

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

REGENTS OF THE UNIVERSITY OF  
NEW MEXICO, FOR ITS PUBLIC OPERATIONS  
KNOWN AS THE UNIVERSITY OF NEW MEXICO  
HOSPITAL, SPECIFICALLY INCLUDING THE  
UNM SANDOVAL REGIONAL MEDICAL CENTER,

Appellant,

v.

Case No. D-202-CV-2024-01995

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

Appellee.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is an appeal pursuant to Rule 1-074 NMRA of Order 8-PELRB-2024 issued by the State of New Mexico, Public Employee Labor Relations Board (“Board”) on February 8, 2024. The Court **AFFIRMS** the Board’s Order.

**I. BACKGROUND**

The University of New Mexico Sandoval Regional Medical Center (“Employer”) is a “public employer” under the Public Employee Bargaining Act (“PEBA”), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended through 2020). On January 19, 2023, the Board’s Executive Director certified the United Health Professionals of New Mexico, AFT, AFL-CIO (“Union”) as the exclusive representative of a bargaining unit of Employer’s employees. The Board affirmed the Certificate of Representation on February 15, 2023.

The Union filed a prohibited practice complaint (“PPC”) against the Employer on May 5, 2023. The PPC alleges that the Employer violated numerous sections of PEBA in April and May 2023, however, the allegations focus on the Employer’s conduct surrounding (1) a layoff/reduction

in force (“RIF”) and (2) the assignment of additional duties to bargaining-unit employees in the Post-Anesthesia Care Unit. The Union, among other allegations, contends that the Employer acted unilaterally and refused to bargain with respect to changes to wages and the terms and conditions of employment.

The Board’s hearing officer held a merits hearing on October 30, 2023, and issued a written report and recommended decision on December 5, 2023. The hearing officer ruled in favor of the Employer with respect to the Employer’s alleged failure to bargain over changes to the layoff policy. The Union has not appealed.

The hearing officer ruled in favor of the Union on the remaining claims. The hearing officer concluded that the Employer breached its statutory duty to bargain in the following ways: (1) refusing to bargain with respect to the RIF after a demand to bargain; (2) failing to respond to requests for information regarding the RIF; and (3) implementing unilateral changes to the duties of bargaining-unit employees. The Board adopted the hearing officer’s report and recommended decision on February 8, 2024.

The Employer appealed the Board’s Order to this Court pursuant to NMSA 1978, Section 10-7E-23(B) (2003) and seeks reversal.

## **II. LEGAL STANDARDS**

PEBA provides for judicial review of orders issued by the Board. § 10-7E-23(B). Such appeals “shall be based upon the record made at the board or local board hearing.” *Id.* The Court must affirm the order unless it is: (1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record considered as a whole; or (3) otherwise not in accordance with law. *Id.*

An agency decision is arbitrary and capricious if it provides no rational connection between the facts found and choices made or omits consideration of relevant factors or important aspects

of the problem at hand. *See N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm’n*, 2019-NMSC-015, ¶ 8.

### III. DISCUSSION

#### A. **The Board’s conclusion that the Employer had a duty to bargain with the Union is not arbitrary or capricious.**

The Board concluded that the Employer had a duty to bargain with the Union at the times relevant to the PPC in April and May 2023. This conclusion is based on the Employer’s status as a “public employer” and the Union’s status as the “exclusive representative.” [RP 224–226] PEBA defines “exclusive representative” as “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.” NMSA 1978, § 10-7E-4(I) (2020). 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.” *See* NMSA 1978, § 10-7E-17(A)(1) (2020).

The Employer contends that the Board’s conclusion is arbitrary and capricious because the Board “failed to consider relevant factors important to the legal issues.” [Statement of Appellate Issues, filed May 6, 2024 (“SAI”), 7] Specifically, the Employer argues that the Board failed to consider the effect of an August 14, 2023 district court decision (“August Decision”) that reversed and remanded for further explanation a series of the Board’s decisions related to the certification of the Union as the exclusive representative.<sup>1</sup> [RP 301–306] The Employer argues that the decision rendered the Union’s certification as the exclusive representative invalid and that there was no duty to bargain with the Union.

The Union responds that the August Decision did not invalidate the Union’s certification. The Union emphasizes that the decision remanded the matter to the Board “to explain the reasons

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<sup>1</sup> *See Op. and Order, UNM Sandoval Reg’l Med. Ctr., Inc., v. United Health Pros. of N.M.*, D-202-CV-2023-02118 (2d Jud. Dist. Ct. August 14, 2023).

for its written determination.” **[Appellee Union’s Response to Statement of Appellate Issues, filed June 14, 2024, 9]** The Union also contends that the Employer had a duty to bargain with the Union in April and May when the events relevant to the PPC occurred.

The Court identifies no error in the Board’s conclusion with regard to the duty to bargain. The Board found that the Union was certified as the exclusive representative of a group of Employer’s employees on January 19, 2023 and that the certification was affirmed by the Board on February 15, 2023. **[RP 225–226]** The Board explained that “all events at issue in this PPC occurred between April and May of 2023 when the duty to bargain indisputably existed” and declined to opine on the effect of the August Decision. **[RP 230]** The Board’s reasoning is rational and the Board’s findings support the conclusion that the Employer had a duty to bargain with the Union at the times relevant to the PPC.

The Employer’s arguments regarding the effect of the August Decision are unavailing. The Court’s role here is to review the Board’s decision regarding the PPC. The Union was the exclusive representative at the times relevant to the PPC, *i.e.*, in April and May 2023. The August Decision, issued after the events described in the PPC, did not change the facts before the Board.

**B. The Board’s Order is not contrary to law.**

**1. The Board’s Order is not contrary to the district court’s order.**

The Employer contends that the Board’s Order is contrary to law because it conflicts with the August Decision. In the administrative proceeding the Employer filed several dispositive motions based on the August Decision and the Employer argues that the Board’s hearing officer erred in denying the motions. In other words, the Employer asserts that the administrative proceeding should have ended after the district court issued the August Decision. **[SAI, 7–8]**

The Union argues that the Employer misreads the August Decision. The Union asserts that the August Decision remanded the matter to the Board for further explanation. The Union

contends that the Board complied with the remand and reaffirmed the Union's certification. The Union also argues that the August Decision was issued after the events described in the PPC.

The Employer's arguments present no basis for reversal. The Court's role in this case is to review the Board's final decision. Here, the Board's Order did not conflict with the August Decision. The district court ordered the Board to explain the reasons for its written determination on a specific issue and to hold further proceedings that may be consistent with the opinion. The August Decision did not direct decertification of the Union, it did not decide the merits of the Union's certification, and it did not address the decision's effect on other administrative proceedings. **[RP 306]** Further, as explained above, the Board's Order concerned events that occurred prior to the August Decision. The Board's Order therefore does not conflict with the August Decision and the Court discerns no error with respect to this issue.<sup>2</sup>

**2. The Board's decision that the Employer breached the duty to bargain by failing to provide information to the Union is not contrary to law.**

Board concluded that the Employer breached its duty to bargain in good faith with the Union by failing to provide information to the Union. The parties do not dispute that the duty to bargain in good faith includes a reciprocal duty to exchange information. The Board found that the Union requested information regarding the RIF and the Employer failed to respond to the request for information. Accordingly, the Board concluded that the Employer breached its duty to bargain in good faith with the Union.

The Employer asserts that the Board acted contrary to law because the issue was not properly presented for adjudication. According to the Employer, the issue was not presented in

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<sup>2</sup> The Employer also referenced a November 1, 2024 district court decision in a supplemental filing. **[Appellant's Notice of Suppl. Authority, filed November 14, 2024.]** That decision involved an appeal of the Board's post-remand order on the Union's certification. *See Op. and Order, Regents of the Univ. of N.M. v. United Health Pros. of N.M.*, D-202-CV-2023-09660 (2d Jud. Dist. Ct. November 1, 2024). The Court will not discuss this decision because it is not part of the administrative record and the matter was not addressed in the parties' briefs. The decision was appealed and the matter is currently pending before the Court of Appeals (A-1-CA-42271).

the PPC or the stipulated pre-hearing order before the Board. The Employer asserts that it did not have notice of the claim or an opportunity to respond to the claim. For these reasons the Employer argues that the Board's decision on the issue is contrary to law.

The Union responds that the issue of the Employer's failure to bargain in good faith with the Union was raised in the PPC. Further, the Union asserts that the request for information and request to bargain were included in the exhibits of the stipulated pre-hearing order.

The record contradicts the Employer's assertion that it lacked notice or an opportunity to respond to the claims. As an initial matter, it is undisputed that the duty to bargain in good faith includes the reciprocal duty to exchange information relevant to bargaining. [SAI, 9] In the PPC, the Union raised the Employer's failure to bargain. [RP 1–3 (paragraph 5 and 12(g))] The stipulated pre-hearing order specifically mentions the Union's position that the Employer breached its duty to bargain and the exhibits listed in the order include an "Email Request to Bargain/Request for Information." [RP 182, 185–187] During the hearing, Union representative Eric Lehto testified about the Union's request to bargain and the accompanying request for information. [1 Hr'g Audio, 43:56–44:40; 46:40–47:00] The Board's hearing officer questioned Witness Lehto about the request for information and provided an opportunity for counsel to ask additional questions. [2 Hr'g Audio, 45:30–48:50] The record therefore reflects that the issue was raised throughout the case and that the Employer had an opportunity to respond to the Union's claims. Accordingly, the Court concludes that the Employer's arguments present no basis for reversal and the Board's Order is not contrary to law.

#### **IV. CONCLUSION**

For the reasons explained above, the Court affirms the Board's Order.

**IT IS SO ORDERED.**



**ELAINE P. LUJAN**  
**DISTRICT COURT JUDGE**

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