sought to  
16 file employee complaints before the New Mexico Public Employee Labor Relations  
17 Board instead of the County’s Labor Board. The district court denied their petition.  
18 Plaintiffs now appeal.

1 **DISCUSSION**

2 **Standard of Review**

3 {6} We review a district court’s denial of a claim for declaratory relief for abuse  
4 of discretion. *State ex rel. Stratton v. Roswell Indep. Sch.*, 1991-NMCA-013, ¶ 49,  
5 111 N.M. 495, 806 P.2d 1085. “An abuse of discretion occurs when the district  
6 court’s ruling is clearly against logic and effect of the facts and circumstances before  
7 the court.” *Id.* However, to the extent that Plaintiffs’ arguments require this Court to  
8 engage in statutory construction, interpretation of a statute is a question of law that  
9 we review de novo. *See Morgan Keegan Mortg. Co. v. Candelaria*, 1998-NMCA-  
10 008, ¶ 5, 124 N.M. 405, 951 P.2d 1066. “A grandfather clause will be construed to  
11 include no case not clearly within the purpose, letter, or express terms, of the clause.”  
12 *City of Albuquerque v. Montoya*, 2012-NMSC-007, ¶ 11, 274 P.3d 108 (alteration,  
13 internal quotation marks, and citation omitted). Furthermore, “[the appellate courts]  
14 review questions of constitutional law and constitutional rights, such as due process  
15 protections, de novo.” *N. M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶  
16 27, 142 N.M. 248, 164 P.3d 947.

17 **The County’s Dispute Resolution Procedures Do Not Violate Plaintiffs’ Due**  
18 **Process Rights**

19 {7} Broadly stated, Plaintiffs’ argument is that the County’s dispute resolution  
20 procedures violate the employees’ procedural due process rights to a fair and

1 impartial tribunal because the county commission has a “vested interest” in the  
2 adjudication of the disputes. Plaintiffs argue that because the County does not have  
3 in place a system that facially operates to protect their collective bargaining rights,  
4 it does not have “a system of provisions and procedures permitting employees to  
5 form, join[,] or assist any labor organization” and is not entitled to grandfather status  
6 under Section 10-7E-26(A) of the PEBA.

7 {8} On a more nuanced level, however, Plaintiffs’ argument requires some parsing.  
8 We understand one prong of Plaintiffs’ argument to be that because the county  
9 commission appoints the county manager, who serves in an advisory role to the  
10 county commission, the county commission effectively serves as both the legislative  
11 and executive branches of county government. Bernalillo County, N.M., Ordinances  
12 § 2-62 (1973, amended 2011), § 2-63 (1973); NMSA 1978, § 4-38-19(B) (1973).  
13 Therefore, according to Plaintiffs, it should be presumed that the county  
14 commission’s interest in employment disputes “lie[s] in favor of managerial  
15 personnel and in conflict with the rights of employees.” Second, because the county  
16 commission is not bound by any recommendations of the Labor Board in reviewing  
17 prohibited practice complaints, Plaintiffs characterize the county commission as  
18 sitting in “unrestrained final judgment” in regard to employee disputes. In considering  
19 these two contentions together, Plaintiffs argue that the system violates the

1 employees' due process rights because it allows the county commission, with its  
2 interests aligned with management personnel, to be the final decision-maker on  
3 employee complaints.

4 {9} “The Fourteenth Amendment of the United States Constitution protects citizens  
5 from state action that leads to deprivations of liberty and property without due  
6 process of law.” *Los Chavez Cmty. Ass’n v. Valencia Cnty.*, 2012-NMCA-044, ¶ 20,  
7 277 P.3d 475 (internal quotation marks and citation omitted). “Procedural due process  
8 requires a fair and impartial hearing before a trier of fact who is disinterested and free  
9 from any form of bias or predisposition regarding the outcome of the case.” *Riegger*,  
10 2007-NMSC-044, ¶ 27 (internal quotation marks and citation omitted). “The inquiry  
11 is not whether the [tribunal is] actually biased or prejudiced, but whether, in the  
12 natural course of events, there is an indication of a possible temptation to an average  
13 [person] sitting as a judge to try the case with bias for or against any issue presented  
14 to him.” *Reid v. N. M. Bd. of Exam’rs of Optometry*, 1979-NMSC-005, ¶ 7, 92 N.M.  
15 414, 589 P.2d 198. “These principles are equally applicable to administrative  
16 proceedings” and are “even more relevant at the quasi-judicial level, where other  
17 trial-like rules of administrative proceedings are relaxed.” *Los Chavez*, 2012-NMCA-  
18 044, ¶ 23.



1 {10} In considering Plaintiffs’ claims of bias, we first emphasize the presumption  
2 that administrative adjudicators perform their duties with honesty and integrity. *See*  
3 *Jones v. N. M. State Racing Comm’n*, 1983-NMSC-089, ¶ 13, 100 N.M. 434, 671  
4 P.2d 1145. That is to say that, in this context, we presume that the county  
5 commission’s interest in reviewing the Labor Board’s decision is to act fairly and  
6 with impartiality in making its determination. “The burden of overcoming the  
7 presumption of impartiality ‘rests on the party making the assertion [of bias.]’ ”  
8 *Navistar Int’l Transp. Corp. v. United States EPA*, 941 F.2d 1339, 1360 (6th Cir.  
9 1991) (quoting *Schweiker v. McClure*, 456 U.S. 188, 196 (1982)). Furthermore, “any  
10 alleged prejudice on the part of the decision[-]maker must be evident from the record  
11 and cannot be based on speculation or inference.” *Id.*

12 {11} The inherent bias or partiality of a given circumstance can often be sufficient  
13 to rebut the presumption that administrative adjudicators will properly perform their  
14 duties. For example, in *Los Chavez*, the fact that a board member of the Valencia  
15 County Commission was a first cousin to an applicant for a zoning change required  
16 the board member to recuse herself. 2012-NMCA-044, ¶ 1. Although the presumption  
17 of bias between close relatives is constitutionally recognized in regard to judges, this  
18 Court saw no reason not to extend that presumption to administrative adjudicators.  
19 *Id.* ¶ 23. Likewise, in *Riegger*, the Court held that the board’s imposition of costs

1 against a losing licensee for the hearing officer’s time and the cost of the hearing  
2 room violated due process. 2007-NMSC-044, ¶ 26. The Court stated that there was  
3 a reasonable probability, even absent evidence of actual bias or partiality, that the  
4 imposition of these costs could give a hearing officer the incentive to rule against the  
5 licensee in order to be fully compensated for his services. *Id.* ¶ 30. Importantly, in  
6 both of these cases, there was some fact or circumstance that established a personal  
7 interest that could improperly influence the administrative adjudicator’s ability to  
8 impartially decide the case. *See Las Cruces Prof’l Fire Fighters v. City of Las Cruces*,  
9 1997-NMCA-031, ¶ 24, 123 N.M. 239, 938 P.2d 1384 (recognizing that “[o]ne who  
10 stands to gain or lose by a decision either way has an interest that may disqualify”  
11 (internal quotation marks and citation omitted)). In the present case, Plaintiffs have  
12 not presented any evidence suggesting the type of personal interest mentioned in *Los*  
13 *Chavez and Riegger*.

14 {12} Plaintiffs rely on *AFSCME v. Martinez*, 2011-NMSC-018, 150 N.M. 132, 257  
15 P.3d 952, to support their argument that the county commission’s interests favor  
16 management personnel. In *Martinez*, our Supreme Court held, in relevant part, that  
17 allowing the governor to remove board members of the Public Employee Labor-  
18 Relations Board (PELRB) “at any time and for any reason” would be a violation of  
19 due process. *Id.* ¶ 10. The Court emphasized that the PELRB directly adjudicates

1 disputes involving the governor and her appointees and, therefore, the governor  
2 “exerts subtle coercive influence over the PELRB.” *Id.* ¶¶ 10-11. Thus, because the  
3 PELRB is “empowered to make decisions that may adversely affect the executive  
4 branch,” it would be a violation of due process “if [the Court] conclude[d] that the  
5 members of the PELRB serve[d] at the pleasure of the [g]overnor.” *Id.* ¶ 11. Plaintiffs  
6 analogize the present case to the *Martinez* decision by arguing that the county  
7 commission’s de facto exercise of executive power is similar to the governor’s  
8 “undue influence” over the PELRB.

9 {13} We are unpersuaded by Plaintiffs’ argument. Although we remain mindful that  
10 the lines between governmental bodies at the county level are not as stark as those at  
11 other levels of government, *Board of County Commissioners v. Padilla*, 1990-  
12 NMCA-125, ¶ 10, 111 N.M. 278, 804 P.2d 1097, we disagree with Plaintiffs’  
13 characterization of the county commission as effectively serving in a dual  
14 legislative/executive role such that its interest should be presumed to be in favor of  
15 management personnel. In *Montoya*, our Supreme Court rejected a similar  
16 presumption regarding the president of the Albuquerque City Council because the  
17 city’s ordinances did not define the president’s role as a managerial position and the  
18 ordinances referred to the city council as the “legislative body of the city.” 2012-  
19 NMSC-007, ¶ 17 (internal quotation marks and citation omitted). While the structure

1 of Bernalillo County government differs in many respects from the City of  
2 Albuquerque's structure noted in *Montoya*, one important area of overlap is that the  
3 county commission, like the Albuquerque City Council, does not directly administer  
4 personnel management. *See id.* ¶ 18; § 4-38-19(B); Bernalillo County, N.M.,  
5 Ordinances § 2-98. Consistent with the county manager's oversight of county  
6 personnel, it is the county manager, like the mayor under Albuquerque's system, who  
7 selects the "management" member of the Labor Board. Bernalillo County, N.M.,  
8 Ordinances § 2-98(a), (b)(3); § 2-214(2) (1975); *Montoya*, 2012-NMSC-007, ¶ 18.  
9 We therefore disagree with Plaintiffs that the level of oversight the county  
10 commission exercises over the county manager indicates an interest sufficient to  
11 presume that the county commission is biased in favor of management personnel.

12 {14} In the absence of evidence establishing the reason why the county commission  
13 would be inclined to favor management personnel over employees, Plaintiffs have not  
14 met their burden to rebut the presumption that the county commission impartially  
15 performs its duties in reviewing employee complaints. Accordingly, we conclude that  
16 the County's dispute resolution procedures do not violate Plaintiffs' due process  
17 rights to a fair and impartial tribunal.

18 **CONCLUSION**

19 {15} For the foregoing reasons, we affirm the district court.

1 {16} **IT IS SO ORDERED.**

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**CYNTHIA A. FRY, Judge**

6 **WE CONCUR:**

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8 **JONATHAN B. SUTIN, Judge**

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10 **RODERICK T. KENNEDY, Judge**