

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

COMMUNICATIONS WORKERS OF
AMERICA,

Appellee,

v.

No. D-202-CV-2025-09870

STATE OF NEW MEXICO WORKERS'
COMPENSATION ADMINISTRATION,

Appellant.

MEMORANDUM OPINION AND ORDER
AND ORDER VACATING HEARING

THIS MATTER is an appeal under Rule 1-074 NMRA of a final order of the Public Employee Labor Relations Board (the "Board"). The decision of the Board is **REVERSED** and **REMANDED** to the Board for further proceedings consistent with this opinion. The hearing presently set for May 21, 2026 is VACATED.

BACKGROUND

On January 22, 2025, Appellee Communications Workers of America ("CWA") submitted a records request to Appellant Workers' Compensation Administration ("WCA") for a copy of an investigative report regarding worker safety concerns at the WCA's Farmington Field Office ("FFO"). [AR 4] The investigative report was authored by Thompson and Associates ("Thompson Report") and was dated November 21, 2024. [AR 5] The findings in the Thompson Report led to the discipline of one union member and two non-union members. [AR 81, Jordan Aff. ¶ 11]

On January 29, 2025, the WCA sent a letter via email to CWA acknowledging CWA's request. [AR 5-8] The WCA noted that "[b]oth the CWA and the WCA are bound by the parties'

collective bargaining agreement (CBA)” and that the “investigation was conducted consistent with Article 6 of the CBA.” [AR 5] The WCA then stated, in relevant part:

Article 6 of the CBA provides as follows:

“D. In all cases, the confidentiality of the disciplinary process shall be maintained by the Employer and its representatives, the Employee’s representative, and any and all Stewards shadowing, as required by law, SPB Rules, and this Agreement.”

As the Thompson Report was created as the by-product of an investigation that could have produced discipline to a CWA member[], it is and remains protected by the confidentiality provision quoted above.

[AR 5]

The letter then continued:

The above quoted provision of Article 6(D) above references “SPB Rules.” I draw your attention to the following pertinent State Personnel Office (“SPO”) Board Rule (bold added for emphasis):

“1.7.1.12 EMPLOYMENT RECORDS:

A. Agencies shall maintain a record of each employee’s employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to review their own file. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee’s employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee’s employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order or subpoena.

C. For the purpose of inspection of public records under Subsection B of 1.7.1.12 NMAC, **the following material shall be regarded as confidential and exempted from public inspection:** records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities

Act; letters of reference concerning employment, licensing, or permits; **records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions;** performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of 1.7.8 NMAC; and as otherwise provided by state or federal law.

[AR 5-6] The WCA argued that “[t]he Thompson Report easily qualified as one containing matters of opinion and concerns infractions and disciplinary actions. Without going into any details, the WCA undertook discipline based on the Thompson Report.” [AR 6]

Next, the WCA cited the Inspection of Public Records Act (“IPRA”) exception for “letters or memoranda that are matters of opinion in personnel files,” *see* NMSA 1978, § 14-2-1(C), and cases construing the exception as “embod[ying] the strong public policy of protecting the confidentiality of disciplinary investigations performed in the context of an employer-employee relationship” [AR 6-7] Thus, the WCA contended the entire Thompson Report is confidential.

[AR 7] According to the WCA: “Article 6 of the C[B]A . . . is consistent with and obviously incorporates the public policy that is behind the IPRA exemption found at §14-2-1(C).” [AR 7]

Finally, the WCA referenced the following provisions from WCA Personnel Policy #3 pertaining to how the WCA treats information received as a result of an investigation:

PROCEDURE

...

[C]2. All employees, whether the complainant, witness, or respondent, are required to cooperate during investigations. During the investigation process, witnesses or potential witnesses who are interviewed have the responsibility to maintain confidentiality about their interviews.

...

E. While the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complaining person cannot be

guaranteed, each will be protected to as great a degree as legally possible. Information will only be disclosed on a need-to-know basis.

- F.** The Director or his/her designee will have sole discretion to determine what information or findings are appropriate for disclosure and to whom.

[**AR 7, 12**] The WCA explained: “As noted in WCA Policy #3, WCA employees are required to maintain confidentiality during an investigation but, more importantly, the employees have the expectation that the results of the investigation be kept confidential by the WCA.” [**AR 7**] The WCA argued that releasing the Thompson Report “would violate WCA Policy #3, violate an employee’s reasonable expectations of confidentiality regarding the investigation . . . ; and incentivize . . . employees to not fully cooperate in future investigations.” [**AR 7**]

The letter concluded:

In an effort to potentially resolve WCA’s objections to CWA’s request for production of the entire Thompson Report, and consistent with WCA’s good faith effort to collectively bargain with the CWA, the WCA is interested in the legal basis and supporting case law which the CWA believes supports its production request at issue. . . .

In addition to the union’s legal bases in support of its request, the WCA hereby requests in the spirit of collective bargaining whether the union has any alternatives to the WCA producing the entire Thompson Report[.] The WCA is very concerned about the Thompson Report being provided to the individuals interviewed, which could lead to retaliation and/or further undermine the positive atmosphere the WCA is striving to enhance in the Farmington Office.

[**AR 8**]

In the following months, CWA and WCA exchanged several letters setting forth the parties’ positions regarding disclosure of the Thompson Report. See Letter from Stephen Curtice, Youtz & Valdez, P.C., to Michael Holt, WCA (Feb. 10, 2025) [**AR 13-15**]; Letter from Holt to Curtice (Feb. 18, 2025) [**AR 16-17**]; Letter from Curtice to Holt (Apr. 9, 2025) [**AR 18**].

On May 7, 2025, WCA wrote to CWA. [**AR 107-109**] The WCA concluded: “Your letter of April 9, 2025 continues to request a full copy of the Thompson Report. The discussions above,

and my earlier letters, explain why this is not going to be possible, absent some further suggestions by the CWA to prevent an impasse.” [AR 108]

On May 16, 2025, CWA filed a Prohibited Practices Complaint (“PPC”) under the Public Employee Bargaining Act (“PEBA”), §§ 10-7E-1 to -26 (2003, as amended through 2020), with the Board. [AR 1-18] On May 19, 2025, the Board deemed CWA’s PPC facially inadequate. [AR 19-20]

On May 23, 2026, CWA filed an amended PPC. [AR 21-39] CWA alleged that the WCA violated Section 10-7E-19(F) of the PEBA by refusing to produce the full Thompson Report to CWA. [AR 24] On June 11, 2025, WCA filed an Answer to Prohibited Practices Complaint. [AR 41-61]

On June 23, 2025, the Board’s Executive Director and Hearing Examiner (“Hearing Examiner”) held a pre-hearing status and scheduling conference with the parties. [AR 62] Following the conference, the Hearing Officer issued a Scheduling Order and Notice of Hearing directing the parties to file cross-motions for summary judgment and scheduling a hearing on the merits for July 31, 2025. [AR 62] The parties thereafter filed cross-motions for summary judgment and responses to the cross-motions. [AR 63-157]

On July 25, 2025, the Hearing Examiner entered findings and recommended conclusions on the parties’ motions for summary judgment. [AR 158-173] The Hearing Examiner noted that the parties were “largely in agreement as to the material facts, and their dispute is primarily one of law and contract interpretation.” [AR 158] The Hearing Officer concluded:

The record makes clear that the Union has agreed to limit the otherwise broad duty to share certain confidential information in Articles 6 and 12 of the CBA, by its express terms and by its express adoption and incorporation of the SPB Rules and law such as IPRA, on which SPB’s definition of confidential documents is based in part. As noted above, “the duty to provide information may be modified by agreement between employer and union”, and in such cases, ordinary contract

interpretation principles must be used to determine what each Party's rights and duties are. *See Am. Med. Response of Conn.*[,] 464 US App. DC at 255, 258-59.

[AR 170] In addition, “the record establishes that the documents sought (the interviews and the summarizations thereof) are confidential under the CBA, SPB rules, WCA Policy No. 3 and/or IPRA, because they include statements related to infractions or discipline, and statements of opinion about FFO employees.” [AR 17]

The Hearing Examiner also concluded that the “WCA . . . violated the general duty to bargain in good faith by failing to provide an accommodation in the first instance.” [AR 172] The Hearing Examiner characterized this as “only a technical violation.” [AR 172]

The Hearing Examiner

Determine[d] and recommend[ed] the Board conclude that: there is no material fact in dispute; the Employer is entitled to judgment as a matter of law as to the confidentiality of the Thompson Report summarizations and interviews . . . ; and the Union is entitled to judgment as a matter of law as to the insufficiency of the Agency's initial response to the Union's request, in failing to offer an accommodation first but instead seeking an initial accommodation from the Union, and in failing or refusing to offer the summarizations on the same basis as the interviews (*e.g.*, with employee permission).

[AR 173]

On August 6, 2025, the WCA appealed to the Board requesting that it not adopt the Hearing Examiner's recommended conclusions that: (1) WCA's initial response to CWA's request was insufficient for failing to offer accommodations first, and (2) WCA failed or refused to offer the summarizations on the same basis as the interviews. [AR 174-178]

On August 8, 2025, CWA appealed to the Board requesting that it reject the Hearing Examiner's conclusions as to, among other things, the confidentiality of the Thompson Report summary and interviews. [AR 179-192] CWA made several legal arguments in favor of its appeal. CWA argued that the PEBA, NLRB case law, and the provisions of CBA required WCA to provide

the Thompson report. [AR 181-189] Finally, the CWA argued that the Hearing Examiner's recommended conclusion

makes the fatal flaw of trying to incorporate IPRA, NMSA 14-2-1, *et. seq.*, into the CBA IPRA is not implicated here, and thus the reference to requiring employee sign-offs before the Employer must fulfill a Request for Information is misplaced. The CBA does not reference IPRA or seek to incorporate it in any way.

[AR 189]

On October 10, 2025, the Board issued an order on the parties appeals.¹ [AR 211] The Board accepted the Hearing Examiner's findings of fact. [AR 211] The Board affirmed the portion of the recommended decision finding that the WCA violated Section 19(F) of the PEBA by failing to offer the CWA and accommodation in the first instance. [AR 211] The Board supplied no reasoning for affirming this recommended decision. The Board also ruled:

That portion of the Recommended Decision finding that the "Thompson Report" is confidential and not subject to disclosure to the Union is OVERRULED. The Board finds that portions of the IPRA cited by the Hearing Officer are not controlling and the Employer is obligated by the PEBA to provide the 'Thompson Report' to the union.

[AR 211] The Board ordered the WCA to provide CWA with a copy of the Thompson Report without requiring waivers.

STANDARD OF REVIEW

The district court shall apply the following standards of review: (1) whether the Board acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on appeal, the decision of the Board is not supported by substantial evidence; (3) whether the action of the Board was outside the scope of authority of the Board; or (4) whether the action of the Board was otherwise not in accordance with law. Rule 1-074(R).

¹ "The board may issue a decision adopting, modifying, or reversing the hearing examiner's recommendations or taking other appropriate action. The board may incorporate all or part of the hearing examiner's report in its decision." 11.21.3.19(C) NMAC.

DISCUSSION

On appeal, the WCA raises several substantive issues regarding (1) the confidentiality of the Thompson Report, (2) whether the WCA violated the PEBA by failing to offer CWA an accommodation in the first instance, and (3) whether the IPRA is pertinent in this matter. The WCA also raises procedural issues regarding the Board's handling of the parties' appeals of the Hearing Examiner's findings and conclusions. For example, the WCA notes that the "PELRB provided no legal analysis to support its legal conclusion even though PELRB accepted the hearing officer's findings of fact." (SAI 11) The Court holds that this issue is dispositive. The Court holds that the Board's action is arbitrary and capricious as it entirely omits consideration of WCA's arguments regarding the CBA, the SPO rules, and WCA Personnel Policy #3.

The record on appeal must indicate the reasoning of the agency and the basis for its decision. *See City of Roswell v. New Mexico Water Quality Control Comm'n*, 1972-NMCA-160, ¶ 16, 84 N.M. 561, 505 P.2d 1237. "[I]n dealing with a determination or judgment which an agency alone is authorized to make, a reviewing court must judge the propriety of such action solely by the grounds invoked by the agency." *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1987-NMCA-153, ¶ 19, 107 N.M. 469, 760 P.2d 161 (internal quotation marks and citation omitted). "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. Regulation Comm'n*, 2017-NMSC-028, ¶ 8, 404 P.3d 1 (internal quotation marks and citation omitted).

In this case, the Board provided no reasoning for affirming the Hearing Examiner's conclusion that the WCA violated the PEBA by failing to offer the CWA an accommodation in

the first instance. In overruling the Hearing Examiner's conclusion that the Thompson Report is confidential and not subject to disclosure to the CWA, the Board found "that portions of the IPRA cited by the Hearing Officer are not controlling and the Employer is obligated by the PEBA to provide the 'Thompson Report; to the union.'" The Board's reasoning is deficient because it entirely omits the WCA's main rationale for not providing the Thompson Report, the CBA itself. Furthermore, the Board erroneously implied that the Hearing Examiner found that the IPRA was controlling. The Hearing Examiner found: "[T]he record establishes that the documents sought (the interviews and the summarizations thereof) are confidential under the CBA, SPB rules, WCA Policy #3 and/or IPRA" Thus, the IPRA was only one of several legal bases for the Hearing Examiner's conclusion. The Board's failure to address the CBA, SPB rules and WCA Policy #3 was arbitrary and capricious as these were "relevant factors or important aspects of the problem at hand." *Albuquerque Cab Co.*, 2017-NMSC-028, ¶ 8.

CONCLUSION

For the foregoing reasons, the final decision and order of the Board is **REVERSED**. This matter is **REMANDED** to the Board to reconsider and explain the reasons for (1) affirming the Hearing Examiner's finding that the WCA violated Section 10-7E-19(F) of the PEBA, and (2) overruling the Hearing Examiner's finding that the Thompson Report is confidential and not subject to disclosure to CWA. 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 Coal. v. Maggiore*, 1998-NMCA-134, ¶ 44, 125 N.M. 786, 965 P.2d 370 (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).

IT IS SO ORDERED.



Judge Lisa Chavez Ortega
District Court Judge
Division XIII