

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

In re:

**UNITED HEALTH PROFESSIONALS  
OF NEW MEXICO, AFT, AFL-CIO,  
Petitioner**

-and-

**PELRB No. 306-21**

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

**ORDER**

**THIS MATTER** comes before the Public Employee Labor Relations Board (“Board”) on Respondent’s request for Board review of Executive Director Thomas J. Griego’s denial of Respondent’s Motion to Dismiss the Petition for Certification filed by the American Federation of State, County, and Municipal Employees (“AFSCME”). The Board, after reviewing the pleadings, hearing oral argument and being sufficiently advised, voted 3-0 to affirm Executive Director Thomas J. Griego’s decision dated September 10, 2021 with the addendum that this appeal is interlocutory and this Order is an interim order not subject to appeal under Rule 1-074 NMRA.

**THEREFORE THE BOARD** adopts the Executive Director’s Decision as its own and the Respondent’s Motion to Dismiss the Petition is **DENIED** and the case is remanded to the Executive Director for further proceedings consistent with this Order.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

10/18/2021  
DATE

Mark Myers  
MARK MYERS, BOARD CHAIR

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**MICHELLE LUJAN GRISHAM**  
Governor

**Marianne Bowers**, Chair  
**Mark Myers**, Vice-Chair  
**Nan Nash**, Member

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**THOMAS J. GRIEGO**  
Executive Director

September 10, 2021

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Re: ***UHPNM – AFT and UNM - Sandoval Reg. Med. Center; PELRB 306-21***

Dear Counsel:

The following constitutes my Letter Decision on the UNM Sandoval Regional Medical Center, Inc.'s Motion to Dismiss.

**PROCEDURAL BACKGROUND**

On August 19, 2021, UNM Sandoval Regional Medical Center, Inc., (“SRMC”) moved to dismiss a Petition filed by United Health Professionals of New Mexico, AFT, AFL-CIO’s Petition for Certification on August 13, 2021, because SRMC is not a “public employer” within the meaning of the New Mexico Public Employees Bargaining Act (“PEBA”). If it is not a “public employer” as that term is defined in Section 10-7E-4(Q) NMSA 1978, then this Board lacks jurisdiction over SRMC and the Petition herein.

The Petitioner filed its Response to the Motion on September 2, 2021 and oral argument on the Motion and Response was heard on September 7, 2021. This decision followed.

**STANDARD OF REVIEW**

This Board has a long-established practice of following the New Mexico Rules of Civil Procedure when it comes to deciding a Motion to Dismiss. Accordingly, this Board follows those cases applying SCRA Rule 1-012(B)(6). The purpose of a motion to dismiss is to test the legal sufficiency of the claim, not the facts that support it. *McCasland v. Prather*, 1978-NMCA-098, ¶ 5, 92 N.M. 192, 585 P.2d 336. “The pleadings must tell a story from which the essential elements prerequisite to the granting of the relief sought can be found or reasonably inferred.” *Derringer v. State*, 2003-NMCA-073, ¶ 5, 133 N.M. 721, 68 P.3d 961 (internal quotation marks, citation and ellipses omitted).

Dismissal under Rule 1-012(B)(6) is appropriate only where the non-moving party is “not entitled to recover under any theory of the facts alleged in their complaint.” *Id.* ¶ 12 (internal quotation marks and citation omitted). The New Mexico Court of Appeals has noted that “granting a motion to dismiss is an extreme remedy that is infrequently used.” *Town of Mesilla v. City of Las Cruces*, 1995-NMCA-058, ¶ 4, 120 N.M. 69, 898 P.2d 121.

## **ANALYSIS AND CONCLUSIONS**

- A. THE NEW MEXICO UNIVERSITY RESEARCH PARK AND ECONOMIC DEVELOPMENT ACT, NMSA 1978, §§ 21-28-1 TO 25 (“URPEDA”) UNDER WHICH THE UNM SANDOVAL REGIONAL MEDICAL CENTER, INC., (“SRMC”) WAS FORMED, DOES NOT CONTROL THE QUESTION OF WHETHER SMRC IS A “PUBLIC EMPLOYER” (AND CONSEQUENTLY WHETHER ITS EMPLOYEES ARE “PUBLIC EMPLOYEES”) UNDER THE PUBLIC EMPLOYEE BARGAINING ACT.**
- 1. SMRC is a Public Employer Other Than the State for Collective Bargaining Purposes Within the Meaning of NMSA 1978 § 10-7E-4(R) (2020) and any of its Regular Non-Probationary Employees are Public Employees as Defined by § 10-7E-4(Q) of the Public Employee Bargaining Act With the Result That This Board has Jurisdiction over it With Respect to the Petition Herein and all Other Collective Bargaining and Labor Relations Matters.**

Because SRMC is a nonprofit “research park corporation” created pursuant to the New Mexico URPEDA and the URPEDA expressly provides that for personnel matters, research park corporations shall not be deemed a public employer, SRMC argues that it does not fall within the scope of PEBA and the PELRB does not have jurisdiction over it with respect to the Petition herein or other collective-bargaining and labor relations matters.

URPEDA provides in relevant part as follows:

“A. A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel, procurement of goods and services, meetings of the board of directors, gross receipts tax, disposition or acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. A research park corporation shall be deemed an agency or other political subdivision of the state for purposes of applying statutes and laws relating to the furnishing of goods and services to the university that operates it and the risk management fund.”

NMSA 1978, § 21-28-7.

This Board is charged with the duty and the authority to enforce provisions of the Public Employee Bargaining Act, which is primarily concerned with guaranteeing public employees the right to organize and bargain collectively with their employers. See, NMSA 1978 §§ 10-7E-9 and 10-7E-2 (2020). When the PEBA describes those who may collectively bargain as employees, it refers to all public employees, except those confidential, managerial, and supervisory employees expressly excluded from bargaining under § 10-7E-5 or § 10-7E-13 of the Act. *Cf. Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers*, 1998-NMSC-020, ¶ 43, 125 N.M. 401, 962 P.2d 1236. Therefore, I liberally construe the definition of “public employer” under the Act to include SRMC and that of “public employees” subject to the Act to include its regular non-probationary employees. I do so based on the following:

1. The Articles of Incorporation for SRMC, Exhibit A to its Motion to Dismiss indicates at Article III that it is incorporated as an instrumentality of the Regents of the University of New Mexico and is specifically organized for the development, construction, and operation of a licensed general, community teaching hospital in support of and under the operating aegis of the Health Sciences Center of the University of New Mexico and, in connection therewith to facilitate and develop the clinical and medical practices of the faculty of the University of New Mexico School of Medicine. By its own terms the Article of Incorporation support a conclusion that SRMC is a “public employer” as defined by § 10-7E-4(R) of the Act:

“‘public employer’ means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than the state for collective bargaining purposes only;”

2. The exclusion of governments of Indian nations, tribes or pueblos from coverage of the Act by definition, and the exclusion of certain management, confidential and supervisory public employees under the PEBA §§ 10-7E-5 and 13, do not include employees of a nonprofit research park corporation created pursuant to the New Mexico URPEDA. There are no further exclusions from coverage of the Act within the Act itself that would exclude employees of a nonprofit research park corporation created pursuant to the New Mexico URPEDA. The PEBA’s express exclusion of certain pre-existing legislation demonstrates that our legislature could have included URPEDA among those exclusions had it wanted to do so. As a matter of statutory construction, I will not add an exclusion to PEBA coverage that the legislature could have but did not include.

3. As SRMC points out, URPEDA at Section 21-28-7 provides:

“A. A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel, procurement of goods and services, meetings of the board of directors, gross receipts tax, disposition or

acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. A research park corporation shall be deemed an agency or other political subdivision of the state for purposes of applying statutes and laws relating to the furnishing of goods and services to the university that operates it and the risk management fund.”

The URPEDA was enacted prior to the PEBA authorizing state-wide public employee collective bargaining and its provisions at 21-28-7(A) that a research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, presents a classic conflict question in consideration of NMSA 1978 §§ 10-7E-2; 10-7E-5; 10-7E-9 and 10-7E-13 (2020). Our legislature has provided for the eventuality of such conflicts by § 10-7E-3:

“In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and rules; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act [6-6-11 NMSA 1978], the Personnel Act [Chapter 10, Article 9 NMSA 1978], the Group Benefits Act [Chapter 10, Article 7B NMSA 1978], the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], the Retiree Health Care Act [10-7C-1 to 10-7C-16 NMSA 1978], public employee retirement laws or the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].”

Conspicuously absent from the listed “previously enacted legislation” unaffected by the passage of the Public Employee Bargaining Act is the URPEDA NMSA 1978 §§ 21-28-1 to 25, inclusive.

Therefore, I conclude that URPEDA, to the extent it would exclude SMRC as a Public Employer other than the state for collective bargaining purposes, has been superseded by the PEBA NMSA §§ 10-7E-1, *et seq.* enacted in 2003 and amended in 2020.

My conclusion that both SRMC and its regular non-probationary employees are covered by the New Mexico Public Employee Bargaining Act is supported by PELRB precedent that the definition of “public employer” must be read in conjunction with the description of “appropriate governing body” in NMSA 1978, § 10-7E-7 (2003). See *USWA & Gila Regional Medical Ctr.*, 1-PELRB-14 (Nov. 17, 1995), Recommended Decision, at 22. Here, either the UNM Board of Regents or the UNM Health Sciences Center Board of Directors, both of which are public employers under the Act as political subdivisions of the state would be the “appropriate governing body” of SRMC pursuant to NMSA 1978, § 10-7E-7 (2003).

As the Union argued in its Response to the Motion to Dismiss New Mexico jurisprudence requires that an “entanglement” between UNM and SRMC would render SRMC a “public” body subject to

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state law such as the PEBA, Citing *Memorial Med. Ctr. v. Tasch Constr., Inc.*, 2000-NMSC-030, 129 N.M. 677, 12 P.3d 431. (New Mexico Supreme Court determined the standards for evaluating whether an otherwise private corporation would be subject to the Public Works Minimum Wage Act or the State Procurement Code, noting that, in general “a private organization, despite its name or legal status, may have so many public attributes it can no longer be considered private” and that “a private entity may be controlled, organized, and conducted in such a manner that it becomes an arm of a public entity.” Id. ¶ 34.

For the foregoing reasons, I find and conclude: (1) that SMRC is a public employer other than the state for collective bargaining purposes within the meaning of NMSA 1978 § 10-7E-4(R) (2020); and, (2) any of its regular non-probationary employees are public employees as defined by § 10-7E-4(Q) of the Public Employee Bargaining Act; and, (3) URPEDA has been superseded by PEBA with respect to its coverage and this Board’s jurisdiction; and (4) this Board has both subject matter and personal jurisdiction over the instant Petition and all other collective bargaining and labor relations matters among the parties

WHEREFORE, Respondent’s Motion to Dismiss is hereby **DENIED** and the matter shall proceed in accordance with this Board’s Rules concerning Representation Petitions.

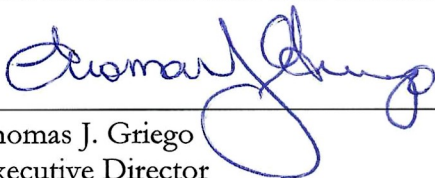
As this is a matter of first impression for the Board and given the fundamental importance of the jurisdictional issues involved, I am certifying this decision for an interlocutory appeal to the Board, pursuant to NMAC 11.21.1.27. Review by the board shall be based on the evidence presented or offered at the earlier stages of the proceeding and shall not be de novo. Additionally, it is appropriate to toll the deadline for Respondent to file its contemplated Motion to Quash a subpoena issued by the Executive Director for a list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately preceding the filing of the petition in the above-captioned action, until after the Board has heard any appeal of this decision. A deadline for filing any such Motion to Quash will be set at or after the Board’s Order following the interlocutory appeal.

Finally, the caption herein shall be amended to reflect the name of the Respondent as it appear on its Articles of Incorporation, Exhibit A to Respondent’s Motion to Dismiss:

“UNM Sandoval Regional Medical Center, Inc.”.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego  
Executive Director