

24-PELRB-2022

STATE OF NEW MEXICO PUBLIC EMPLOYEES LABOR RELATIONS BOARD

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
(IAMAW), AFL-CIO,**

Petitioner,

and

PELRB No. 303-22

**UNIVERSITY OF NEW MEXICO SANDOVAL
REGIONAL MEDICAL CENTER,**

Respondent.

ORDER

THIS MATTER came before the Public Employee Labor Relations Board (hereinafter the “Board”) at its open meeting on November 19, 2022 upon University of New Mexico Sandoval Regional Medical Center’s (“Respondent”) Objections to the Card Check conducted on September 15, 2022 pursuant to NMSA 1978, § 10-7E-14(C) (2020). This card check was conducted in connection with the Petition for Certification (“Petition”) filed by the International Association of Machinists and Aerospace Workers (IAMAW), AFL-CIO. The Board, after reviewing the numerous pleadings in this matter and having conducted a fact finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, by a vote of 3-0, enters the following pursuant to the Public Employee Bargaining Act (the “PEBA”), NMSA 1978, Sections 10-7E-1 to 25 (2003, as amended through 2020):

FINDINGS OF FACT

1. IAMAW filed its Petition with the Board on May 18, 2022.
2. The Petition contemplated a bargaining unit consisting of all full-time, regular part-time, and per diem, non-probationary Security Guards, Security Guard Leads, Cooks, Food Service Workers, Food Service Leads, Kitchen Staff Workers, Registration Representatives, Prior

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Authorization Clerks, Patient Access Representatives, Central Registration Representatives, Charge Entry Specialists, Clerks, Facilities Services Maintenance Technicians, Facilities Services Maintenance Technicians Leads, Maintenance Technicians, Materials Technicians, Materials Coordinators, Housekeepers, Housekeeper Leads, Environmental Services Workers (EVS) employed by the University of New Mexico Sandoval Regional Medical Center at its acute care hospital.

3. Following a hearing held on July 27, 2022, the Board's Executive Director issued a Hearing Officer's Report and Recommended Decision dated August 11, 2022, finding that the Lead Maintenance Mechanic and the Lead Housekeeper positions were not supervisors as contemplated by the Act and that UNM-SRMC employees Melissa Chacon, Alexis Heslop, Lupita Muñoz, Sandra Vigil, Jason Rimbart, and Nadine Chavez were employed in a probationary status at the time the Petition was filed and therefore should not be included in the employee list for the purposes of a card check.
4. On September 15, 2022, the Executive Director and Board staff conducted the card check.
5. Neither counsel for IAMAW nor counsel for UNM-SRMC were present during the card check.
6. The results of the card check were reported as follows:
 1. Total Number of Employees in Bargaining Unit: 88
 2. 50% of Employees in Bargaining Unit Equals: 44
 3. Total Interest Cards Indicating Support: 51
 4. Number of Challenged Cards: 3
Challenged Cards Rejected by Director: 2
Challenged Cards Accepted by Director: 1
 5. Percent of Employees in Bargaining Unit indicating support: 58%

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7. UNM-SRMC filed its Objections to Card Check Results and Certification of Representation by International Association of Machinists and Aerospace Workers (IAMAW), AFL-CIO (“Objections to Card Check”), on September 22, 2022. In relevant part, the Objections to Card Check contended that cards obtained or signed prior to May 18, 2022 should not have been included or considered by the Hearing Officer, that the cards provided by IAMAW were stale, that “a couple of cards obtained by the union were done so through coercion,” and that the card check was invalid because UNM-SRMC was not provided notice or the opportunity to observe the card count.
8. IAMAW filed a Response to Objections to Card Check Results and Certification of Representation on September 26, 2022. In relevant part, IAMAW argued that the cards submitted prior to May 18, 2022 were valid, none of the cards were stale, that it had not coerced any employee into signing a card, and that the Director followed the applicable administrative regulations in conducting the card count.
9. On October 18, 2022, the Executive Director filed his Director’s Report on Objections to Card Check. The Executive Director concluded that there was “no authoritative support for SRMC’s objection to the consideration or inclusion of any authorization cards obtained and/or signed prior to May 18, 2022,” and that UNM-SRMC’s argument to the contrary overlooked the fact that the cards submitted by the Union said nothing about having been submitted under the authority of, or pursuant to a proceeding under, the Public Employee Bargaining Act. The Executive Director further found that none of the cards submitted by IAMAW were stale because they were not more than a year old and no other factual basis could be found to the contrary. In addition, he concluded that UNM-SRMC had provided no facts that would indicate that any of the cards submitted were obtained by fraud or coercion.

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Finally, he found that there was no legal authority for UNM-SRMC's contention that it had a right to notice or attendance at the card count.

10. The Executive Director recommended that the Board proceed with a fact-finding hearing, as contemplated by Section 10-7E-14(C) of PEBA, and make appropriate findings thereafter.
11. The Board conducted a fact-finding hearing at its open meeting on November 19, 2022.
12. Although both parties were provided an opportunity to call witnesses and introduce evidence, neither UNM-SRMC nor IAMAW opted to do so and the Board therefore heard oral argument from both.
13. During the oral argument, UNM-SRMC maintained that cards obtained or signed prior to May 18, 2022 should not have been considered as part of the card check and that it had been improperly denied notice and an opportunity to observe the card check.
14. IAMAW reiterated its contentions that the cards submitted prior to May 18, 2022 were valid and that UNM-SRMC had still failed to provide authority for its contention that it was entitled to notice and an opportunity to observe the card check.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject of this proceeding.
2. Section 10-7E-14(C) provides:

As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

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3. The September 15, 2022 card check was conducted pursuant to and in accordance with Section 10-7E-14(C) of the PEBA.
4. The September 15, 2022 card check was conducted pursuant to and in accordance with 11.21.2.33 NMAC.
5. UNM-SRMC's first objection, that cards obtained or signed prior to May 18, 2022 should not have been included or considered by the Hearing Officer, is without merit. Although May 18, 2022 was the effective date of Senate Bill 41, the authorization card itself simply indicates that the employee has designated IAMAW to be the employee's exclusive bargaining representative.
6. As the representation petition in this case was filed on May 18, 2022, this does not involve the retroactive application of Senate Bill 41.
7. UNM-SRMC's second objection, that the cards provided by IAMAW were stale, is without a factual basis. None of the cards submitted by IAMAW were more than a year old at the time of their submission, and the requirements of NMAC 11.21.2.13 were met in that the cards were reviewed for assurance that the cards are signed, dated and sufficiently current.
8. UNM-SRMC's third objection, that cards were obtained by fraud or coercion, is similarly unsupported by the evidence. The objection was not articulated based on facts, but instead "[u]pon information and belief," which is not a sufficient basis to invalidate any particular cards.
9. Finally, while UNM-SRMC's fourth objection maintains that it had a right to attend and observe the card count conducted by the Director, no provision within the PEBA vests an employer with such a right and UNM-SRMC has not identified such a provision. This objection is therefore without merit.

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10. A majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

IT IS THEREFORE ORDERED:

1. UNM-SRMC'S objections to the results of the September 15, 2022 card check are hereby DENIED; and
2. The Certification of Exclusive Representation issued September 15, 2022 is hereby AFFIRMED.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



HON. NAN NASH, BOARD CHAIR

9 December 2022

DATE

State of New Mexico

Public Employee Labor Relations Board

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Certification of Representation

The undersigned hereby certifies that **International Association of Machinists and Aerospace Workers (IAMAW), AFL-CIO**, (Union) has demonstrated a sufficient basis pursuant to NMAC 11.21.2.33 to be certified as the exclusive representative for a bargaining unit comprising the following employees of the **University of New Mexico Sandoval Regional Medical Center**:

All full-time, regular part-time, non-probationary Security Guards, Security Guard Leads, Cooks, Food Service Workers, Food Service Leads, Kitchen Staff Workers, Registration Representatives, Prior Authorization Clerks, Patient Access Representatives, Central Registration Representatives, Charge Entry Specialists, Clerks, Facilities Services Maintenance Technicians, Facilities Services Maintenance Technicians Leads, Maintenance Technicians, Materials Technicians, Materials Coordinators, Housekeepers, Housekeeper Leads, Environmental Services Workers (EVS).

The undersigned makes this certification based on the following:


1. By a Petition filed **May 18, 2022** the Union requested Certification as the Exclusive Representative of the above-described unit together with per diem or PRN employees.
2. On **May 19, 2022**, the Executive Director determined that the Petition was facially valid and sent notice to the parties requesting statements of their positions as to whether the certification should be made, specifically inviting comment concerning whether per diem employees are "regular employees" under the PEBA and if so, whether they share a sufficient community of interest to be included in the same bargaining unit with the other petitioned-for employees.
3. The parties' statements and an Employee list were received on **June 16, 2022**.
4. A Hearing on whether certain employees on the list should be excluded from coverage of the Act as probationary and on whether certain employees on the list are excluded from the bargaining unit because they are supervisory employees was held on **July 27, 2022**. After reviewing the parties' closing briefs submitted **August 3, 2022** the Director determined on **August 11, 2022** that the Lead Maintenance Mechanic and the Lead Housekeeper positions are not supervisors as contemplated by NMSA 1978 §10-7E-4(T) (2020) and that disputed employees undergoing an orientation period were

employed in a probationary status as contemplated by NMSA 1978, §10-7E-4(Q) (2020) so that under NMAC 11.21.1.7(B)(9) they should not be included in the employee list for purposes of an election or card check.

5. Having determined the probationary and supervisory status issues and there being no intervention by another union, on **September 15, 2022** the Director compared the Union's showing of interest with the employee list to determine whether IAMAW demonstrated majority support with the result that of the 88 employees comprising the bargaining unit, 51 submitted valid interest cards showing support, meaning that 58.0%, a majority of employees in the proposed unit, expressed interest in being represented by the International Association of Machinists and Aerospace Workers.

ISSUED this 15th day of September, 2022 by:

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director

