

40-PELRB-2023

STATE OF NEW MEXICO PUBLIC EMPLOYEES LABOR RELATIONS BOARD

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

Complainant

v.

PELRB No. 109-23

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

Respondent

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on September 5, 2023 upon Respondent's request for Board review of the Hearing Officer's denial of the Respondent's Motion for a Stay of these proceedings in light of the District Court's ruling in case number D-202-CV-2023-02118 (Respondent's appeal of this Board's Decision in PELRB 304-22 recognizing the Complainant herein, as the exclusive representative for a bargaining unit comprising some of Respondent's employees).

The Board finds and concludes that Respondent's request is interlocutory in nature, and the requirements of NMAC 11.21.1.27 that review by the Board shall be permitted only after completion of proceedings by a hearing examiner, must be complied with.

WHEREFORE, by a vote of 3-0 the Board affirms the Hearing Officer's July 26, 2023 denial of Respondent's Request for Stay.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DocuSigned by:

Peggy Nelson

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PEGGY J. NELSON, BOARD CHAIR

9/5/2023

DATE



STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MICHELLE LUJAN GRISHAM
Governor

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Executive Director

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July 26, 2023

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Attn: Michael Calderon, Kevin Gick

Re: ***UHPNM, AFT v. UNM SRMC; PELRB 109-23***

Dear Counsel:

This constitutes my Letter Decision denying the Respondent's Motion For Stay of Proceedings.

PROCEDURAL BACKGROUND

On March 17, 2023, UNM Sandoval Regional Medical Center ("SRMC" or "Employer") appealed to the Second Judicial District Court of New Mexico this Board's Orders 8-PELRB-2023 and 9-PELRB-2023 (PELRB Case No. 304-22), concerning representation and certification of the Complainant herein ("UHPNM", "AFT" or "Union"). That appeal is now pending as Cause No. D-202-CV-2023-02118.

On May 5, 2023, Complainant filed the instant Prohibited Practice Complaint ("PPC") against SRMC alleging various violations of the Public Employee Bargaining Act arising out of SRMC's bargaining unit employee layoffs beginning in April, 2023, without bargaining and by direct dealing with individual employees regarding the plan to initiate and carry out the layoffs, circumventing the authorized bargaining representative. The Union further alleges that SRMC assigned additional duties of bargaining-unit members in the Post-Anesthesia Care Unit (PACU) without bargaining.

SRMC filed its Answer to the PPC and a Motion For Stay of Proceedings on May 26, 2023. I placed the Motion on the Board's agenda for consideration at its regularly scheduled meeting on July 11, 2023. The Board considered SRMC's objections to its consideration of the Motion and determined in its resulting Order 29-PELRB-2023, that it has jurisdiction over the subject matter and the parties herein, but that review by the Board shall be permitted only after completion of proceedings by a hearing examiner, pursuant to NMAC 11.21.1.27. Therefore, the Executive Director, as the designated Hearing Officer in this matter, was directed to decide the Motion For Stay of

Proceedings. I consider the Motion to have been fully briefed by the citations and arguments in the Motion itself and the Response thereto filed June 12, 2023. A Hearing on the Motion was held on July 25, 2023 at which I heard testimony of one witness for the Employer and argument of counsel.

STANDARD OF REVIEW

I take my guidance as to the standard to be applied in deciding this Motion from Rule 1-074(Q)(c) NMRA applicable to this agency whenever an appeal is taken to the District Court from one of its Orders. A Request to Stay Proceedings must:

- “(c) state the reasons for granting a stay and the facts relied upon to show that:
 - (i) the appellant will suffer irreparable injury unless a stay is granted;
 - (ii) the appellant is likely to prevail on the merits of the appeal;
 - (iii) other interested persons will not suffer substantial harm if a stay is granted; and
 - (iv) the public interest will not be harmed by granting a stay.

The applicant has the burden of demonstrating that a stay is warranted. The standard articulated above is consistent with that espoused in *Associated Securities Corp. v. Securities & Exchange Commission*, 283 F.2d 773 (10th Cir.1960) adopted in *Tenneco Oil Co. v. New Mexico Water Quality Control Com’n*, 736 P.2d 986, 105 N.M. 708, 1986 NMCA 33 (N.M. App. 1986).¹

DISCUSSION

I have carefully considered the Motion for a Stay of Proceedings in light of these four criteria. As discussed below, I find that the SRMC is not likely to prevail on the merits of the appeal, nor has it demonstrated that the other three factors favor the interim relief requested.

A. SRMC Has Not Demonstrated a Substantial Likelihood of Success on the Merits of its Appeal

To show that it is “likely to prevail on the merits of the appeal” SRMC will have to demonstrate that the Board’s certification order in PELRB Case No. 304-22 was “(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence on the record considered as a whole; or (3) otherwise not in accordance with law.” NMSA 1978, § 10-7E-23(B) (2003). In considering the Motion, I have reviewed once again, the Board Orders 26-PELRB-2022, 8-PELRB-2023, 9-PELRB-2023 and the Recommended Decisions underlying them. They are well-reasoned and supported by

¹ In *Associated Securities Corp.*, the appellate court recognized four conditions which they determined should guide an appellate court in determining whether its discretion should be exercised in the granting of a stay from an order or regulation adopted by an administrative agency. These conditions involve consideration of whether there has been a showing of: (1) a likelihood that applicant will prevail on the merits of the appeal; (2) a showing of irreparable harm to applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) a showing that no harm will ensue to the public interest.

substantial evidence, so that they cannot reasonably be considered to be arbitrary, capricious or an abuse of discretion. There was no clear argument made in the hearing on the Stay Motion that the New Mexico Legislature's 2022 amendment to URPEDA expressly recognizing the SRMC as a public employer subject the PEBA, violates the New Mexico Constitution and Constitution of the United States of America. I can only conclude that those novel claims that without more on this record, stand a remote chance of success. The likelihood that that the District Court will find that AFT is not the exclusive representative of the bargaining unit as found by this Board, and that AFT had no standing to bring this PPC, is small.

B. SRMC Has Not Demonstrated Irreparable Injury if the PPCs Are Not Stayed.

In order to obtain a stay, SRMC must also demonstrate that it will suffer irreparable injury absent a stay of these proceedings. Irreparable harm is the "single most important prerequisite for the issuance of a preliminary injunction." *First W. Cap. Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017). It requires a showing of "significant risk" of "harm that cannot be compensated after the fact by money damages." *Fish v. Kobach*, 840 F.3d 710, 751 (10th Cir. 2016). The testimony of Wilson Wilson, upon which SRMC relies indicates that its claimed harm is largely monetary or retrospective in nature. See also, Motion for Stay of Proceedings, page 4 ¶1. ("Given that the PELRB's discretion in awarding relief is broad, including matters involving economic impact on a non-profit regional hospital, a stay pending appeal is proper. Moreover, no mechanism exists to undo relief issued by the PELRB should the parties be required to return to the certification process. Accordingly, a stay is proper.")

The fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay. Any such harm attributable to the Union may be remedied by damages, and as the Union argues, claimed potential monetary losses may be avoided by SRMC honoring and obeying the Order of this Board recognizing Complainant as the exclusive representative of the employees in question and engaging in the good faith bargaining required by NMSA 1978 § 10-7E-17 and 19(F) (2020).

The PEBA imposes a duty to bargain in good faith upon a public employer and unions. See NMSA 1978, § 10-7E-17(A)(1) (2020) (providing that public employers and exclusive representatives "shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties"). NMSA 1978 § 10-7E-4(I) defines "exclusive representative" to mean "a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining and status of SRMC as a public employer subject to Act is the law of the case. I can think of few things more fundamental to the at-issue bargaining unit employees' wages, hours and conditions of employment than the layoffs at issue. That is not to say that SRMC has committed a PPC as alleged, but to point out the importance of finding an irreparable harm justifying enjoining adjudication of that statutory right.

Issuing a Stay based only on a possibility of irreparable harm is inconsistent with a stay of proceedings as an extraordinary remedy that should only be awarded upon a clear showing that the applicant is entitled to such relief. SRMC has not made such a showing. I am persuaded by the Union's argument that Mr. Wilson's testimony established that there is no extra cost associated with defending these PPCs as all involved in doing so are salaried employees, and no harm to patient care has been demonstrated. I agree with the Union that at least as of May 20, 2022 SRMC is a public employer subject to the Public Employee Bargaining Act. Unless and until that fact is negated by a court of competent jurisdiction, or amended by the legislature, that is the law of the case.

I am not persuaded by the argument that if the Union prevails on this PPC and the Board order return to the status quo ante concerning the suspended employee or orders damages to that employee for the violation, that SRMC has been irreparably harmed. Rather I am persuaded by the Union's argument to the effect that SRMC's stated position is tantamount to saying that it shouldn't have to spend time defending its actions before the PELRB alleged to have violated the PEBA or face the negative effect of its failure to bargain pending appeal, effectively giving it the ability to act with impunity. Accordingly, other than the possibility of a decision on the PPCs adverse to its interest, in which event SRMC may seek to stay enforcement, I find that there are no injuries demonstrated that would result from the absence of a stay granted now.

C. Substantial Harm to Other Parties and the Public Interest Will Result if the Requested Stay is Issued.

The third factor to be considered in granting a stay is the harm, if any, that could result to other parties if a stay is granted, and the fourth factor is the public interest.

As noted above, the PEBA extends to the Complainant organizational and representational rights. It is the declared public policy of the State of New Mexico that the purpose of the PEBA is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions. See NMSA 1978 § 10-7E-2. To the extent the union is impeded in fulfilling its role as exclusive representative its rights under the PEBA are impaired, its constituent members' rights under the PEBA are impaired and the public interest expressed in § 2 of the Act, is impaired.

The apparent delay in SRMC recognizing its good faith bargaining obligation demonstrated in this case and by its request for a Stay of this PPC, constitutes the kind of lengthy delay in bargaining that deprives the union of its ability to demonstrate to its represented employees the tangible benefits to be derived from union representation. Further delay that would result from granting the requested Stay would cause the kind of substantial harm to the Union and SRMC employees recognized in *Franks Bros. Co.* and *Lee Lumber & Bldg. Material Corp.* Encouraging that delay by granting the requested Stay is not in the public interest.

Letter Decision re: Motion for Stay
July 26, 2023
Page 5

CONCLUSION

For the reasons discussed above, justice requires that SRMC's Motion For Stay of Proceedings filed May 26, 2023, should be, and hereby is, **DENIED**.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

A handwritten signature in blue ink, appearing to read "Thomas J. Griego". The signature is fluid and cursive, with a large loop at the end of the last name.

Thomas J. Griego
Executive Director