STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

UNITED HEALTH PROFESSIONALS OF NEW MEXICO, AFT, AFL-CIO,
Appellant,
v. **D-202-CV-2024-07978**

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,
Appellee.

FINAL MEMORANDUM OPINION AND ORDER

THIS MATTER is an appeal under Rule 1-074 NMRA of an Order of the Public Employee Labor Relations Board ("Board") dismissing a prohibited practices complaint ("PPC") filed by Appellant United Health Professionals of New Mexico, AFT, AFL-CIO ("Union"). The Court **AFFIRMS** the Board's Order.

I. BACKGROUND

A. Factual background

The record reflects the following. UNM Sandoval Regional Medical Center, Inc. ("SRMC" or "Employer") is a research park created pursuant to the University Research Park and Economic Development Act, NMSA 1978, §§ 21-28-1 through -25 (1989, as amended through 2022).[1] Research parks are not public bodies for most purposes, but they are deemed to be public employers for purposes of the Public Employee Bargaining Act ("PEBA"). § 21-28-7(B)(2).

[1] The purpose of the University Research Park and Economic Development Act is, among other things, to "forge links between New Mexico's educational institutions, business and industrial communities and government through the development of research parks on university real property" and to "engage in cooperative ventures of innovative technological significance that will advance education, science, research, conservation, health care or economic development within New Mexico." § 21-28-2(C), (D).

On January 1, 2024, the Regents of the University of New Mexico ("Regents"), which operates UNM Hospital, acquired Employer's assets pursuant to an Asset Purchase Agreement that was executed on May 22, 2023. [AR 645–61] The purchase involved approvals by various state and federal agencies, such as might be expected when one hospital acquires the assets of another. [AR 944–88, 1244–57]

In the months and weeks preceding the acquisition, Employer's employees received communications and information about the acquisition and its consequences for their employment. Specifically, they were informed that as of the effective date of the acquisition (12:01 a.m. on January 1, 2024) SRMC would "cease to be an employer of any employees at the SRMC hospital facility." [AR 1790] Employees of SRMC were notified that from January 1, 2024 forward, "the SRMC hospital facility will operate as a campus of UNM Hospital under UNMH's hospital license." [Id.]

UNM Hospital extended an invitation to all employees of SRMC to become employees of UNM Hospital upon the effective date of the acquisition. The notice the employees received expressed the Regents' "sincere hope" that SRMC's employees would choose to become UNM Hospital's employees at its SRMC campus. The notice described the process for becoming employed at UNM Hospital. Specifically, it stated that if an employee of SRMC wanted to become employed at UNM Hospital's SRMC campus upon the acquisition, they would need to affirm their choice no later than December 1, 2023, by logging onto "Learning Central" at the link provided and selecting the option to affirm their intention to accept UNH Hospital employment. They were informed that their job functions and salary would remain the same if they accepted employment at UNM Hospital, but that job titles and certain benefits would be different. The notice advised employees that by logging onto Learning Central they could access a module that would explain

the benefits and conditions of employment at UNM Hospital. Finally, SRMC's employees were directed to reach out to UNM Hospital's human resources department if they had any questions regarding benefits or the process of accepting employment. [AR 1790–91]

SRMC's employees also were given access to a "Benefits Orientation" packet that provided an overview of topics such as deadlines for UNM Hospital open enrollment; eligibility for coverage; health plan options; health plan premiums; flexible spending accounts; prescription drug coverage; health savings accounts; access to "LoboCare Clinic"; dental plans; vision plans; life insurance; and long- and short-term disability coverage. [AR 1792–1835] In "A Message from the UNMH CEO," UNM Hospital Chief Executive Officer Kate Becker praised SRMC's employees' continuing dedication to patient care, and described the expanded training opportunities and academic reimbursement that would be available to them if they became UNM Hospital employees. [AR 1836–37]

B. Procedural background

Union filed a PPC against Employer on October 10, 2023. The PPC alleged Employer had violated PEBA by engaging in direct dealing by communicating with bargaining-unit members regarding alterations of their terms and conditions of employment without bargaining the changes with the Union. The Union alleged that Employer had "bypassed the Union in issuing proposed changes related to the impending merger between [Employer] and UNM Hospital." [AR 2] The Union sought an injunction that would require Employer to bargain these issues. [AR 5]

The PPC also alleged the Union requested information related to the merger plans and that Employer violated PEBA by refusing to respond to the request for information. [AR 4, 9] The information requested included job descriptions for each job classification; copies of employee manuals, handbooks, and similar documents; a detailed breakdown of certain information for each

bargaining unit employee; the average number of days used by each bargaining unit member for various types of leave; average hours of overtime for each bargaining unit member; and policy statements for certain types of benefits such as leave and overtime pay. [AR 29–30]

After a hearing on November 7, 2023, the Hearing Officer denied the Union's request for a temporary restraining order. On January 8, 2024, the Hearing Officer issued a "Stipulated Order Granting Respondent's Motion to Substitute Party and to Amend Caption by Interlineation." [AR 244] The basis for the substitution was that as of January 1, 2024, all Employer's assets, including its hospital facility, had been acquired by UNM Hospital. [AR 233–35] Filings after that date identify Regents as the Respondent in the administrative proceeding.[2]

A hearing on the merits of the PPC was held May 30, 2024. The Hearing Officer accepted exhibits and sworn testimony offered by both parties. The Hearing Officer issued the Hearing Officer' Report and Recommended Decision on July 18, 2024. [HO Report] The report concluded: (1) Union had standing to bring the PPC; and (2) Union did not meet is burden of establishing that Employer refused to bargain or that it had refused to respond to the Union's request for information. The Hearing Officer accordingly concluded the Union had failed to establish a PEBA violation and recommended that the PPC be dismissed. The Board upheld and affirmed the Hearing Officer's recommendation on September 10, 2024. This appeal followed.

II. LEGAL STANDARDS

PEBA provides for judicial review of orders issued by the Board. NMSA 1978, § 10-7E-23(B) (2003). The Court must affirm the order unless it is: (1) arbitrary, capricious or an abuse

[2] On appeal to this Court, Regents, having substituted for Employer during the administrative proceedings is the appellee.

of discretion; (2) not supported by substantial evidence in the record considered as a whole; or (3) otherwise not in accordance with law. *Id.*; *see also* Rule 1-074(R) NMRA.

III. DISCUSSION

A. The Union's status as the exclusive representative is not at issue on appeal.

A threshold dispute presented during the administrative proceedings was whether Union had standing to bring a prohibited practices complaint against Employer. The dispute involved a question as to whether various district court decisions and the Board's responses to those decisions had altered the Union's status as the exclusive representative.

The Hearing Officer determined the Union had standing to bring a prohibited practices complaint against Employer. The Hearing Officer reasoned that Employer was required to maintain the status quo regardless whether the district court decisions cast doubt on the Union's status.

Appellee has not challenged the Hearing Officer's conclusion that the Union had standing to bring a prohibited practices complaint. The Court expresses no opinion on the question of the Union's status as the exclusive representative during the relevant time.

B. Refusal to bargain

The PPC alleges Employer made unilateral changes to the terms and conditions of employment, bypassed the Union, and engaged in direct dealing with its employees. Specifically, the PPC alleges Employer violated PEBA by refusing to bargain with the Union regarding UNM Hospital's paid holidays, leave policies, FMLA eligibility, student loan repayment, shift differential, overtime and double time policies, and the "sunsetting" of SRMC's benefits, and instead communicating directly with employees about these matters. [AR 1–27]

PEBA imposes on public employers a duty to "bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties." NMSA 1978, § 10-7E-17(A)(1) (2020). An employer's refusal to bargain in good faith with the exclusive representative constitutes a prohibited practice. § 10-7E-19(F).

The argument that Employer violated PEBA by communicating with its employees is misplaced. Employer's communications to its employees did not constitute "dealing." Employer was merely supplying information about the terms and conditions that its employees could expect in the event they decided to accept future employment at UNM Hospital.

Union argues Employer made unilateral changes to the terms and conditions of employment. The record does not support this argument. Union's argument relies on obscuring the difference between SRMC and UNM Hospital.

SRMC advised its employees that it would cease to be an employer as of January 1, 2024, the date of the acquisition. And SRMC provided information about the terms and conditions its employees could expect in the event they decided to accept employment at UNM Hospital once they no longer were employees of SRMC. As the Hearing Officer explained, the alleged changes communicated to SRMC's employees were not changes at all. Rather, they were the wages and benefits SRMC's employees could expect to receive if they elected to accept employment at UNM Hospital, an entity with whom the Union had no bargaining relationship. [HO's Report pp. 10–11] The Court finds no error in this reasoning.

Union challenges the Hearing Officer's finding that the communications were sent by UNM Hospital and UNM Hospital alone. Union points to evidence that the communications, including a guide to future employment with UNM Hospital, were accessible through Employer's intranet.

The issue on appeal is not who sent the communications or whether Employer participated in the communications in some manner; the issue is whether Employer had a duty to bargain. The source of the communications has no bearing on the duty to bargain.

The Court agrees the terms and conditions of potential employment at UNM Hospital were not subject to bargaining; first, because Union did not have a bargaining relationship with UNM Hospital; second, because the terms and conditions at UNM Hospital—such as holidays, leave policies, FMLA eligibility, student loan repayment practices, shift differential, and overtime and double time policies—did not affect SRMC's employees as a bargaining unit, but rather depended on each employee individually accepting UNM Hospital's offer of employment after their employment with SRMC ended.

Even if Employer initiated the communications or facilitated the communications through its intranet, Employer did not violate PEBA by failing to bargain the conditions of its current employees' potential future employment. Employer was under no obligation to bargain the terms and conditions that existed at a different entity. Absent a duty to bargain, a claim of error in the Hearing Officer's factual finding regarding the source of the communications is not grounds to reverse.

The Union points to evidence it claims demonstrates that Employer implemented changes to the terms and conditions of employment prior to the merger: Exhibit J, a document that describes three benefits that purportedly would be "sunsetting" ahead of the January 1, 2024 merger. These three benefits are: the Career Advancement Program; the student loan forgiveness program; and the parental leave program. [AR 27 (PPC Ex. J)] The Hearing Officer declined to give Exhibit J evidentiary value. [HO Report p. 9]

The witness that sponsored for Exhibit J, Adrienne Enghouse, described the document as a screenshot from a cell phone. She stated that Exhibit J indicated that employees' ability to obtain medical care for chronic conditions would be impacted. Upon voir dire, however, the witness admitted she did not have personal knowledge of Exhibit J and could not say for certain where it came from because she did not receive it directly. The witness also admitted that, contrary to her testimony on direct examination, Exhibit J did not actually pertain to medical benefits. She further testified she did not have personal knowledge of the purportedly sunsetting benefits, nor did she know whether the information reflected on Exhibit J was true. She stated she was merely testifying as to concerns she had heard from others. The Hearing Officer admitted Exhibit J over hearsay and other objections, but indicated that it suffered inherent weaknesses similar to the Union's other documentary evidence. [Audio record, May 30, 2024 hearing, 1:00:00–1:04:00]

The technical rules of evidence do not apply to matters before the Board. 11.21.1.17 NMAC (03/15/2004). A hearing officer has discretion to exclude evidence that is unreliable, whether or not there is an objection to the evidence. 11.21.1.17(A), (B) NMAC.

The Hearing Officer did not exclude Exhibit J. Thus, in this case, the weight given to the exhibit is a matter of credibility. The Court concludes the Hearing Officer's decision to give Exhibit J little weight was not arbitrary or capricious in light of the testimony described above.

As to the Regents, which had been substituted as the Respondent because it had acquired Employer's assets after the PPC was filed, the Hearing Officer found it also had not committed a PEBA violation by communicating with SRMC's employees. The Court finds no error in this reasoning. As Union acknowledges, UNM Hospital was not the employer of any member of the bargaining unit at issue at the time the communications were sent.

C. Refusal to provide information

On October 4, 2023, Union sent Employer a demand for information in light of its concerns about potential violations of its members' bargaining rights. The information requested included: (1) job descriptions for each job classifications falling under the bargaining unit; (2) copies of employee manuals, handbooks and similar documents pertaining to employees in the bargaining unit; (3) a detailed breaking down by bargaining unit employee showing information such as pay level, job title, hourly rate, and date of hire; (4) average number of days of leave used for each bargaining unit member; (5) average number of overtime worked per week by each bargaining unit member; and (6) SRMC's policy statements regarding leave and other benefits. [AR 29–30] Employer declined to provide the requested information on the grounds that a recent district court decision had invalidated the Union's certification as the exclusive bargaining agent and Employer therefore had no obligation to provide information. [AR 31 (Exhibit L)]

The Hearing Officer concluded Employer had responded to the request for information by refusing to provide the information for the reasons stated. [HO Report p. 3] The Hearing Officer further concluded that Regents had no duty to provide information. [Id. p. 13.]

Union asserts the Board erred by dismissing the claim. According to Union, a refusal to provide information is not an adequate response to a representative's request for information.

Union relies on *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 99 S.Ct. 1123 (1979). That case held that the duty to bargain imposed by the National Labor Relations Act "includes a duty to provide relevant information needed by a labor organization for the proper performance of its duties as the employees' bargaining representative." *Detroit Edison Co.*, 440 U.S. at 303, 99 S. Ct. at 1125 (citations omitted). Union's claim that it had a right to the information thus is premised on the existence of a duty to bargain. The claim necessarily fails where, as here, there was no duty to bargain.

The Union also relies on PEBA, specifically Section 10-7E-15(F) and (G). Section 10-7E-15(F) requires employers to provide the exclusive representative certain employee information, such as name, date of hire, contact information, job title, salary, and work site location. § 10-7E-15(F). For newly hired employees, the information must be provided within ten days from the date of hire; for all other employees in the bargaining unit, the information must be provided every one hundred twenty days. § 10-7E-15(G).

No evidence in the record supports the Union's claim that Employer violated Section 10-7E-15(F) or (G). As an initial matter, the duty to provide information imposed by PEBA does not depend on a demand; an employer must provide the information automatically. In this case, the Union's claim is that Employer failed to respond to a *demand* for information. Furthermore, the Union provided no evidence, nor did it claim, that Employer failed to provide the information Section 10-7E-15(F) requires within the timeframe that Section 10-7E-15(G) requires.

IV. CONCLUSION

The Board's Order adopting the Hearing Officer's July 18, 2024 Report and Recommended Decision and dismissing the Union's complaint is **AFFIRMED.**

IT IS SO ORDERED.

Nancy J. Franchini

NANCY J. FRANCHINI
DISTRICT COURT JUDGE