STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0760

St. Paul Federation of Educators,
Respondent,

Public Employment Relations Board,
Respondent,

vs.

St. Paul Public Schools, ISD No. 625,
Relator.

Filed March 3, 2025
Affirmed in part and reversed in part
Larkin, Judge

Public Employment Relations Board
File Nos. 21-U-001, 24-U-001

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Considered and decided by Ede, Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this certiorari appeal, relator school district challenges a determination of the Public Employment Relations Board that the district engaged in unfair labor practices. The district argues that the determination was based on legal errors, unsupported by substantial evidence, and arbitrary and capricious. We affirm in part and reverse in part.

FACTS

This appeal stems from a decision and order of respondent Public Employment Relations Board (PERB) that relator St. Paul Public Schools, ISD No. 625 (the District) committed unfair labor practices in violation of Minn. Stat. § 179A.13, subd. 2(1), (3) (2024), by issuing a letter of directives and a written reprimand to AK, the District's employee and a union steward for respondent St. Paul Federation of Educators (the Union). The letter of directives and written reprimand were based on three communications involving AK.

First, on October 30, 2022, AK and two other union stewards sent the principal at the school where AK worked a letter regarding "staff needs" and working conditions at the school. The letter addressed issues such as confusion over parent pick-up procedures and fire-drill routing. The stewards sought input from union members before submitting the letter.

Second, on January 27, 2023, AK and a union member drafted an email to the principal about a prior union meeting. At that meeting, a teacher (Teacher A) told the membership about an anonymous call, in which the caller claimed that a union steward (not AK) complained about three teachers of color and called for their discharge. The union membership was concerned about the anonymous call and wanted support from the principal. AK and a union member circulated the draft email to all union members and asked for their input. The draft email named the three teachers who were allegedly targeted for termination. Teacher A told AK not to use names due to possible ramifications. AK and the union member revised the email, removed Teacher A's name (but included her position), and sent the email to the principal on January 31, 2023. The email stated, in part, "We wanted to make sure you knew about this serious situation and would appreciate your help in moving forward. It would be helpful for staff to know how to handle difficult situations with parents and what steps to take if they find themselves in a similar situation."

Third, on February 2, 2023, AK sent an email to all school staff regarding the staff calendar:

> Last spring we had a lot of discussion as a staff about how stressful it is being blind-sided by events all of the time. . . . [W]e decided we needed both a [Google] Calendar and a list calendar (some preferred one, some the other). We have them. Neither is completely up to date since there were several field trips this week not on the calendar.
>
> Here is the link to the list calendar - which is also in our shared drive. Would you mind taking a peek at it to see if there's anything to add? [JL] made it accessible for everyone to add their events.

AK included a link and stated, "In terms of getting the events onto the Google Calendar, I know [a staff member] is working hard on it but there have been some roadblocks for access."

The principal quickly responded to AK's email, explained the calendar process, directed staff to use only the established calendar, and noted that the established calendar was up to date except for a "fieldtrip for today." AK responded using the "reply all" feature and noted that other field trips and events were not on the established calendar: "There were 3rd and 4th grade field trips as well this week. They are not on the calendar. There are also new events in our PTO newsletter that are not on the calendar." The school staff member in charge of placing events on the established calendar replied and directed AK to "[t]ake a chill pill!!!!"

On February 7, 2023, the principal and AK met to discuss AK's communications. On February 10, 2023, the District issued AK a letter of directives. The letter explained that, as an employee, AK was expected to conduct herself appropriately in her communications and interactions. The letter directed AK to adhere to her role and responsibilities as a teacher; refrain from sending emails to all staff regarding the management of school activities and functions at the school site; only communicate about the duties of a union steward in her role as a union steward, and not about the duties of a school administrator; be respectful and act professionally; be mindful about confidential and private data; follow directives and expectations given by the principal; and exercise good professional judgment. The Union did not grieve or otherwise contest the letter.

On April 13, 2023, the District conducted an investigative interview of AK. On April 20, 2023, the District issued AK a written reprimand stating that AK was being disciplined based on the October 30 working-conditions letter, "emails, staff[-]written statements[,] and the investigative interview." The reprimand directed AK to communicate concerns to the principal, respond to and attend meetings requested by the principal, follow the directives of her supervisors, and "[r]efrain from sending emails to the principal which should go through the leadership team." The reprimand stated, "[w]hen communicating your suggestions or recommendations provide these to your union steward who is on the leadership team where information is communicated to the principal" and "[u]tilize the union/principal meetings to address contractual discussions."

The Union filed a grievance regarding the reprimand, which the District denied. The Union then filed an unfair-labor-practices charge with PERB, alleging that the District violated Minn. Stat. § 179A.13, subd. 2(1)-(3) (2024), based on the District's February 10 letter of directives and April 20 written reprimand. PERB determined that there was a "reasonable basis in law and fact to support PERB's issuance of a Complaint that [the District] committed unfair labor practices." PERB ordered an evidentiary hearing before a hearing officer. After that hearing, the hearing officer determined that AK's three communications constituted protected activity and recommended that PERB find that the District violated Minn. Stat. § 179A.13, subd. 2(1), (3), because the District's letter of directives and written reprimand unlawfully directed AK to refrain from further union activity.

The District filed exceptions to the recommended order, assigning multiple errors. PERB denied the District's exceptions, deleted one factual finding, and otherwise adopted the hearing officer's recommended order.

This certiorari appeal follows.

DECISION

The Minnesota Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.25 (2024), "governs labor relations between public employees and their employers." *Allen v. Hennepin County*, 680 N.W.2d 560, 563 (Minn. App. 2004), *rev. denied* (Minn. Aug. 17, 2004). An employee or employee organization aggrieved by an unfair labor practice may file a charge with PERB. Minn. Stat. § 179A.13, subd. 1(a). Unless the charge has no reasonable basis in law or fact, PERB must issue a complaint and provide a hearing before a hearing officer. *Id.*, subd. 1(b). At the hearing, "[t]he party on whom the burden of proof rests shall be required to sustain the burden by a preponderance of the evidence." *Id.*, subd. 1(g). After the hearing, the hearing officer must issue a recommended decision and order. *Id.*, subd. 1(d). Parties may file exceptions to the hearing officer's recommended decision and order with PERB. *Id.*, subd. 1(k). PERB must then review the recommended decision and order and "may adopt all, part, or none of the recommended decision and order." *Id.*

Under Minn. Stat. § 179A.052, decisions of PERB relating to certain unfair labor practices, including violations of Minn. Stat. § 179A.13, may be reviewed by this court via a writ of certiorari. "[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Anoka County v. Law Enf't Lab. Servs., Inc.*, 3 N.W.3d 586, 591 (Minn. 2024) (quotation omitted). "Review by certiorari is limited to an inspection of the record" and "is necessarily confined to questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). We may reverse an agency's decision if its findings or conclusions are unsupported by substantial evidence. *Law Enf't Lab. Servs., Inc.*, 3 N.W.3d at 591. Substantial evidence has been described as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (quotation omitted). "[T]he appellant bears the burden of establishing that the agency findings are not supported by the evidence in the record." *Law Enf't Lab. Servs., Inc.*, 3 N.W.3d at 591 (quotation omitted).

The District makes several arguments in support of reversal. One argument regards a procedural issue. Other arguments regard the merits of PERB's decision and order. We address each issue in turn.

I.

The District contends that PERB "erred as a matter of law" by holding that the District's letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), "without any allegation from [PERB]" that the letter of directives violated that subdivision.

Under PELRA, if PERB finds that a charge has a reasonable basis in law or fact, PERB "shall promptly issue a complaint . . . stating the charges" and give notice of a hearing before a qualified hearing officer. Minn. Stat. § 179A.13, subd. 1(b). The "hearing must address the issues in the complaint or amended complaint." Minn. R. 7325.0220

(2023). The District argues that PERB's complaint in this case did not indicate that the following issue would be considered at the hearing: whether the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(3).[1]

PERB's "COMPLAINT AND NOTICE OF HEARING" in this matter has three sections. The first section is untitled. We refer to it as the "introduction." According to the introduction, the Union filed a charge alleging that the District

> violated Minn. Stat. § 179A.13, subd. 2(1) and (3), by issuing a letter of directive on February 10, 2023, that restricted employee [AK]'s protected activities by interfering with her role as a Union steward, and by, on April 20, 2023, issuing [AK] a letter of reprimand in retaliation for her activities as Union steward.

In the final paragraph of the introduction, PERB generally states that after reviewing the "parties' submissions and governing law," PERB was persuaded that there was a "reasonable basis in law and fact" to support its "issuance of a Complaint that [the District] committed unfair labor practices within the meaning of [section] 179A.13, [subdivision] 2(1) and (3), by its letter of directive to [AK] on February 10, 2023, and its letter of reprimand to her on April 20, 2023." That statement reasonably suggests that PERB would consider whether the letter of directives violated both subdivision 2(1) and 2(3).

However, the charges set forth in the second section of PERB's "COMPLAINT AND NOTICE OF HEARING," which is entitled, "COMPLAINT," are inconsistent with the description of the charges in the introduction. Instead of alleging that the District's

[1] That subdivision prohibits public employers, their agents, and representatives from "discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization." Minn. Stat. § 179A.13, subd. 2(3).

letter of directives violated both subdivision 2(1) and 2(3), the "COMPLAINT" states that PERB found that there was a reasonable basis in fact and law to permit a finding that the District committed unfair labor practices within the meaning of Minn. Stat. § 179A.13, subd. 2(1), (3), in two specific ways. First, paragraph seven of the "COMPLAINT" states that the District "interfered with, restrained or coerced employees in the exercise of the rights guaranteed by [PELRA], in violation of Minn. Stat. § 179A.13, subd. 2(1)," by committing "the conduct described in paragraph 5," which discusses only the letter of directives. Second, paragraph eight of the "COMPLAINT" states that the District "discriminated in regard to the hire or tenure of employment of its employees, thereby discouraging membership in a labor organization, in violation of Minn. Stat. § 179A.13, subd. 2(3)," by committing "the conduct described in paragraphs 6(a) and 6(b)," which discuss only the written reprimand.

The third section of PERB's "COMPLAINT AND NOTICE OF HEARING," is entitled "NOTICE OF HEARING AND HEARING PROCEDURE." In that section, PERB once again used general language to describe the issues to be decided, consistent with its description of the Union's charge in the introduction. PERB stated that "[a]n evidentiary hearing is ordered to determine whether [the District], by its agent [principal], violated Minn. Stat. § 179A.13, subd. 2(1) and 2(3)," without specifying which subdivisions would be considered when assessing the District's letter of directives and written reprimand. PERB also stated that "[t]he hearing must address all issues in this Complaint."

In sum, although the Union arguably alleged that the letter of directives violated both subdivision 2(1) and 2(3), and general language in the first and third sections of PERB's "COMPLAINT AND NOTICE OF HEARING" could suggest that PERB would consider each of those alleged violations, the "COMPLAINT" itself specified that PERB would consider whether the letter of directives violated subdivision 2(1) and whether the written reprimand violated subdivision 2(3).

When interpreting conflicting provisions within a document, specific provisions govern over general provisions. *See Burgi v. Eckes*, 354 N.W.2d 514, 519 (Minn. App. 1984) ("[T]he specific in a writing governs over the general."). We discern no basis not to apply that principle here. Thus, the specific charges in the "COMPLAINT"—which expressly tied the complained-of conduct to specific statutory subdivisions—identified the issues for the hearing. Those charges did not allege that the District's letter of directives violated Minn. Stat. § 179A.13, subd. 2(3).

Moreover, as the District notes, even though it raised this procedural issue as an exception to the hearing officer's recommended order, PERB did not address the issue.[2] Instead, PERB stated that the District offered "no basis for rejecting the Recommended Order, apart from its disagreement with the outcome and a flawed analysis of PELRA."

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[2] The District's statement of exceptions assigned error as follows: "The Hearing Officer's Conclusion of Law No. 5," which determined that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), and constituted an unfair labor practice, "is erroneous as a matter of law." The District asserted that "[t]he only issue regarding the February 10, 2023 Letter of Directives in the Complaint served by [PERB] is whether the Letter violated Minn. Stat. § 179A.13, subd. 2(1)," and that "[t]he Hearing Officer's Conclusion of Law No. 5 exceeded his authority and constitutes an error of law." The District's brief in support of its exceptions also addressed this issue.

Nor did PERB amend its complaint to allege that the District's letter of directives violated Minn. Stat. § 179A.13, subd. 2(3). *See* Minn. Stat. § 179A.13, subd. 1(b) (authorizing PERB to amend a complaint "at any time prior to the issuance of an order based thereon"). Instead, PERB adopted the hearing officer's recommended conclusion that the letter of directives violated subdivision 2(3), even though that issue was not stated in PERB's "COMPLAINT."

Under the circumstances, PERB erred by determining that the District's letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), because that issue was not identified in the "COMPLAINT." *See* Minn. R. 7325.0220 (stating that the "hearing must address the issues in the complaint or amended complaint").

The Union's counterarguments do not persuade us otherwise. The Union notes that it "alleged a violation of Minn. Stat. § 179A.13, subd. 2(3) in the unfair labor practice charge form for both the Letter of Directives and the Written Reprimand." The Union also notes that the issue statement in its post-hearing brief asserted that whether the letter of directives violated subdivision 2(3) was an issue at the hearing. The Union asserts that the District "had clear notice of the subd. 2(3) allegation regarding the Letter of Directives from both the Union and [PERB]."

Although the Union arguably alleged that the letter of directives violated subdivision 2(3), the charges in PERB's "COMPLAINT" were clear: PERB charged that the District's issuance of the letter of directives violated subdivision 2(1) and that the District's issuance of the written reprimand violated subdivision 2(3). Because PERB's

"COMPLAINT" did not charge that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), we reverse PERB's determination of this issue.[3]

II.

We now turn to the District's challenges to the merits of PERB's determination that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(1). The District makes three arguments in support of its contention that PERB erred in applying PELRA. We address each in turn.

A.

The District argues that PERB erred "by failing to require the Union to prove by a preponderance of the evidence that [AK] was, in fact, engaged in protected conduct under PELRA as is required by Minn. Stat. § 179A.13, subd. 2(1)." *See* Minn. R. 7325.0230 (2023) ("The charging party has the burden of proving the unfair labor practice allegation in the complaint by a preponderance of the evidence . . . ."). In effect, the District challenges the sufficiency of the evidence, focusing its arguments on AK's February 2, 2023 school-calendar communication.

Under Minn Stat. § 179A.13, subd. 2(1), "[p]ublic employers, their agents and representatives are prohibited from . . . interfering, restraining, or coercing employees in the exercise of the rights guaranteed" under PELRA. Under PELRA, "[p]ublic employees

[3] Because we reverse PERB's determination that the District's letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), we do not address the District's argument that the Union failed to prove that the District's letter of directives was motivated by anti-union animus.

have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." Minn. Stat. § 179A.06, subd. 7.

In determining that the District interfered with AK's rights under PELRA, the hearing officer broadly determined that the District restricted AK's rights to engage in "union activity" and inhibited her right as a union steward "to communicate with bargaining unit members about working conditions." In adopting the hearing officer's recommendations, PERB implicitly indicated that the PELRA rights at issue were those in Minn. Stat. § 179A.06, subd. 7, which protects an employee's right to engage in concerted activities for the purpose of mutual aid or protection. For example, PERB cited *Children's Studio School Public Charter School*, which PERB stated was "remarkably similar." 343 N.L.R.B. 801 (2004). In that case, the National Labor Relations Board (NLRB) considered an allegation based on a violation of "protected concerted activities." *Id.* at 802. We therefore consider whether there is sufficient evidence to support a determination that the District violated Minn. Stat. § 179A.06, subd. 7.

In identifying protected conduct under PELRA, both parties rely on cases interpreting the National Labor Relations Act (NLRA). When interpreting PELRA "it is often instructive to refer to decisions interpreting the [NLRA]," though such decisions are not binding. *Int'l Union of Operating Eng'rs, Local 49 v. City of Minneapolis*, 233 N.W.2d 748, 752 (Minn. 1975). The NLRA includes a provision that is analogous to section 179A.13, subdivision 2(1), forbidding an employer from interfering, restraining, or coercing employees in the exercise of their rights guaranteed under the NLRA. *See* 29 U.S.C. § 158(a)(1) (2018). And like PELRA, the NLRA guarantees the right "to engage in other concerted activities for the purpose of . . . other mutual aid or protection." 29 U.S.C. § 157 (2018).

Under the NLRA, "[o]ne of the chief rights protected is the right to engage in concerted activities for the purpose of improving working conditions." *NLRB v. Mount Desert Island Hosp.*, 695 F.2d 634, 637 (1st Cir. 1982); *see State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010) ("[A]lthough we are not bound to follow precedent from other states or federal courts, these authorities can be persuasive."), *rev. denied* (Minn. June 29, 2010). "It is well settled that employees have the right to engage in concerted activities for the purpose of protesting and forcing the improvement of working conditions." *NLRB v. Robertson Indus.*, 560 F.2d 396, 398 (9th Cir. 1976). "Concerted activity" has been interpreted to include instances "where individual employees bring truly group complaints to the attention of management." *MCPC, Inc. v. NLRB*, 813 F.3d 475, 483 (3d Cir. 2016) (quotation omitted). "[T]alk looking toward group action" is protected; mere griping is not. *Mushroom Transp. Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964).

The record supports PERB's determination that the communications underlying the District's letter of directives were protected concerted activities. The October 30 working-conditions letter raised group concerns about conditions at the school. Likewise, the January 31 email to the principal constituted a group action and sought advice about a "serious situation," namely, the anonymous allegation that teachers of color would be fired. Finally, the February 2 emails addressed staff concerns about a school calendar that some staff perceived as inadequate.

In sum, AK's communications addressed working conditions and the concerns of fellow employees, and the record supports PERB's implicit determination that the District interfered with AK's rights under Minn. Stat. § 179A.06, subd. 7. *See NLRB v. Talsol Corp.*, 155 F.3d 785, 797 (6th Cir. 1998) (holding that an employee's comments about safety at a group meeting attended by employees and management constituted protected concerted activity because the meeting was conducted to address plant safety concerns, the employee's questions were on the topic of safety, and the context indicated that the employee's statements were "not purely personal gripes").

B.

The District argues that PERB "erred as a matter of law in determining that [AK's] conduct resulting in the February 10, 2023, Letter of Directives 'was well within steward conduct that the NLRB has repeatedly held protected from employer discipline.'" The District asserts that PERB's decision "entirely disregards" two Eighth Circuit decisions: *Earle Industries, Inc. v. NLRB*, 75 F.3d 400 (8th Cir. 1996) and *Carleton College v. NLRB*, 230 F.3d 1075 (8th Cir. 2000).

In *Earle*, an employer challenged the NLRB's determination that it committed an unfair labor practice by firing an employee for insubordination and dishonesty. 75 F.3d at 401. The Eighth Circuit agreed that the employer "was entitled to fire" the employee because the employee "was part of a group of employees who assisted and accompanied [Reverend Jesse] Jackson in making his way through a part of the plant where he had no right to be" and defied a manager before a crowd of employees "by means of a false statement." *Id.* at 405, 407. The Eighth Circuit noted that the employee's insubordination occurred in the context of a union campaign, but found that "the factors of context, impulsiveness and effect on discipline" weighed against the employee. *Id.* at 407. For example, the employee "deliberately lied to Jackson to cause him to push forward instead of going back to the visitor's entrance," as a manager had requested. *Id.*

In *Carleton College*, the Eighth Circuit denied enforcement of an NLRB unfair-labor-practice order, concluding that there were legitimate reasons for the nonrenewal of an employee's contract. 230 F.3d at 1077-78, 1080, 1082. For example, the employee, in the context of a meeting with the dean of the college, used "vulgarities" and described the music department as a "laughingstock" and a "pig." *Id.* at 1081.

AK's conduct in this case is easily distinguishable from the employee conduct in *Earle* and *Carleton College*. In her February 2 school-calendar communications, AK addressed group concerns regarding the accuracy of the school calendar. In her "reply all" response to the principal, AK made factual assertions regarding the calendar's completeness. But the record does not suggest that AK was dishonest, much less that she "deliberately lied" in a way that undermined management. Nor did AK use vulgar language or engage in name calling.

The District asserts that AK's communications were unprofessional, inappropriate, and constituted insubordination. But the District exaggerated the tone and content of AK's communications in its briefing and oral argument to this court. For example, at oral argument, the District asserted that AK wrote that staff felt "back-stabbed" by the calendar omissions. The District later acknowledged that AK actually used the phrase "blind-sided." And in its briefing, the District insists that AK's communications crossed a line separating protected and unprotected union communications. But courts have held that far more egregious comments are protected. For example, in *Cooper Tire & Rubber Co. v. NLRB*, the Eighth Circuit upheld an NLRB determination that the firing of an employee violated the NLRA, even though that employee made racist comments while on a picket line. 866 F.3d 885, 889 (8th Cir. 2017).

PERB recognized that "not all union steward conduct is protected," but it determined that AK's conduct was "not even close to the conduct that was held unprotected" in the cases that the District cited. Having reviewed the relevant caselaw, we cannot say that PERB erred in determining that AK was engaged in protected conduct. *See Law Enf't Lab. Servs., Inc.*, 3 N.W.3d at 591 (stating that deference should be shown to an agency's expertise); *Carleton College*, 230 F.3d at 1078 ("We will enforce the Board's order if the Board has correctly applied the law and its factual findings are supported by substantial evidence on the record as a whole, even if we might have reached a different decision had the matter been before us de novo." (quotation omitted)).

C.

The District argues that PERB erred in holding that PELRA "does not require proof that any specific employee was interfered with, restrained, or coerced in exercising statutory rights." The District asserts that PELRA rights must "actually be affected in order to establish a violation of Minn. Stat. [§] 179A.13, subd. 2(1)."

The District relies on a nonprecedential opinion from this court as support. *See Stephens v. Bd. of Regents*, No. A03-1082, 2004 WL 237386 (Minn. App. Feb. 10, 2004), *rev. denied* (Minn. Mar. 30, 2004). Nonprecedential opinions of this court are not binding, but they may be persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority."). In *Stephens*, this court dismissed a claimed violation of Minn. Stat. § 179A.13, subd. 2(1), because the appellant made "no argument that respondent interfered with, restrained, or coerced her into not exercising rights guaranteed under PELRA." 2004 WL 237386, at *2-3.

PERB rejected the District's reliance on *Stephens*, stating that the claim in that case failed, "not because PELRA requires proof that an employee actually refrained from subsequent PELRA-protected conduct, but because she was merely alleging breach of her individual employment contract, failing even to allege any employer conduct that violated PELRA." PERB explained that interference with an employee's exercise of rights "does not require proof that any specific employee was interfered with, restrained, or coerced in exercising statutory rights." PERB relied on *Green Apple Supermarket of Jamaica, Inc.*, in which the NLRB stated, "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the [NLRA] does not turn on the employer's motive or on whether the coercion succeeded or failed." 366 N.L.R.B. No. 124, slip op. at 20 (2018) (quotation omitted).

Again, when interpreting PELRA "it is often instructive to refer to decisions interpreting the [NLRA]," though such decisions are not binding. *Local 49*, 233 N.W.2d at 752. But in *Stephens*, we did not discuss the relevant persuasive decisions interpreting the NLRA. *See Brandeis Mach. & Supply Co. v. NLRB*, 412 F.3d 822, 830 (7th Cir. 2005) (stating that the test is "whether the employer engaged in conduct, which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the [NLRA]") (quotation omitted)); *Nat'l Steel & Shipbuilding Co. v. NLRB*, 156 F.3d 1268, 1271 (D.C. Cir. 1998) (stating that an employer interferes with NLRA rights "if its actions have merely a tendency to coerce, regardless of their actual impact in a particular case" (quotation omitted)). For that reason, our nonprecedential decision in *Stephens* is not persuasive here. PERB did not err by instead relying on decisions interpreting the NLRA.

III.

Finally, we address the District's contentions that PERB's decision and order reflected its will rather than its judgment and that the decision and order was therefore arbitrary and capricious. *See In re Quantification of Env't Costs,* 578 N.W.2d 794, 799 (Minn. App. 1998) ("If an agency's decision represents its will and not its judgment, the decision is arbitrary and capricious."), *rev. denied* (Minn. Aug. 18, 1998). The District relies, in part, on PERB's determination that the District's issuance of its letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), even though PERB's "COMPLAINT" did not identify that charge as an issue to be determined at the hearing. Although we reverse the determination that the District's issuance of its letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), we do not otherwise conclude that PERB's decision and order was arbitrary or capricious.

Caselaw provides that an agency decision is not arbitrary and capricious if the agency took a hard look at the salient issues. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). In assessing whether PERB met that standard, we note that PERB rejected the following finding of fact by the hearing officer: "Before a meeting scheduled for February 7, 2023 with the principal, [AK] reasonably believed that the meeting over her 'communication' might lead to discipline and asked for but was denied union representation consistent with *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975)." In rejecting that finding, PERB explained:

> While the record supports the Hearing Officer's statement that [AK] sought, and was denied, union representation, we reject any implicit legal conclusion that the [District's] denial violated [PELRA] for the following reasons: (1) PERB's Complaint did not include any allegation that a denial of union representation violated PELRA so that the [District] was not afforded notice that [this] alleged violation . . . was being adjudicated. (2) The Hearing Officer's list of Conclusions of Law does not include any mention of [this] . . . violation. (3) The Hearing Officer's list of remedial recommendations does not mention any remedy for [this] . . . violation.

PERB's explanation shows that it took a hard look at this issue. In addition, PERB took "care to explain why the [District's] exceptions are not consistent with PELRA," providing approximately six pages of legal analysis to support its decision.

Although PERB should have addressed the District's exception assigning error to the hearing officer's recommendation that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(3), PERB otherwise took a hard look at the issues, and its decision was not arbitrary or capricious.

Conclusion

For the reasons explained in section I of this opinion, we reverse PERB's determination that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(3). But we affirm the remainder of PERB's decision and order.

Because proof of only one unfair labor practice is necessary to sustain PERB's order, and because we affirm PERB's determination that the District's issuance of the letter of directives violated Minn. Stat. § 179A.13, subd. 2(1), we do not remand for further proceedings.[4] *See* Minn. Stat. § 179A.13, subd. 1(i) ("If, upon a preponderance of the evidence taken, the hearing officer determines that any party named in the charge has engaged in or is engaging in *an* unfair labor practice, then a recommended decision and order *shall* be issued . . . .") (emphasis added)).

Affirmed in part and reversed in part.

[4] We note that PERB also determined that the District's issuance of the written reprimand violated Minn. Stat. 179A.13, subd. 2(1), (3). That determination—which the District does not challenge—also sustains PERB's order.