

IN THE ELEVENTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF MCKINLEY

DISTRICT COURT
MCKINLEY COUNTY
N.M.

THE ZUNI PUBLIC SCHOOL DISTRICT, et al.,
Plaintiffs,

2002 MAY 30 A 11: 29

THE GALLUP-MCKINLEY SCHOOL DISTRICT
NO.1, et al.,

Plaintiffs-Intervenors

-vs-

No. CV-98-14-II

THE STATE OF NEW MEXICO, et al.,

Defendants.

ORDER APPROVING REPORT OF SPECIAL MASTER

THIS CAUSE came before the Court pursuant to Rule 1-053 E (2), NMRA 2002. All parties were represented by counsel. Each party was given the opportunity to state its position regarding the Report of the Special Master.

Background

1. This Court entered a Partial Summary Judgment in favor of the Plaintiff/Intervenors (Plaintiffs) on October 14, 1999.
2. At the request of Plaintiffs, this Court agreed to the concept to and agreed to appoint a Special Mater to hear issues and conduct such evidentiary hearings as may be necessary. This was referenced in this Court's Status Conference Memorandum filed on April 24, 2001.
3. The Honorable Dan McKinnon was appointed as Special Master by this Court's Order filed on May 8, 2001.

4. The Special Master conducted an evidentiary hearing which took place over a three-day period beginning October 24, 2001. Hundreds of pages of exhibits were introduced into evidence. Twelve witnesses testified.

5. On January 14, 2002 the Special Master rendered his Report.

6. All Plaintiffs have filed objections to the Report in one form or another.

7. This Court held a hearing on the objections on May 2, 2002.

Standard Of Review

8. Rule 1-053 E (2), NMRA 2002 states in pertinent part:

(2) In an action to be tried without a jury, the Court shall accept the master's findings of fact unless clearly erroneous.

Further,

...the Court after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

9. "Clearly erroneous" within the rule that the Trial Court shall accept the Special Master's findings of fact unless they are "clearly erroneous" means findings not supported by substantial evidence. See *Lopez v. Singh*, 53 N.M. 245 (S.C. 1949).

10. If there is any testimony consistent with the Special Master's findings, they must be treated as unassailable. See *Witt v. Skelly Oil Company*, 71 N.M. 411 (S.C. 1963).

11. The Special Master's findings are presumed to be correct and where there is any testimony consistent with the findings, they must be treated as unassailable. See *State ex rel. Reynolds v. Niccum*, 102 N.M. 330 (S.C. 1985).

12. A Trial Court has the authority to consider the Conclusions of Law reached in the Report on a de novo basis. See *Lozano v. GTE Lenkurt, Inc.*, 122 N.M. 103 (Ct. App 1996).

Report of Special Master

13. The Report of the Special Master was based upon his synthesis of the testimony and his critical review of all exhibits. The Special Master had the unique opportunity to view the witnesses to determine their sincerity and credibility.

14. The Special Master clearly labored to present a Report to this Court which was concise, succinct and supported by the record. He has the thanks of this Court for a difficult job well done.

Findings of Special Master

15. The Findings of the Special Master has been reviewed in accordance with the above cited authorities. As to the Findings of Fact of the Special Master, the Court rules as follows:

- a. Finding No. I is adopted.
- b. Finding No. II is adopted.
- c. Finding No. III is adopted.
- d. Finding No. IV is adopted.
- e. Finding No. V is adopted
- f. Finding No. VI is adopted
- g. Finding No. VII is adopted
- h. Finding No. VIII is adopted
- i. Finding No. IX is adopted

- j. Finding No. X is adopted
- k. Finding No. XI is adopted.
- l. Finding No. XII is adopted
- m. Finding No. XIII is adopted.
- n. Finding No. XIV is adopted.
- o. Finding No. XV is adopted.
- p. Finding No. XVI is adopted.
- q. Finding No. XVII is adopted.
- r. Finding No. XVIII is adopted.
- s. Finding No. XIX is adopted.
- t. Finding No. XX is adopted.
- u. Finding No. XXI is adopted.

16. As to the Conclusions of Law of the Special Master, the Court rules as follows:

- a. Conclusion No. I is adopted.
- b. Conclusion No. II is adopted.
- c. Conclusion No. III is adopted.
- d. Conclusion No. IV is adopted.

17. The above Conclusion of Law ^S ^{are} is supported by the Findings of Fact and the record in this cause and should be adopted. See *State ex rel. Reynolds*, supra at page 333 and *Witt v. Skelly Oil Company*, supra at page 412.

WHEREUPON, it is;

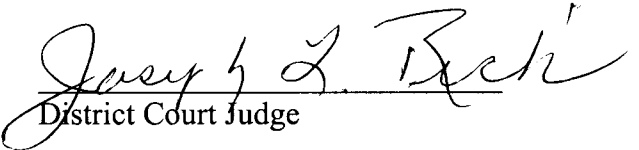
ORDERED, ADJUDGED AND DECREED as follows:

1. The Report of the Special Master is approved as corrected by the State's Motion for Corrections.

2. The objections of the Plaintiffs to the Report are overruled.

3. The Legislature has made some progress since this Court's Partial Summary Judgment but should continue its work in this area.

4. This Court reserves the right to hold status conferences or review of legislative activity subsequent to any session of legislature.


District Court Judge

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