STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

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.

UNITED HEALTH PROFESSIONALS of NEW MEXICO, AFT, AFL-CIO,
Appellee.

D-202-CV-2023-09660

Opinion and Order

This matter comes to the Court's attention on Appellant's appeal of the Public Employees Labor Relations Board's Order 59-PELRB-2023. The request for hearing is denied. The Board's Order is reversed. Appellee's Emergency Motion for Declaration of Obligation to Meet and Bargain is moot as a result and is denied.

Facts and Background

In May 2022, Appellee sought to exercise their collective bargaining rights under the Public Employee Labor Relations Act (PEBA), by submitting a petition for certification, supported by a showing of interest from a majority of the employees in the proposed bargaining unit. Appellee's petition included proposed representation of full-time, regular part-time, and per diem, non-probationary employees of the University of New Mexico Sandoval Regional Medical Center (the Hospital). **RR, at 108.** The parties disagreed regarding the appropriate composition of the bargaining unit. While the Board's hearing officer found that per diem, or PRN, employees are not "regular employees" for purposes of PEBA, the Board reversed this decision, without

explanation.

On November 21, 2023, the Board, in Order 59-PELRB-2023, following remand concerning the earlier order to explain the reasons for the Board's determination that PRN employees in the proposed unit are "regular" employees under PEBA, set out its reasoning and basis. **RR, at 517.** The Board reaffirmed its adoption of Findings of Fact 1 through 42 of the hearing officer. ***Id.*** Further relevant facts, which are undisputed, are set out as follows.

The hearing officer set out two stipulated facts. **RR, at 110.** First, Appellee is a labor organization as defined by PEBA, and second, Appellant is a public employer for the limited purposes of PEBA, as that term is defined by the statute. ***Id.*** **(FF 1 & 2).**

Per diem positions are termed *pro re nata* (PRN) in the medical field, meaning "'as the situation demands' or simply 'as needed.'" **RR, at 111 (FF 3).** Pursuant to the Hospital's Personnel Manual, "'[a]ll PRN staff are considered employees of [the Hospital] and are not contract employees," and must comply with the Hospital's scheduling provisions, appropriate job description, and personnel and administrative policies. ***Id.*** **(FF 4).**

"PRN staff must be available to work at least eight hours per week and usually work more." ***Id.*** **(FF 5).** "Shift assignments for the subject employees are based in part on seniority using the Hospital's 'shift wizard' software with full-time employees choosing their shifts first, part-time employees choosing second and PRNs choosing last." ***Id.*** **(FF 6).** PRNs "schedule their shifts based upon what is available after full-time (FTE) and part-time employees (PTE) choose their shifts in order to provide staffing during any periods when there are insufficient FTE and PTE employees to fully staff a shift, floor or unit as needed," thus, "PRNs do not have a set schedule like a full-time or part-time regular employee." ***Id.*** **(FF 7).**

"When asked to fill in for an absent employee at the last-minute, a PRN is not obligated to

accept the assignment if it is not within the days or times the PRN has committed to be available for work." **RR, at 112 (FF 8).** "A PRN is able to substitute for a regular employee for part of a shift." ***Id.*** **(FF 9).** "PRNs provide their availability to [the Hospital, and if it] needs them to fill-in for an FTE or PTE on leave or otherwise absent during the period a PRN is available, that PRN is called to work. If there is no such FTE or PTE absence, the PRN is not scheduled to work." ***Id.*** **(FF 10).** "Because the person a PRN fills in for is an employee whose position has been counted for staffing levels, PRNs are used to maintain those staffing levels." ***Id.*** **(FF 11).**

While "PRNs are evaluated in the same manner and on the same criteria as other employees and, if they work a sufficient number of qualifying hours on their 'as needed' schedules, they are eligible for the same health insurance coverage as a FTE or PTE;" they "are not eligible to receive certain other benefits enjoyed by FTE or PTE such as, paid time off (PTO)," "incentive payments or tuition reimbursement." **RR, at 112-13 (FF 12).** "PRNs are among the first positions," pursuant to the Hospital's policy, "to be eliminated during a reduction in force," and the last to be called back to work. ***Id.*** **at 113 (FF 13 & 14).**

"Except for the 'PRN' designation, the Hospital's form offer of employment to a PRN is the same as that for all other employees." **RR, at 113 (FF 15).** "PRNs attend New Employee Orientation and must meet all of the other qualification requirements" "as other employees do." ***Id.*** **at 114 (FF 16).** "PRNs and third-party contractors known as 'Travelers' sometimes work as House Supervisors, assuming the same responsibilities as those employed by the Hospital on a full-time basis." ***Id.*** **(FF 17).**

The hearing officer determined that, because of their irregular employment status, distinguishing them from others in the putative unit, PRN employees are not "regular" employees and thus are not public employees under NMSA 1978, § 10-7E-4(Q) (2020). **RR, at 119-20.** As

a result, inclusion of PRNs in the bargaining unit was not appropriate. ***Id.* at 220.** Explaining that, absent ambiguity, the plain meaning rule requires giving effect to the statutory language and refraining from further interpretation, the hearing officer determined that the common understanding of the term "regular" in the workplace "means usual, normal or habitual," an "antonym of 'casual' or 'irregular.'" ***Id.* at 123.** Thus, the hearing officer concluded that PRN employees are not "regular" employees. ***Id.***

It observed that, following its review of thirty-five states and the District of Columbia in an earlier matter, the term "regular" is part of the definition of "public employee" only in New Mexico and Maine. ***Id.* at 123 & n.6.** The hearing officer explained that the applicable Maine statute defined "'regular employee'" as "'any professional or classified employee who occupies a position that exists on a continual basis,'" "consistent with the common understanding of regular employment as excluding from collective bargaining, those working an irregular schedule." ***Id.* at 124 (citation omitted).**

The hearing officer determined that

> although the positions a PRN employee occasionally temporarily fills may be said to exist on a continual basis, it is the regular employee hired into that position, who 'occupies' it, not the occasional PRN. PRNs do not have a set schedule like a full-time or part-time regular employee but schedule their shifts based upon what may be available after full time and part-time employees choose their shifts in order to provide staffing during any period when there are insufficient FTE and PTE employees to fully staff a shift, floor or unit. Because the person a PRN fills in for is an employee whose position has been counted for staffing levels, and PRNs are only occasionally scheduled to maintain those staffing levels it is clearly that first person who occupies a position that exists on a continual basis, not the PRN.

RR, at 124.

Reviewing other state laws on the topic that do not include the term "regular," the hearing officer recounted that New Hampshire excluded from the definition of "public employee" "'[p]ersons in a probationary or temporary status, or employed seasonally, *irregularly or on call*.'"

Id.* (quoted authority omitted) (emphasis in original).** It referenced Ohio law, which similarly excluded "'[s]easonal and *casual employees*'" from the definition. ***Id.* at 125 (quoted authority omitted) (emphasis in original).** Turning to other states, the hearing officer explained that "[n]o state expressly includes in its definition of 'public employee', those employed in temporary, seasonal or irregular employment status." ***Id. Finally, the hearing officer relied on *Barber v. Los Alamos Beverage Corp.*, 1959-NMSC-007, ¶¶ 3, 27-28, 65 N.M. 323, 337 P.2d 394 (concluding an individual, holding "regular employment" with the fire department, was working as a "special" or "casual" employee for the defendant company, paid by the day, was not a "regular" employee under worker's compensation law).

As noted above, the Board rejected the hearing officer's conclusion that PRN employees are not "regular" employees for the purposes of PEBA. **RR, at 517.** The Board explained that, instead, "whether a public employee is 'regular' depends on the nature of the employment relationship," "not" "upon the frequency of work or similarity of job duties." ***Id.*** "Nothing in the PEBA indicates that the right of employees to collectively bargain should depend on a specific employer's idiosyncratic hiring, retention, seniority, assignments or scheduling practices." ***Id.* at 521.** It similarly determined that "regularity should not turn on duty assignments," which might allow the creative and nimble employer to avoid PEBA through creative staffing and work assignment strategies." ***Id.***

The Board, unlike the hearing officer, found that the term "regular" as used in PEBA is "inherently ambiguous," because it could refer to employment frequency or status, and relied on New Mexico statutory definitions relating to "the frequency of an event or circumstances, such as 'regular meeting,'" as well as "a status, such as a 'regular', as opposed to ad hoc, member of a board or commission.'" **RR, at 518 (quoted authorities omitted).** As a result, the Board

attempted to construe the term in light of the purpose of PEBA, "'to guarantee public employees the right to organize and bargain collectively with their employers.'" ***Id.*** **(quoted authority omitted).**

The Board concluded

> that these laudable objectives would in no way be promoted, and could be eroded, if the right of public employees to organize, bargain and assert collectively bargained for rights was conditions on the frequency of work, or on other idiosyncratic terms and conditions within the control of an employer. That is so because certain public employers, such as [Appellant], have discretion in the establishment of work hours and schedules. There is no meaningful criteria or measure to determine where along the continuum between a part-time and flexible schedule and a full-time salaried fixed schedule the right to PEBA protections should attach or detach. To the contrary, the public policy underlying the PEBA is best promoted by allowing all public employees on the continuum to organize and bargain. For these reasons, the Board concludes that "regular" in this context refers to some status of the employee, rather than to the schedule of the employee.

RR, at 519.

The Board next addressed the "challenge" of "identifying the particular status that the term 'regular' contemplates." ***Id.*** "The status of a public employee could refer to whether the worker is permanent or temporary, classified or unclassified, direct or indirect, or some other dichotomous legal connotation." ***Id.*** After again referencing PEBA's purpose, the Board also discussed how other New Mexico statutes addressed the terms "'temporary'" and "'classified,'" noting that our Legislature "does not use 'regular' as a synonym for 'temporary' or 'classified' when it intends for a law to refer to either category of employment." ***Id.*** **(quoted authority omitted).**

"Conversely, there is no statutory corollary illustrating that the legislature uses the terms 'direct' or 'indirect' or 'special' to refer to a public employee's status." **RR, at 519-20.** Explaining that a "direct employee is one who is under the control of and paid by the same employer" while an "'indirect' or 'special' employee is under the control of one employer but paid by another," the Board determined that PEBA's policies "are implicated to a much lesser degree as compared to

when a public employer engages an employee directly." ***Id.* at 520 (quoted authorities omitted).** The Board concluded that "PEBA should not apply to indirect, or special, employment relationships." ***Id.*** It then construed "'regular' to refer to only direct employment relationships," "avoid[ing] the legal and practical difficulties that would obtain if 'regular' included indirect or special employees," as the Legislature's intent. ***Id.* at 521.**

"[T]he Board concludes that the determination whether an employee is 'regular' depends on the contractual status of the employee, not on employer specific variables such as duties, tenure or schedule." **RR, at 521.** "[P]ublic employees are those with whom the public employer can meaningfully bargain over core terms and conditions of employment, such as the PRNs. That cohort is comprised of employees with whom the public employer can offer and agree to abide [by] the full complement of collectively bargainable rights." ***Id.*** "[T]hat cohort does not include employees who have contracted through a third party who controls the meaningful terms and conditions of the employment agreement." ***Id.* at 522.**

The Board, in addition to determining that PRNs are regular employees, further concluded that "orders 8-PELRB-2023 and 9-PELRB-2023 are reaffirmed and given full force and effect." ***Id.*** Appellant filed a timely appeal.

Discussion

Standard of Review

The standard of review Appellant must meet in order to prevail on the merits is whether the PERLB's order was arbitrary, capricious, or an abuse of discretion, was not supported by substantial evidence in the record, or was otherwise not in accordance with law. *Cf.* NMSA 1978, § 10-7E-23(B) (2003); *accord* Rule 1-074(R). Otherwise, [a]ctions taken by the board . . . shall be affirmed." § 10-7E-23(B).

Appellant raises six issues for the Court's review. First, whether the Board's order complied with the Open Meetings Act (OMA); second, whether PRNs are considered "regular employees" for the purposes of PEBA; third, whether PRNs share a community of interest with other clinical employees; fourth, whether the interest cards obtained prior to May 18, 2022, are valid; fifth, whether Appellant, as a public employer, has the right to notice and to observe any card count collected under PEBA; and sixth, the appropriateness of the card count being performed prior to the Board's resolution of objections as to unit composition.

The OMA issue was resolved in the Court's Opinion and Order on Appellant's motion to stay. Because the Court concludes that the Board's determination that PRNs are "regular" employees under PEBA is not in accordance with law, the Court does not reach Appellant's remaining issues.

Whether PRNs are public employees under PEBA

Although cautioning that no final determination on the merits had been made, the Court previously concluded that Appellant had not demonstrated likelihood of success on the merits sufficient to warrant a stay. However, after full consideration of the determinations of the hearing officer and the Board, as well as the arguments of the parties, the Court holds that a PRN employee is not a "public employee" as the term is used in Section 10-7E-4(Q).

The Court affords some deference to the Board's interpretation of PEBA. *Cf. Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, ¶ 11, 120 N.M. 579, 904 P.2d 28 ("When an agency that is governed by a particular statute construes or applies that statue, the court will begin by according some deference to the agency's interpretation. . . . The court will confer a heightened degree of deference to legal questions that 'implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function.'")

(quoted authority omitted). However, the Court "is not bound by the agency's interpretation and may substitute its own independent judgment for that of the agency because it is the function of the courts to interpret the law." *Id.* "The court should reverse if the agency's interpretation of a law is unreasonable or unlawful." *Id.*

As set out above, the PRNs at issue are Appellant's employees and are not contract employees, but are utilized on an as-needed basis when there is a vacancy or gap otherwise in the schedule. PRNs work on a continuous basis, and must be available to work at least eight hours per week. As a result, they may work a full week, may not work at all, or some period of time in between. Shift assignments are based in part on seniority, with full-time employees choosing their shifts first, part-time employees choosing second, and PRNs choosing last. PRNs provide their availability to Appellant, and if Appellant needs them to fill in for a FTE or PTE on leave or otherwise absent during the period a PRN is available, that PRN is called to work. If there is no such FTE or PTE absence, the PRN is not scheduled to work. Because the person a PRN fills in for is an employee whose position has been counted for staffing levels, PRNs are used to maintain those staffing levels. PRNs and the other employees all perform the same work. PRNs are subject to the scheduling provisions, appropriate job description, and personnel and administrative policies.

Appellant argues that the Board's determination that PRNs are "regular" is contrary to law. It recounts that the Board stated: "The issue at hand is not whether the PRNs are public employees under [§ 10-7E-4(Q)'s] definition; they indisputably are. The issue is whether PRNs are 'regular' public employees." Appellant contends that this is a clear misunderstanding of the definition, asserting that, by definition, an employee cannot be a public employee unless, first, they are a regular employee, because there is no such thing as a public employee that is not regular. In the

opinion and order on Appellant's motion to stay, the Court agreed with Appellee that Appellant is a public employer and PRNs were its employees, stating that the question presented is whether they are "regular" as that term is used in Section 10-7E-4(Q).

While not wholly determinative, the Court, upon further consideration, concludes that the Board's initial statement prematurely began on the wrong foot in its conclusion that PRNs are "indisputably" public employees under Section 10-7E-4(Q). The accurate posture of the case, based on the undisputed facts, is that the PRNs are employees of Appellant, a "public employer" for purposes of PEBA pursuant to NMSA 1978, § 21-28-7(B)(2) (2022). The question in fact presented by this matter is whether a PRN employed by Appellant is a "public employee" as that phrase is defined under PEBA. The Board's statement that PRNs are "indisputably" "public employees" demonstrates that the Board appeared to accept a definitive conclusion prior to any statutory analysis.

The phrase "public employee" is a term of art defined by statute. A PRN cannot be considered a "public employee" unless and until the PRN is determined to meet the statutory definition of a "public employee." Under PEBA, a "public employee is defined as "a regular non probationary employee of a public employer." Section 10-7E-4(Q). The term "regular" is undefined. *Cf.* § 10-7E-4 (PEBA definitions).

The Court continues to agree that the Board, in interpreting an undefined statutory term, properly relied on the purpose of PEBA. *Cf. Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047 (explaining that statutes should be read as a whole, "including [its] purposes and consequences").

> The purpose of [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.

NMSA 1978, § 10-7E-2 (2003).

The Board explained that the legislation's objective would be eroded if the right to bargain "was conditioned on the frequency of work, or other idiosyncratic terms and conditions of work within the control of an employer," as "[t]here is no meaningful criteria or measure to determine where along the continuum between part-time and flexible schedule and a full-time salaried fixed schedule the right to PEBA protections should attach." **RR, at 519.**

However, the question presented required the Board to consider PEBA's purpose not simply as promoting collective bargaining generally but to assist in interpretation of the Legislature's definition of "public employee," those with the statutory right to organize and collectively bargain, specifically as to the Legislature's use of the limiting operative term, "regular." This is so because "the Court's 'primary goal is to ascertain and give effect to the intent of the legislature.'" *Diamond v. Diamond*, 2012-NMSC-022, ¶ 25, 283 P.3d 260 (quoted authority omitted). "'We must assume the legislature chose its words advisedly to express its meaning unless the contrary intent clearly applies.'" *Id.* ¶ 28 (quoted authority omitted). In Section 10-78E-4(Q), the Legislature confined the definition of a "public employee" to a "regular" employee of a public employer.

"In assessing intent, 'we look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.'" *Diamond*, 2012-NMSC-022, ¶ 25 (quoted authority omitted). The Board observed that "regular" has different meanings, contrasting use of the word to reference the frequency in which a person provides services to an employer, as opposed to a status of the employee, illustrated by the example of a regular board member compared to an ad hoc one. Based on PEBA's purpose, the Board

concluded that "regular" under Section 10-7E-4(Q) refers to the status of the employee, not to the employee's schedule.

The Board then wrestled with identification of the particular status that the term "regular" contemplates, explaining that an employee's status could refer to whether the employee is permanent or temporary, classified or unclassified, and direct or indirect. Again relying on PEBA's purpose, the Board also referenced the inapplicable State Personnel Act. *Compare* § 21-28-7(A) ("A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel . . . ."), *with* § 21-28-7(B)(2)(B) ("A research park corporation shall be deemed . . . a public employer for the purposes of" PEBA "if it owns, operates or manages a health care facility or employs individuals who work at a health care facility."). As mentioned in the Opinion on motion for stay, the Court concluded that the Board simply attempted to seek guidance from the State Personnel Act, and did not in fact apply it to this matter. The Board's discussion of this law led it to determine that the Legislature does not use the term "regular" as a synonym for "temporary," which in any case would be contrary to the plain meaning of these words, or "classified" when it intends for a law to refer to either category of employment. As Appellant observes, the State Personnel Act, in a provision not discussed by the Board and contrary to its conclusion, provides: "All employees of the state holding positions brought into the *classified serviced* by the Personnel Act shall be continued in their positions and become *regular employees* without original examinations, if they have held the position for at least one year immediately prior to the effective date of the Personnel Act." NMSA 1978, § 10-9-16 (1961) (emphasis added). In any case, the Court is unpersuaded that the Board's discussion of the Act usefully furthers the determination of the meaning of "regular" as used in Section 10-7E-4(Q).

The Board also concluded that "there is no statutory corollary illustrating that the legislature uses terms 'direct' or 'indirect' or 'special' to refer to a public employee's status." **RR, at 519-20.** The Board explained that a "direct" employee is one under the control of and paid by the same employer while an "indirect" or "special" employee is provided by an employee leasing company. ***Id.* at 520**. Building on its earlier determination that "regular" under Section 10-7E-4(Q) refers to some status of the employee, and despite its own observation that the Legislature does not use the terms "direct" and "indirect" to refer to a public employee's status, the Board ultimately concluded that "regular" must be construed so as to refer only to direct employment relationships. The Board explained that, unlike the situation with indirect employees, when a public employer engages a direct employee, the employer determines wages and benefits, implicating PEBA's underlying policies, and has primary control over core matters that are the subject of a collective bargaining agreement.

The Court rejects the Board's analysis. The Board appears to have substituted "direct" for "regular," or perhaps simply equated the two terms. The Board did so even though the Board itself determined that there was no statutory corollary demonstrating that our Legislature uses "direct" or "indirect" to refer to a public employee's status. Further, if "regular" means a "direct" employee, there would be no exclusion for temporary employees, so long as they were hired by the public employer, as Appellant points out, an absurd construction of "regular." *Cf. Chavez v. Bridgestone Americas Tire Operations, LLC*, 2022-NMSC-006, ¶ 40, 503 P.3d 332 ("We will 'take care to avoid adoption of a construction that would render [a] statue's application absurd or unreasonable or lead to injustice or contradiction.'") (quoted authority omitted) (alteration in original).

The hearing officer, in contrast, explained that the common understanding of the term

"'regular' means unusual, normal or habitual," and "is the antonym of 'casual' or 'irregular.'" **RR, at 123**; *Barber*, 1959-NMSC-007, ¶ 18 ("'Casual is an antonym of regular;'" where one is paid by the day, "'employment [is] irregular and therefore casual'") (quoted authority omitted). The hearing officer recounted its review of other states which permit public employee collective bargaining, finding that only Maine similarly uses the term "regular" in the definition of public employees. Maine, under its University of Maine System Labor Relations Act, defines a "'[r]egular employee'" as "any professional or classified employee who occupies a position that exists on a continual basis." Me. Rev. Stat. tit. 26, § 1022(8) (2010). As the hearing officer determined, this is consistent with the common understanding of regular employment, excluding those working an irregular schedule from collective bargaining.

However, Appellee observes that Maine's labor relations board, interpreting that statute with regard to adjunct faculty members, noted "that unlike all of the other public sector collective bargaining statutes in Maine, the University Act does not contain an exclusion from the definition of employee for any person who is a 'temporary, seasonal, or on-call employee.'" Response, at 19 (setting out the full citation). In any case, as noted below and recognized by that board, Maine's Employees Labor Relations Act does exclude on-call workers.

The hearing officer explained that its understanding of a "regular" employee is further supported by other states' public employee collective bargaining statutes even where the term is not used. *Cf.* Me. Rev. Stat. Ann. tit. 26, § 979-A(6)(F) (2023) (State Employees Labor Relations Act) (excluding from the definition of "[s]tate employee" one "[w]ho is temporary, seasonal or on-call"); Ohio Rev. Code Ann. § 4117.01(C)(13) (2015) (Public Employees Collective Bargaining Act) (excluding from its definition of "[p]ublic employee" "[s]easonal and casual employees as determined by the state employment relations board"). New Hampshire's Public

Employee Labor Relations Act excludes from its definition of "[p]ublic employee" "[p]ersons in a probationary or temporary status, or employed seasonally, irregularly, or on call." N.H. Rev. Stat. § 273-A:1, IX(d) (2014).[1] The New Hampshire Supreme Court construed this definition of "'public employee,'" observing that "'irregularly'" and "'on call'" are undefined, applied the plain meaning of the terms as "'lacking continuity or regularity of occurrence, activity, or function,'" and "'ready to respond to a summons or command,'" respectively, concluding that part-time officers working on-call on an irregular basis must be excluded from the bargaining unit. *In re Town of Stratham*, 743 A.2d 826, 828 (N.H. 1999) (quoted authorities omitted). The Court is persuaded by *Stratham*'s definition of "irregularly" as applied to Section 10-7E-4(Q)'s use of the term "regular" as well as the hearing officer's determination.

The Court concludes that a PRN employee is not "regular" and is thus not a "'public employee'" under Section 10-7E-4(Q) based on the meaning of the term discussed above in light of the undisputed facts in the present matter. PRNs must only be *available* to work for at least eight hours per week, even if they typically work more. While PRNs occasionally and temporarily fill positions that exist on a continual basis, it is the "regular" employee hired into that position who in fact occupies it. PRNs do not have a set schedule, unlike other employees, whether full time or part time, and instead schedule shifts that may be available after these other employees choose their shifts in order to provide necessary staffing. The fact that PRNs share the same qualifications, follow the same policies, and must complete the same evaluations as other employees is necessarily required because they must fill in for the positions of the other full-time and part-time employees. PRNs' work lacks continuity and is irregular in occurrence; thus, they

[1] Section 10-7E-4(Q) similarly excludes a probationary employee for the employees at issue. *Cf. id.* ("'public employee' means a regular nonprobationary employee of a public employer," unless the public employer is a public school, in which case "regular probationary employee" is included in the definition).

are not "regular" employees.

The Board's determination equating "regular" with "direct" is not in accordance with law and is thus reversed. As a result, the Court denies Appellee's Emergency Motion for Declaration of Obligation to Meet and Bargain as moot.

Conclusion

The decision of the Board is **REVERSED**. Appellee's emergency motion is **DENIED**.

IT IS SO ORDERED.

Nancy J. Franchini

NANCY J. FRANCHINI
DISTRICT COURT JUDGE

A copy of the foregoing document e-filed
on this 1st day of November 2024.

Thomas Wilson TCAA
D-202-CV-2023-09660