

# 42-PELRB-2023

## STATE OF NEW MEXICO PUBLIC EMPLOYEES LABOR RELATIONS BOARD

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

**Complainant**

v.

**PELRB No. 111-23**

**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**

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*Peggy Nelson*

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**PEGGY J. NELSON, BOARD CHAIR**

9/5/2023

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**DATE**



STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Governor

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THOMAS J. GRIEGO  
Executive Director

July 26, 2023

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Attn: Michael Calderon, Kevin Gick

Re: *UHPNM, AFT v. UNM SRMC; PELRB 111-23*

Dear Counsel:

This constitutes my Decision denying the Motion by UNM Sandoval Regional Medical Center to Stay these proceedings.

**PROCEDURAL BACKGROUND**

On March 17, 2023, UNM Sandoval Regional Medical Center (“SRMC” or “Employer”) appealed PELRB Case No. 304-22, including the PELRB’s decisions concerning representation and certification of AFT as exclusive bargaining representative, to the Second Judicial District Court of New Mexico. That appeal is now pending as Cause No. D-202-CV-2023-02118. On June 7, 2023 United Health Professionals of New Mexico, AFT, AFL-CIO (“UHPNM, AFT” or “Complainant”) filed a Prohibited Practice Complaint (“PPC”) against SRMC alleging various violations of the Public Employee Bargaining Act arising out of a three-day suspension of an SRMC employee within the bargaining unit recognized by this Board in PELRB Case No. 304-22. The Union alleges that the suspension was based on the allegation that the employee’s use of the employee badge to allow a Union Representative access to conduct Union business is protected concerted activity.

SRMC filed its Answer to the PPC and a Motion For Stay of Proceedings on June 27, 2023. UHPNM responded to the Motion on July 7, 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 the Board determined in its resulting Order 30-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.

## 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 (10<sup>th</sup> 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).<sup>1</sup>

## 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 has not is 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 substantial evidence, so that they cannot reasonably be considered to be arbitrary, capricious or an abuse of discretion. There was no clear argument made at the hearing on the 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

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<sup>1</sup> 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.

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 (10<sup>th</sup> 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 (10<sup>th</sup> 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).

Issuing a preliminary injunction 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 further agree that SRMC’s argument in favor of the stay is tantamount to saying that it shouldn’t have to spend time defending its actions before the PELRB alleged to have violated the PEBA, 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 imposes a duty to bargain in good faith upon both a public employer, and a union recognized by the PELRB as an exclusive representative of an appropriate group of employees. See NMSA 1978, § 10-7E-17(A)(1) (2020). If the NLRB's interpretation of the obligation to bargain as commencing with the election of an exclusive representative, or in this case, a card check pursuant to NMSA 1978, § 10-7E-14(C) (2020), SRMC was under a statutory obligation to bargain in good faith with the union since January 19, 2023. In any case it was so obliged as of the certification of results by the board, February 15, 2023. 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.

I recognize that the issue of the duty to bargain discipline has not been resolved by the PELRB. Granting the requested Stay does not further the interests of both parties in having that issue determined sooner, rather than later. 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.

**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



Thomas J. Griego  
Executive Director