

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

UNM SANDOVAL REGIONAL MEDICAL
CENTER, INC.,

Appellant,

v.

No. D-202-CV-2023-00132

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS (IAMAW), AFL-CIO,

and

STATE OF NEW MEXICO PUBLIC
EMPLOYEE LABOR RELATIONS BOARD,

Appellees.

FINAL MEMORANDUM OPINION AND ORDER

THIS MATTER is an appeal under Rule 1-074 NMRA of Order 24-PELRB-2022 issued by the State of New Mexico, Public Employee Labor Relations Board (“Board”). The Order rejected the objections of University of New Mexico Sandoval Regional Medical Center, Inc. (“UNM SRMC”) to the results of a card check and affirmed the certification of the International Association of Machinists and Aerospace Workers, AFL-CIO (“Union”) as the exclusive representative of the bargaining unit identified in the Union petition filed pursuant to the Public Employee Bargaining Act (“PEBA”), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended through 2020).

The Court **AFFIRMS** the Board’s Order.

I. BACKGROUND

In 2022, the Legislature amended the University Research Park and Economic Development Act to deem certain research park corporations a “public employer” for the purposes of PEBA. NMSA 1978, § 21-28-7(B)(2) (2022). The law became effective on May 18, 2022. *Id.*

On the same day, the Union filed a petition for certification of the Union as the exclusive bargaining representative of a unit of public employees employed by UNM SRMC. The Union sought certification pursuant to the procedures of NMSA 1978, Section 10-7E-14(C) (2020).

After ruling on certain issues concerning unit composition, the Board conducted a card check on September 15, 2022 to determine whether the showing of interest demonstrated majority support for the Union to be the exclusive representative of the bargaining unit in question. No party received advance notice of the card check and therefore neither UNM SRMC nor the Union observed the card check. On the same day, the Board found that the showing of interest demonstrated majority support for the Union and the Board subsequently issued a certification of representation identifying the Union as the exclusive representative of the bargaining unit of employees of UNM SRMC.

On September 22, 2022, UNM SRMC filed an objection to the card count and certification of representation. The Board thereafter began an investigation and requested that UNM SRMC present the Board all evidence available in support of UNM SRMC's objections. The Board's Director then submitted a report on objections to the card check. Based on the evidence presented by UNM SRMC, the report recommended that the Board reject UNM SRMC's objections. The report further recommended, in accordance with Section 10-7E-14(C), that the Board hold a fact-finding hearing on the challenge.

The Board conducted a fact-finding hearing on November 19, 2022. Neither UNM SRMC nor the Union called any witnesses or introduced additional evidence. Rather, the Board heard argument from the parties regarding UNM SRMC's objections. After the hearing, the Board voted to adopt the reasoning of the Director's report, overrule the objections of UNM SRMC, and affirm the certification of the Union. The Board also issued a written Order with respect to its decision.

UNM SRMC 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.*

III. DISCUSSION

A. **The Board did not act contrary to law by relying on authorization cards dated prior to May 18, 2022 when certifying the Union.**

In the administrative proceedings, UNM SRMC submitted an objection to the inclusion in the card count of fifty-seven authorization cards dated before May 18, 2022, *i.e.*, the date that UNM SRMC became a "public employer" under PEBA. UNM SRMC argues that prior to that date it was not a "public employer" under PEBA and relying on interest cards dated before the right to organize vested constitutes an impermissible retroactive application of the law. The Union responds that the petition was filed on the effective date of the new law and that there was no retroactive application of the law.

The Board concluded that the authorization cards are valid. The Board reasoned that the authorization cards merely indicate that an employee has designated the Union to be a bargaining representative. The Board concluded that there was no impermissible retroactive application of the law because the Union filed its petition on May 18, 2022. [2 RP 222–23.]

A statute or regulation is considered retroactive "if it impairs vested rights acquired under prior law or requires new obligations, imposes new duties, or affixes new disabilities to past transactions." *Gadsden Fed'n of Tchrs. v. Bd. of Educ.*, 1996-NMCA-069, ¶ 14, 122 N.M. 98. It

is well established that “a statute is not applied retroactively merely because it draws upon antecedent facts for its operation.” *Lucero v. Bd. of Regents*, 1978-NMSC-054, ¶ 6, 91 N.M. 770.

The Board’s decision to rely upon authorization cards gathered prior to May 18, 2022 is not a retroactive application of the law. The application of the law in this case began with the Union’s petition, which was filed on the same day the new law became effective. The Board assessed the new petition under the new law and part of the process drew upon antecedent facts. There was no retroactive application of the law because there was no change in vested rights or new obligations affixed to past transactions.

For these reasons, the Board did not act contrary to law in relying on the authorization cards as part of the basis for certification of the Union under PEBA.

B. The Board’s Order rejecting UNM SRMC’s objections to the card count procedure is not arbitrary or capricious.

UNM SRMC objects to the Board’s procedures for conducting the card count. UNM SRMC argues that it was not provided notice or the opportunity to observe the card count and that a party’s right to object is hindered without the ability to observe the card count. Specifically, UNM SRMC argues that “[a]llowing objections while disallowing any process that would allow the objections to be meaningful is arbitrary and capricious.” [UNM SRMC Statement of Appellate Issues, filed November 10, 2023, 6.] UNM SRMC further contends that because of the Board’s procedures, the parties have no opportunity to challenge any potential misconduct of the Director or observable error on the part of the agency.

The Union responds that the Board properly followed its regulations. The Union further contends that the card count process is purely administrative and that UNM SRMC has little role to play in the process because the authorization cards are confidential.

The Board concluded that there is no right to advance notice of a card count and no right to observe a card count given the confidential nature of the authorization cards. The Board further

concluded that a card count is “purely administrative” and the Board followed its regulations. Accordingly, the Board overruled UNM SRMC’s objections to the card count procedure.

In 2020, the Legislature amended PEBA to allow a procedure for the certification of an exclusive representative through verification of authorization cards rather than an election. *See* § 10-7E-14(C). During this procedure, the Board’s Director “shall compare the showing of interest with the employee list provided by the employer . . . and determine whether the petitioning labor organization has demonstrated majority support.” 11.21.2.33(A) NMAC. The regulations also explain that evidence of a showing of interest, *e.g.*, authorization cards, “shall be kept confidential by the director and the board” and “shall be returned to the party that submitted the same upon the close of the case.” 11.21.1.21 NMAC.

The Court concludes that the Board’s Order rejecting UNM SRMC’s objections is not arbitrary or capricious for two reasons. First, the Board had rational reasons to conduct the card count procedure without notice to the parties or the opportunity to observe the count. The regulations provide that the showing of interest, in this case the authorization cards, must be kept confidential. Further, neither the statute nor the regulations provide for the participation of outside parties in the administrative process of the card count. It is reasonable for the Board to conduct the card count administratively, without observers, because outside parties have no role in the process and are not permitted to view the authorization cards.

Second, in this case, UNM SRMC had a meaningful opportunity to gather information, submit objections, and have the objections heard even though it did not observe the card count. UNM SRMC issued a verification challenge and submitted objections based on information that it had gathered. The Director investigated the objections, provided a detailed report on the matter, and recommended that the Board hold a fact-finding hearing. **[2 RP 157–184 (UNM SRMC’s proffer of evidence and the Director’s Report).]** The Board held a fact-finding hearing pursuant

to PEBA. *See* § 10-7E-14(C). UNM SRMC had the opportunity to call witnesses and present evidence at the fact-finding hearing, however, it chose to do neither. [2 RP 222.] The Board's procedures, *i.e.*, the Director's investigation and the Board's fact-finding hearing, provided sufficient opportunity for UNM SRMC to gather information and present its case concerning alleged errors in the Board's determination of majority support.

Considering the record as a whole, the Board's Order rejecting UNM SRMC's objection is not arbitrary or capricious.

IV. CONCLUSION

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

IT IS SO ORDERED.



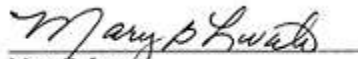
Joshua A. Allison
District Court Judge

This is to certify that a true and correct copy of the foregoing document was mailed and/or otherwise delivered to the following on the date of filing:

Jeff D. Herrera
Scott Cameron
Assistant Attorneys General
408 Galisteo Street
Santa Fe, NM 87501
(505) 490-4878
jherrera@nmag.gov
scameron@nmag.gov
Counsel for Appellee State of New Mexico
Public Employee Labor Relations Board

Shane Youtz
Stephen Curtice
James A. Montalbano
YOUTZ & VALDEZ, P.C.
900 Gold Avenue, SW
Albuquerque, NM 87102
(505) 244-1200
shane@youtzvaldez.com
stephen@youtzvaldez.com
james@youtzvaldez.com
Counsel for Appellee IMAAW

Samantha Hults
Melissa M. Kountz
Rodey Dickason Sloan Akin & Robb PA
Post Office Box 1888
Albuquerque, New Mexico 87103
(505) 765-5900
shults@rodey.com
mkountz@rodey.com
Counsel for Appellant UNM SRMC


Mary B. Lovato
TCAA to Division XXIII