

# 75-PELRB-2021

## STATE OF NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

UNITED ELECTRICAL RADIO AND  
MACHINE WORKERS OF AMERICA,

Petitioner,

and

PELRB NO. 307-20

UNIVERSITY OF NEW MEXICO,

Respondent.

### ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board (“Board”) on an oral motion by counsel for the Respondent at the December 7, 2021 meeting of the PELRB for review of Executive Director Griego’s denial of Respondent University of New Mexico’s (“UNM”) Motion to Stay proceedings in 307-PELRB-20 pursuant to Rule 1-074(Q)(1)(a) pending the administrative appeal of the Board’s decision to the Second Judicial District Court under Rule 1-074.

The Board, after reviewing the pleadings and being sufficiently advised, voted 3-0 to uphold the Executive Director’s denial of UNM’s Motion to Stay proceedings in 307-PELRB-20 as it is consistent with the Board’s prior decision in Order 73-PELRB-2021 directing the Executive Director to proceed with the card check without delay, and the Board’s position that Order 73-PELRB-2021 was not a final order subject to appeal under Rule 1-074.

**THEREFORE**, UNM’s request to stay the proceedings is **DENIED**.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

12/09/2021  
DATE

  
MARK MYERS, BOARD CHAIR



STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MICHELLE LUJAN GRISHAM  
Governor

THOMAS J. GRIEGO  
Executive Director

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

2929 Coors Blvd. N.W. Suite 303  
Albuquerque, NM 87120  
(505) 831-5422  
(505) 831-8820 (Fax)

December 3, 2021

Youtz & Valdez, P.C.  
900 Gold Avenue SW  
Albuquerque, New Mexico 87102  
Attn: Stephen Curtice

Holcomb Law Firm  
3301-R Coors. Blvd. NW  
Albuquerque, New Mexico 87120  
Attn: Dina Holcomb

Re: ***United Electrical, Radio and Machine Workers of America & UNM; PELRB 307-20***

Dear Counsel:

The following constitutes my Letter Decision concerning the Respondent's Motion to Stay Proceedings pending Appeal.

### **PROCEDURAL BACKGROUND**

On October 4, 2021, I issued my Report and Recommended Decision concluding that the petitioned-for job titles form an appropriate bargaining unit and that Petitioner is a labor organization able to petition for recognition as an exclusive representative under the Act. That report was reviewed by the PELRB on November 2, 2021. As appears from its Order 73-PELRB-2021, the Board, adopted my Recommended Decision with direction that the parties proceed with a card check that is to be scheduled without delay. UNM filed a Notice of Appeal on November 11, 2021. The Union filed a Motion to Dismiss the Appeal on November 22, 2021 along with this Motion to Stay Proceedings. The Union filed its Response on November 24, 2021. This decision followed.

### **ANALYSIS AND CONCLUSIONS**

UNM's Notice of Appeal is taken pursuant to NMSA 1978, § 10-7E-23(B) (2003), and Rule 1-074 NMRA. Both permit an appeal only from a *final* decision of the PELRB. See § 10-7E-23(B); Rule 1-074(C). Rule 1-074(P)(6) NMRA references NMSA 1978, § 39-3-1.1(H) (1999), for the definition of a "final decision" from which an appeal can be taken. That statute defines a "final decision" as "an agency ruling that as a practical matter resolves all issues arising from a dispute within the jurisdiction of the agency, once all administrative remedies available within the agency have been exhausted[,]" and further provides that the "determination of whether there is a final decision by an agency shall be governed by the law regarding the finality of decisions by district courts." *Id.*

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Because the Order appeal requires the Director to conduct a card check after which a certification will issue and be affirmed by the Board at some future date, that Order is not final and subject to appeal. The Notice of Appeal was, thus, premature. I agree with the Union that the effect of this early appeal is that UNM is seeking an interlocutory appeal of the PELRB's non-final orders, despite there being no provision for such in the Rules of Civil Procedure, hence the Union filed a motion to dismiss that appeal.

For the foregoing reasons, and based on the arguments and case authorities cited in the Union's Response, UNM's Motion to Stay Proceedings is DENIED.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

  
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Thomas J. Griego  
Executive Director