

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**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,**

**Appellant,**

v.

**D-202-CV-2024-01996**

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

**Appellee.**

**FINAL MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is an appeal pursuant to Rule 1-074 NMRA of Order 9-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 May 5, 2023, the United Health Professionals of New Mexico, AFT, AFL-CIO (“Union”) filed a prohibited practice complaint (“PPC”) asserting that Employer breached its duty to bargain in good faith, ignored requests to bargain with the Union, and failed to provide the Union with information required by PEBA. The Union claims that it requested the following: financial information; documentation related to a presentation by Employer’s chief executive officer; Occupational Health and Safety Administration documentation; a current list of employees; and information regarding Employer’s layoff plans.

According to the Union, the information it requested is necessary to enforce its rights and the rights of its members.

The Board's hearing officer held a merits hearing on November 1, 2023 and issued a written report and recommended decision on December 8, 2023. The hearing officer ruled in favor of Employer with respect to its alleged failure to respond to various requests for information between January and March 2023. The Union has not appealed.

The hearing officer ruled in favor of the Union on the other issues. First, the hearing officer noted that part of the Union's PPC had already been adjudicated in a separate administrative proceeding (PELRB 109-23), *i.e.*, Employer's failure to provide information with respect to layoffs. With respect to the remaining claims, the hearing officer concluded that Employer breached its statutory duty to bargain in the following ways: (1) failure to respond to an April 10, 2023 request for an updated list of bargaining unit employees; (2) failure to provide information for bargaining dates on April 20, 2023; and (3) failure to respond to an April 20, 2023 request for an updated list of bargaining unit employees. The Board adopted the hearing officer's report and recommended decision on February 8, 2024.<sup>1</sup>

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

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<sup>1</sup> On October 17, 2024, the Court ordered that the Board complete the administrative record with a transcript of proceedings pursuant to Rule 1-074(H)(4). The Board complied with the Court's order and the Court received the audio files listed in the record on review index. **[Record on Review Index, filed June 11, 2024.]**

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. 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

This case concerns the duties that “public employers,” such as Employer in this case, owe to an “exclusive representative” pursuant to PEBA. An exclusive representative is “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 have a duty to bargain in good faith with the exclusive representative which includes a duty to exchange information. *See* NMSA 1978, § 10-7E-17(A)(1) (2020).

Employer’s arguments generally focus on the Union’s status as the exclusive representative. In particular, Employer argues that the Union’s certification as the exclusive representative is invalid and that Employer owes no duties to the Union under PEBA.

#### A. Employer has failed to identify error in the Board’s findings.

Employer purports to raise a substantial evidence challenge to the Board’s findings. Employer’s sole argument is that “[s]ubstantial evidence was not presented to the Board to sustain

its determination that a duty to bargain existed.” [Statement of Appellate Issues, filed July 11, 2024 (“SAI”), 11–12.] Employer appears to challenge the factual finding underlying the conclusion that it has a duty to bargain with the Union, *i.e.*, the finding that the Union is the “exclusive representative certified by this Board on January 19, 2023.” [RP 155.]

The Union responds that the Board’s findings are supported by substantial evidence. The Union argues that the Board previously determined that the Union is the exclusive representative. In support of this contention, the Union refers to the Board’s order 9-PELRB-2023.

Employer has failed to identify error in the Board’s findings. The Board’s finding is supported by a previous order of the Board, *i.e.*, 9-PELRB-2023, which ratifies the Union’s certification as the exclusive representative of a specified bargaining unit of employees. [RP 165, 244.] This is substantial evidence in support of the Board’s finding.

Employer presents other arguments about the legal effect of the Board’s previous rulings, however, these arguments provide no basis to conclude that the Board’s findings are unsupported by substantial evidence. With respect to the Board’s findings, the Court reviewed the record and discerns no error.

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

Employer challenges the Board’s conclusion that it had a duty to bargain with the Union by calling into question the Union’s status as the exclusive representative. Specifically, Employer argues that the Board “failed to consider relevant factors necessary to determine the legal status of the parties.” [SAI, 10.] The relevant factor allegedly omitted from the Board’s analysis is the effect of a decision issued by the Second Judicial District Court on August 14, 2023.<sup>2</sup> In that decision, the district court reversed and remanded for further explanation a series of the Board’s

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<sup>2</sup> *UNM Sandoval Reg’l Med. Ctr., Inc. v. United Health Pros. of N.M., AFT, AFL-CIO*, August 14, 2023 (“*Certification Appeal*”) (D-202-CV-2023-02118).

decisions related to the certification of the Union as the exclusive representative. **[RP 101.]** Employer argues that the decision reversed the Union's certification and therefore there was no duty to bargain with the Union.

The Union responds that the decision did not invalidate the Union's certification, rather, it remanded the Board's decisions for further explanation. Further, the Union contends that Employer had a duty to bargain with the Union when the events relevant to the PPC occurred.

The Court discerns no error in the Board's conclusion with respect to the duty to bargain. Here, the Board found that the Union is the exclusive representative certified by the Board on January 19, 2023. This finding is supported by substantial evidence. The Board's conclusion that Employer had a duty to bargain with the Union after certification rationally flows from the Board's factual finding.

Employer's arguments regarding the district court decision are unpersuasive. At issue in this case is the Board's decision regarding the PPC. The PPC alleged improper conduct during a time frame prior to May 2023 and the Board analyzed the facts relevant to that period. The Union was the exclusive representative at the times relevant to the PPC. The district court decision occurred after the events described in the PPC and did not change the facts before the Board.

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

**1. The Board's order does not conflict with the district court's decision.**

Employer argues that the Board's order in this case is contrary to law. According to Employer, the Board's decision in this case conflicts with the district court's lawful order in the *Certification Appeal*.

The Union responds that Employer misreads the district court decision and that the decision merely remanded the certification decision to the Board for further explanation. According to the Union, the Board complied with the district court's decision and reaffirmed the Union's

certification. Further, the Union points out that the district court decision was issued after the events described in the PPC.

The Board's final decision in this case is not contrary to the district court's order. The district court's order directed further administrative proceedings with respect to certification that are consistent with the opinion — it did not direct decertification, decide the merits of the Union's certification, or discuss the decision's effect on other ongoing administrative proceedings. **[RP 106.]** The Board's order in this case concerned events that occurred prior to the district court's decision. This Court discerns no conflict between the Board's final order and the decision of the district court.

**2. The Board decision with respect to the duty to bargain over layoffs is not contrary to law.**

The Board concluded that part of the Union's PPC had been adjudicated in another administrative proceeding arising from the same set of facts. Specifically, the Board previously determined that Employer breached its duty to bargain with the Union by failing to respond to a Union request for information regarding layoffs. The Board concluded that no double recovery should be permitted by a separate identical conclusion in this case. **[RP 159–60.]**

Employer contends that the Board's order is contrary to law because the Board ruled on an issue not raised in the PPC or the pre-hearing order. Employer argues that the Board failed to provide it with an opportunity to respond to the allegations.

The Union responds that the Board did not re-adjudicate the underlying issue of failure to bargain concerning the layoffs. According to the Union, the Board simply acknowledged that it reached an identical conclusion in a separate administrative proceeding.

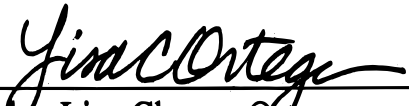
The Court discerns no error in the Board's order. Contrary to Employer's claim, the Union raised the issue of Employer's failure to bargain, *i.e.*, failure to provide information, regarding layoffs in the PPC. **[RP 2–3 (paragraphs 9 and 13(f)).]** The issue remained disputed in the pre-

hearing order. [RP 116, 119.] Employer briefly discussed the matter at the hearing during cross examination of Witness Adrienne Enghouse and the parties referred to testimony on the matter that was admitted by stipulation. [2 Audio 15:40–19:15 (discussing the April 21, 2023 email requesting information).] The Board’s final order acknowledged that the issue had been decided in a separate administrative proceeding, *i.e.*, PELRB 109-23, and that the same facts warranted the same conclusion. [RP 160; 540 (findings 13–14 in PELRB 109-23); 552–53 (discussing in PELRB 109-23 Employer’s failure to provide information to the Union).] The Board did not act contrary to law with respect to this issue and Employer’s arguments provide no basis for reversal.

#### IV. CONCLUSION

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

**IT IS SO ORDERED.**

  
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Judge Lisa Chavez Ortega  
District Court Judge  
Division XIII