

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

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

Appellant,

v.

No. D-202-CV-2024-01099

REGENTS OF THE UNIVERSITY OF NEW MEXICO for  
its public operations known as UNIVERSITY OF NEW  
MEXICO HOSPITAL, specifically including UNM  
SANDOVAL REGIONAL MEDICAL CENTER,

Appellee.

### **FINAL MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is an appeal pursuant to Rule 1-074 NMRA of Order 10-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**

This case concerns a prohibited practices complaint (“PPC”) filed by the United Health Professionals of New Mexico, AFT, AFL-CIO (“Union”) on June 7, 2023. The Union alleges that the University of New Mexico Sandoval Regional Medical Center (“Employer”) violated the Public Employee Bargaining Act (“PEBA”), NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended through 2020), when it disciplined its employee Regina McGinnis. The discipline included a three-day suspension (without pay) and a “disqualification of CAP,” *i.e.*, a reduction in pay rate. The Employer disciplined Ms. McGinnis after she used her key card to assist a non-employee, Union Representative Adrienne Enghouse, to access secure areas of Employer’s hospital facility on Sunday, May 21, 2023.

The PPC alleges that the Employer’s reason for the discipline is pretextual. According to the PPC, Ms. McGinnis allowed Ms. Enghouse into the facility for the purpose of conducting

Union business (including posting flyers). The PPC contends that the Employer violated PEBA by retaliating against Ms. McGinnis for engaging in protected Union activity.

The Board's hearing officer held a merits hearing on November 15, 2023. After the Union presented its case the hearing officer heard argument from the parties and then orally ruled in favor of the Employer. The hearing officer concluded that the Employer did not violate PEBA and issued a written report and recommended decision on November 17, 2023. The Board adopted the hearing officer's 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.*

A reviewing court will uphold an agency decision if it is satisfied that there is "substantial evidence in the record as a whole to support the agency's decision and that the evidence in the record demonstrates that the decision is reasonable." *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, ¶ 47. Substantial evidence means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Gallup Westside Dev., LLC v. City of Gallup*, 2004-NMCA-010, ¶ 11, 135 N.M. 30. When conducting a substantial evidence review, courts view the evidence "in the light most favorable to the agency decision." *Nat'l Council on Comp. Ins. v. N.M. State Corp. Comm'n*, 1988-NMSC-036, ¶ 7, 107 N.M. 278. Although there may be conflicting evidence, courts consider "whether the record supports the result reached, not whether a different

result could have been reached.” *Gallup Westside Dev., LLC*, 2004-NMCA-010, ¶ 11.

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 findings are supported by substantial evidence.**

Generally, the Union argues that the Board should have reached a different result and refers to evidence in the record that may support different findings than the Board’s findings. However, the issue before this Court is whether the record supports the result reached, not whether a different result could have been reached.

The Union raises broad-ranging arguments against the Board’s findings that fit into two categories. The Union argues that the evidence does not support a finding that Ms. McGinnis violated the Employer’s policies and thus fails to support the related finding that the Employer had a legitimate basis for the discipline. The Employer responds that the Board’s findings are supported by substantial evidence.

As an initial matter, the Union does not appear to dispute that the Employer imposed security restrictions on its employees including Ms. McGinnis. The Board found that Ms. McGinnis entered into a “Workplace Member Confidentiality Agreement” wherein she agrees to the following provisions: (1) she may not share a “key card” with “any other person”; and (2) the Employer has a right to reprimand the employee if she breaches any provision of the agreement. [RP 155, 204.] Additionally, the Board found that the Employer’s “Access Control” procedure

states that staff members may not open any door in the facility for the purpose of allowing access to any non-staff member. **[RP 155–56, 213–215.]**

The Board found that Ms. McGinnis knowingly violated the Employer’s policies. Specifically, the Board found that Ms. McGinnis was aware of the Employer’s “Access Control” policy and that she nevertheless allowed Ms. Enghouse to access secured areas of the hospital normally limited by the use of a key card authorization system. **[RP 155.]** The Board also found that Ms. McGinnis and Ms. Enghouse did not have permission from the Employer to access secured hospital facilities. **[RP 156.]**

The Union argues that there is no evidence that Ms. McGinnis shared her badge with anyone, that she allowed any unauthorized access to Employer’s facilities, or that she otherwise violated the Employer’s policies. However, substantial evidence supports the finding that Ms. McGinnis knowingly violated the Employer’s policies. Ms. McGinnis testified that she was aware of the Employer’s “Access Control” procedure. **[1 Audio 1:24:25–1:26:40 (“This may be in a policy, but it’s not in practice”).]** Ms. McGinnis further testified that she used her key card to allow Ms. Enghouse access to the to the Intensive Care Unit (“ICU”). **[1 Audio 1:10:35 – 1:11:55.]** Ms. Enghouse also testified that she lacked badge access to certain areas of the hospital that she visited with Ms. McGinnis. **[4 Audio 11:30 – 12:30 (noting the areas they visited); 5 Audio 2:15 – 2:40 (noting Ms. Enghouse’s lack of badge access to the ICU and the respiratory therapy offices).]**

Substantial evidence also supports the finding that Ms. McGinnis and Ms. Enghouse lacked permission from the Employer to access secured hospital facilities. Ms. McGinnis testified that she did not seek permission to visit the ICU or the Respiratory Therapy Department for the purpose of posting Union flyers. **[1 Audio 1:07:00 – 1:07:40.]** She further testified she visited secured areas of the hospital with Ms. Enghouse before discussing permission with the Employer’s security

personnel. [1 Audio 28:42 – 31:15.] Ms. Enghouse confirmed that she did not seek or receive the Employer’s permission to access to the facilities. [5 Audio 2:18 – 3:16.]

**B. The Board’s conclusions are not arbitrary or capricious.**

**1. The Board’s conclusion that the Employer did not commit a prohibited practice is rational.**

The Employer’s given reason for disciplining Ms. McGinnis is that she engaged in the “unauthorized use of [her] identification and access badge” and that she willfully allowed an “unauthorized person to access patient care and work areas.” [RP 210.] The Board reasoned that there was a substantial, non-discriminatory reason for taking the disciplinary action at issue. The Board therefore concluded that the Employer did not commit a prohibited practice.

The Union raises several arguments that the Employer’s conclusion is arbitrary and capricious. The Union argues that: (1) a “mountain of evidence” supports its position and that the Board committed a prohibited practice; (2) the Board misinterpreted the Employer’s access control policy; (3) the Board failed to consider the fact that Ms. Enghouse is permitted by law to conduct Union activity; and (4) the Board improperly granted a “directed verdict” after hearing the Union’s case. [Statement of Appellate Issues, filed May 21, 2024 (“SAI”), 13, 16–17.]

The Employer responds that the Board’s decision was rational in light of the evidence in the record. According to Employer there was a legitimate basis to discipline Ms. McGinnis because she violated the Employer’s security policies.

The Court discerns no error in the Board’s conclusion. The Board found that the Employer’s policies forbid sharing a key card and opening a door to allow access to any non-staff member. The Board also found that Ms. McGinnis knowingly violated the policies and used her key card to assist a non-employee to access secured areas of the hospital. The Board’s interpretation of the Employer’s policies is reasonable because it relies on the plain meaning of the quoted language in the documents. Substantial evidence supports the Board’s findings and the

Board's conclusion rationally flows from the findings. Further, the Board's conclusion is reasonable even if other evidence in the record could support a contrary result.

The Union's argument that Ms. Enghouse was allowed by law to conduct Union activities is not material to the Board's reasoning and does not alter the Court's conclusion. This case concerns the Employer's discipline of Ms. McGinnis for knowingly violating the Employer's security policies. Ms. Enghouse's rights as a Union representative are a separate issue and do not affect the finding that Ms. McGinnis allowed facility access to a non-employee without permission. The Board considered relevant evidence with respect to Ms. McGinnis' conduct and did not arbitrarily disregard the Union's arguments.

Lastly, the Court's role in this case is to review the final order of the Board as directed by PEBA. The hearing officer's oral ruling after hearing the Union's case, referred to by the parties as a "directed verdict," is not under review. At issue is the Board's final order.

**2. The Board's application of the *Wright Line* framework is not arbitrary or capricious.**

The Board applied the *Wright Line* burden shifting framework and concluded that the Union failed to make a prima facie showing of a discriminatory motivation for the discipline.

The Union argues that the Board failed to consider evidence applicable to the *Wright Line* framework. The *Wright Line* framework relates to the Union's claim that the given reason for the discipline was pretextual and that Ms. McGinnis was punished for engaging in Union activity. Under the *Wright Line* framework, the complaining party must make a prima facie showing of a discriminatory motive for the employment action. The burden then shifts to the Employer to demonstrate that adverse employment action would have taken place even in the absence of protected conduct. *See Ready Mixed Concrete Co. v. NLRB*, 81 F.3d 1546, 1550 (10th Cir. 1996).

The Union contends that it presented sufficient evidence to make a prima facie showing and that the Board ignored the Union's evidence. Specifically, the Union asserts that the Board

disregarded evidence of selective enforcement of Employer's policies, evidence that Ms. McGinnis was a prominent Union member, and evidence that Ms. McGinnis was involved in another PPC against the Union that resulted in a settlement. The Employer contends that the Board correctly applied the *Wright Line* framework and that the Union failed to make a prima facie showing of discriminatory motivation.

The Board's conclusion that the Union failed to make a prima facie showing is not arbitrary or capricious. The Board reasoned that the evidence presented by the Union was undeveloped and unspecific. With respect to selective enforcement, the Board pointed out that the Union's examples were not sufficiently supported and it was not clear whether the Employer was aware of other security breaches. **[RP 159.]** Regarding other PPCs, the Board explained that the Union failed to draw a connection to the discipline of Ms. McGinnis. **[RP 161.]** In this case, the record on appeal establishes that Ms. McGinnis knowingly violated the Employer's security policies and the Employer issued discipline. Ms. McGinnis' status as a Union member and the mere existence of other disputes with the Employer is insufficient to make a prima facie showing of a discriminatory motivation for the discipline.

**C. The Board's Order is not contrary to law.**

**1. The issue of reasonable access to the Employer's facilities was not presented for adjudication.**

The Union contends that the Employer acted contrary to law and denied Ms. Enghouse, a Union representative, reasonable access to the hospital facility. The Employer responds that this issue was not before the Board.

At issue in this case is the Board's decision on the PPC. The PPC alleges that the Employer committed a prohibited practice when it disciplined Ms. McGinnis. The PPC did not address the issue of whether the Employer denied reasonable access to the hospital facility to Ms. Enghouse. **[RP 1–4, 144–45.]** The latter issue was not before the Board and is outside the scope of this appeal.

**2. The hearing officer’s conduct presents no grounds for reversal.**

The Union objects to certain conduct of the hearing officer during the merits hearing. The Union contends that the hearing officer “showed excessive deference to the Employer and its counsel” and “coached” counsel during the hearing. The Union further argues that the conduct “calls into question the fairness of the hearing” and “lends weight to the arguments” that the hearing officer’s conclusions were not based on substantial evidence and were contrary to law.

**[SAI, 23–24.]**

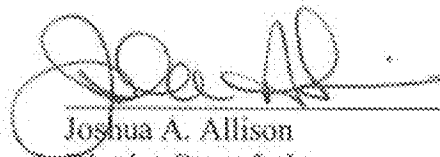
The Employer responds that the Union’s argument presents no basis for reversal. According to the Employer, the hearing officer did not exhibit any disqualifying bias, but rather helped streamline the presentation of evidence and generally commented on proceedings throughout the hearing.

The Court reviewed the audio recording of the merits hearing and discerns no error. The hearing officer interjected and facilitated the proceedings at various points and provided ample opportunity for both sides to address the matters raised. It is within the discretion of the hearing officer to guide the proceeding to address matters important to the adjudication of the merits. The Court concludes that the hearing was fair and comported with due process. *See Mississippi Potash, Inc. v. Lemon*, 2003-NMCA-014, ¶ 12, 133 N.M. 128 (noting that administrative hearings must comport with due process and are generally less formal).

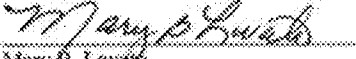
**IV. CONCLUSION**

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 served upon counsel through Odyssey.

  
Mary A. Lovitt  
TCAA to Division XXIII