

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

UNM Sandoval Regional Medical Center, Inc.,

Respondent-Appellant,

v.

Case No. D-202-CV-2023-02118

RE: PELRB No. 304-22

United Health Professionals
of New Mexico, AFT, AFL-CIO.,

Petitioner-Appellee.

FINAL MEMORANDUM OPINION AND ORDER

THIS MATTER is an appeal under Rule 1-074 NMRA of Orders 26-PELRB-2022, 8-PELRB-2023 and 9-PELRB-2023 of the New Mexico Public Employee Labor Relations Board (“Board”) relating to Appellee United Health Professionals of New Mexico, AFT, AFL-CIO’s (“AFT”) petition for certification as the exclusive bargaining representative, for the purposes of collective bargaining, for a unit of specified employees employed by UNM Sandoval Regional Medical Center, Inc. (“SRMC”). The Board decisions are **REVERSED** and this matter is **REMANDED** to the Board for further proceedings consistent with this opinion.

I. FACTS AND BACKGROUND

SRMC is a research park corporation organized under the University Research Park and Economic Development Act (“URPEDA”), NMSA 1978, §§ 21-28-1 through -25 (1989, as amended through 2022). Prior to May of 2022, as a URPEDA corporation, SRMC was not a “public employer” under the Public Employee Bargaining Act (“PEBA”), NMSA 1978, §§ 10-7E-1 to -25 (2003, as amended through 2020). Section 21-28-7(B)(2) of URPEDA was amended, effective May 18, 2022, such that a URPEDA corporation which “owns, operates or manages a

health care facility or employs individuals who work at a health care facility” is a public employer for the purposes of PEBA.

On May 18, 2022, AFT filed a Petition for Certification (“Petition”) seeking certification as the exclusive bargaining representative, for the purposes of collective bargaining, for a unit of specified full-time, part-time and per diem public employees employed by SRMC. **RP 1-4.** AFT also sought a check card under Section 10-7E-14(C). *Id.* **at 3, 5.** On May 19, 2022, the Executive Director of the Board requested a list of employees who would be in the bargaining unit as proposed, along with each party’s statement of issues relating to unit inclusion or exclusion that may be in dispute and any other issues that could affect the outcome of the proceeding. *Id.* **at 6-7.** SRMC provided copies of putative unit employee lists on July 25, 2022 and July 26, 2022. Stip. Mot. to Supp. RP on Appeal, Exs. A & B, Emails and Employee Lists; Order Granting Stip. Mot. to Supp. RP on Appeal.

The parties disagreed regarding the appropriate composition of the unit. **RP 8-13, 22-23.** SRMC took the position that per diem employees are not public employees because they are not “regular” employees under Section 10-7E-4(Q). *Id.* **at 10;** *see* § 10-7E-4(Q) (“[P]ublic employee’ means a regular nonprobationary employee of a public employer[.]”). A hearing was scheduled for July 25, 2022 but was postponed to August 3, 2022. *Id.* **at 105.** The Hearing Officer issued a Report and Recommended Decision on August 23, 2022 determining that due to their irregular employment status, the evidence supported the conclusion that SRMC employees employed on a per diem basis, known as “pro re nata” (“PRN”) employees, are not “regular” employees under

Section 10-7E-4(Q) such that their inclusion in the bargaining unit would render it inappropriate.¹
***Id.* at 115-21, 134-35.**

On September 7, 2022, AFT requested the Board's review of the Hearing Officer's Recommended Decision to the extent it determined that the per diem employees in the proposed unit are not "regular" employees under Section 10-7E-4(Q). ***Id.* at 137-46.** SRMC filed its response on September 21, 2022. ***Id.* at 147-53.** The Board issued Order 26-PELRB-2022 on December 1, 2022 reversing the Hearing Officer's Recommended Decision with respect to its determination that SRMC employees employed on a per diem or "PRN" basis are not "regular" employees under Section 10-7E-4(Q). ***Id.* at 154-55.** The Board remanded to the Hearing Officer to determine whether the per diem employees share a community of interest with others in the petitioned for unit. ***Id.* at 155.**

Following briefing by the parties, on January 13, 2023, the Hearing Officer issued a Report and Recommended Decision Concerning Appropriate Bargaining Unit finding that SRMC's per diem employees share a community of interest with the other employees such that their inclusion in a single unit with the other SRMC employees would be appropriate. ***Id.* at 161-202.** The Executive Director conducted a card-check on January 18, 2020 which showed majority support for certification of AFT as the exclusive representative of the collective bargaining unit comprised of SRMC employees. ***Id.* at 203.** The Executive Director certified AFT as the representative of the collective bargaining unit on January 19, 2023. ***Id.* at 203-5.**

SRMC requested the Board's review of the Hearing Officer's Report and Recommended Decision Concerning Appropriate Bargaining Unit on January 27, 2023. ***Id.* at 206-15.** On

¹ The Hearing Officer also concluded that house supervisors and charge nurses are not excluded from coverage under PEBA and were appropriate for inclusion in the bargaining unit. **RP 18-31.** These determinations are not the subject of the present Rule 1-074 appeal.

February 2, 2023, SRMC filed a Motion to Strike Card Check Results as Premature and Invalid and Request to Remove from Agenda. *Id.* at 216-20. At its February 7, 2023 meeting, the Board voted to adopt and affirm the Hearing Officer’s Report and Recommended Decision Concerning Appropriate Bargaining Unit and issued Order 8-PELRB-2023. *Id.* at 221. In Order 9-PELRB-2023, the Board denied SRMC’s motion on the basis that SRMC failed to timely file an objection to the card check under 11.21.2.34 NMAC. *Id.* at 222-23. The Board also ratified and affirmed the Executive Director’s Card Check Result Report issued on January 19, 2023 and the Certification of Representation. *Id.* at 223. SRMC timely appealed the Board’s decisions on March 17, 2023.

II. STANDARD OF REVIEW

The Court may reverse the decision only if the Court finds:

- (1) the agency acted fraudulently, arbitrarily or capriciously;
- (2) based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;
- (3) the action of the agency was outside the scope of authority of the agency; or
- (4) the action of the agency was otherwise not in accordance with law.

Rule 1-074(R). The party challenging the agency’s decision bears the burden on appeal of showing the decision meets one of the grounds for reversal. *Fitzhugh v. N.M. Dep’t of Labor*, 1996-NMSC-044, ¶ 25, 122 N.M. 173, 922 P.2d 555. “A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record.” *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm’n*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806.

III. DISCUSSION

SRMC argues the Board’s decision to reverse the Hearing Officer’s Recommended Decision with respect to its determination that per diem or “PRN” employees employed by SRMC

are not “regular” employees under Section 10-7E-4(Q) was arbitrary and capricious because the Board failed to provide a reasoned basis for its decision. **Stmt. of App. Issues at 5.**

A reviewing court, “in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.” *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm’n*, 2003-NMSC-005, ¶ 11, 133 N.M. 97, 61 P.3d 806 (block quotation and citation omitted). “If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis.” *Id.*; see *Atlixco Coal. v. Maggiore*, 1998-NMCA-134, ¶ 20, 125 N.M. 786, 965 P.2d 370 (“[T]he reviewing court may not supply a reasoned basis for the agency’s action that the agency itself has not given.”) (citation omitted). “For the court to supply reasons for the [Board] in this manner is not consistent with the doctrine of separation of powers because it foists upon the court what is essentially the function of the Executive Branch of government.” *Atlixco Coal.*, 1998-NMCA-134, ¶ 20 (internal quotation marks and citation omitted).


The Hearing Officer’s Report and Recommended Decision provided a broad analysis, including citations to relevant authorities, supporting its determination that employees employed by SRMC on a per diem or “PRN” basis are not “regular” employees under PEBA. **RP 115-21.** The Board subsequently voted at its November 19, 2022 meeting to reverse the Recommended Decision with respect to this conclusion. *Id.* **at 154.** No rationale was provided for the Board’s decision in Order 26-PELRB-2022 on this issue. *Id.* **at 154-55.** Put differently, the Board’s decision contained no citation to authorities, any facts it relied upon, or its analysis to support the conclusion that the per diem or “PRN” employees in the proposed unit are “regular” employees under Section 10-7E-4(Q). *Id.*

“An agency’s action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” *Albuquerque Cab Co., Inc. v. N.M. Pub. Regul. Comm’n*, 2017-NMSC-028, ¶ 8, 404 P.3d 1 (internal quotation marks and citation omitted). As the Board did not provide a reasoned basis for its decision regarding the eligibility of per diem or “PRN” employees for inclusion in the collective bargaining unit, which served as a precursor to its subsequent actions, the Court remands this matter to the Board to explain the reasoning for its decision that the per diem or “PRN” employees in the proposed unit are “regular” employees under PEBA. *See* Rule 1-074(T)(1) (“The district court, in its appellate capacity, shall issue a written decision, which may include . . . remanding the case to the administrative agency with specific instructions for further proceedings and determinations”); *Atlixco*, 1998-NMCA-134, ¶ 44 (setting aside provisions of a final order of the Secretary of the New Mexico Environment Department approving a solid waste facility permit and remanding to the Secretary to reconsider and explain the reason for deviating from the hearing officer’s recommendations).

CONCLUSION

For the foregoing reasons, the Board’s decisions are **REVERSED**, and this matter are **REMANDED** to the Board to explain the reasons for its written determination that per diem or “PRN” employees in the proposed unit are “regular” employees under the PEBA, and for any other remaining proceedings that may be consistent with this opinion.

IT IS SO ORDERED.


VICTOR S. LOPEZ, JUDGE
Second Judicial District, Div. XXVII

This is to certify that a true and correct copy of the foregoing document was mailed and/or otherwise delivered to the following on August 14, 2023:


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