

# 8-PELRB-2023

## STATE OF NEW MEXICO PUBLIC EMPLOYEES LABOR RELATIONS BOARD

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

**Petitioner,**

**and**

**PELRB No. 304-22**

**UNIVERSITY OF NEW MEXICO SANDOVAL  
REGIONAL MEDICAL CENTER,**

**Respondent.**

### ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on February 7, 2023 upon a Request by the University of New Mexico Sandoval Regional Medical Center for Review of the Hearing Officer's Report and Recommended Decision concerning the designation of an appropriate bargaining unit including PRN or Per Diem positions. After review of the submissions and hearing argument of counsel, Stephen Curtice of Youtz & Valdez, P.C. appearing for Petitioner, and Melissa Kountz, appearing for the Employer, the voted 2-0 adopt and affirm the Hearing Officer's Report and Recommended Decision.

**WHEREFORE,** the Executive Director has resolved all questions concerning representation and his designation of the appropriate bargaining unit in this case is **AFFIRMED**.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

DocuSigned by:  
*Nan Nash*  
DFE4A440B2614C5

**NAN NASH, BOARD CHAIR**

2/15/2023

**DATE**

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PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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**HEARING OFFICER'S REPORT AND RECOMMENDED DECISION  
CONCERNING APPROPRIATE BARGAINING UNIT**

The following constitutes my Report and Recommended Decision Concerning designation of an appropriate bargaining unit following remand from the Public Employee Labor Relations Board for that purpose.

**STATEMENT OF THE PROCEEDING:** On August 23, 2022, the Public Employee Labor Relations Board's Hearing Officer issued his Report and Recommended Decision concerning whether the bargaining unit proposed by the Petitioner in this case is appropriate unit and if not, what constitutes an appropriate bargaining unit in this case, pursuant to NMSA 1978 §10-7E-13(B). That Report and Recommended Decision concluded that University of New Mexico Sandoval Regional Medical Center (SRMC) employees employed on a per diem or "PRN" basis are not "regular" employees because of their irregular, occasional employment status, which distinguishes them from others in the putative unit. Therefore, PRNs were not deemed by the Hearing Officer to be "public employees" as defined by section 4(Q) of the Public Employee Bargaining Act and their inclusion in the bargaining unit would render it inappropriate. The Hearing Officer also concluded

that SRMC's House Supervisors were not "Management" employees as defined by Section 4(N) of PEBA and, so, were not excluded from coverage under the Act and their inclusion in the bargaining unit would not render it inappropriate. Similarly, the Hearing Officer concluded in his August 23, 2022, Report and Recommended Decision that Charge Nurses at SRMC are Lead Employees expressly excluded from the definition of a "supervisor" under NMSA 1978 §10-7E-4(T) (2020), and as such, are to be included as part of an appropriate bargaining unit in this case.

After review of that Report and Recommended Decision during a regularly scheduled meeting on November 19, 2022, this Board issued its Order 26-PELRB-2022 on December 1, 2022, reversing its Hearing Officer in part, but only with respect to his conclusion that SRMC employees employed on a per diem or "PRN" basis are not "regular employees" for the purposes of the PEBA. The Board adopted the Recommended Decision as to its remaining conclusions that found that House Supervisors and Charge Nurses are not excluded from coverage under the PEBA and are appropriate for inclusion in the bargaining unit. The PELRB's Order 26-PELRB-2022 further remanded the matter to the Hearing Officer for the purpose of determining whether the PRN's share a community of interest with others in the petitioned-for unit.

This matter comes before the Board's designated Hearing Officer, Thomas J. Griego, upon that remand from the PELRB and pursuant to a scheduling order issued on December 15, 2022 calling for legal briefs on the issue by December 28, 2022, subsequently extended by agreement of the parties to January 6, 2023, to determine whether all the employees this Board has determined are public employees entitled to collective bargaining rights under PEBA in this case should be in a single bargaining unit; or whether PRN employees should be segregated into their own separate second bargaining unit based on recognized community of interest standards.

**LEGAL STANDARD:** The Public Employee Bargaining Act NMSA 1978, § 10-7E-13 provides:

“The board...shall upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved... Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.”

11.21.2.13 NMAC further requires the Board’s Executive Director to “... determine whether there are significant issues of unit scope, unit inclusion or exclusion...”.

There is no absolute rule of law as to what constitutes an appropriate bargaining unit and courts will defer to the Board if its determination is supported by substantial evidence and otherwise in accordance with the law. See, *San Juan College v. San Juan College Labor Management Relations Board*, 2011-NMCA-117, 267 P.3d 101. To be deemed “appropriate”, proposed bargaining units must be either one of the occupational groups delineated in NMSA 1978 §10-7E-13(A) or be shown to share a proper “community of interest”. In addition to the “essential” factors of efficient administration of government and assurance of the fullest freedom in exercising rights guaranteed by the Act, whenever it is faced with a question of whether employees in a putative bargaining unit share identifiable communities of interest in employment terms and conditions and related personnel matters, this Board applies those factors colloquially referred to as “Kalamazoo factors”. Such factors include similarities or differences in the method of wage or compensation, the hours of work, employment benefits, separate supervision, job qualifications, job functions and amount of time spent away from employment situs, regularity of contact with other employees, level or lack of integration and the history of collective bargaining. See *NEA-Belen & Belen Federation of School Employees & Belen Consolidated Schools*, 1 PELRB No. 2 (May 13, 1994) citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962); *Santa Fe Community College-AAUP and Santa Fe Community College*, 4-PELRB-2017 (May 5, 2017) (PELRB No. 311-16).

No single community of interest factor is conclusive, and the test cannot be mechanically applied as some elements may support one outcome, and others may indicate another outcome. Rather, the factors are a means of sifting through relevant facts to reach well-reasoned community of interest determinations. See *NEA-Belen & Belen Fed. of School Employees & Belen Consol. Schools*, Id.

As part of the “efficient administration of government” factor, I include the Board’s preference against over-fragmentation of bargaining units expressed in *NEA-Belen & Belen Federation of School Employees & Belen Consolidated Schools*, *supra*; citing *Mallinckrodt Chem. Works*, 162 NLRB 387, 64 LRRM 1011 (1966). (“Consequently, we adopt an anti-fragmentation policy to avoid unnecessary and needless proliferation of bargaining units. We do so because the failure to promulgate such a policy could have a deleterious effect on the efficient administration of government with simultaneous negative consequences for management, labor, and the community at large.”)

**FINDINGS OF FACT:** As memorialized in the Scheduling Notice dated December 15, 2022, the parties have stipulated to the following relevant facts:

1. Union Ex. A, Section 5 Employee Classification (AFT 021-22) classifies SRMC employees as “Exempt”, “Non-Exempt” (pertaining to FLSA overtime requirements), “Full-Time Regular Employees”, “Part-Time Regular Employees”, and “PRN employees”. Unlike the other employee classifications under this policy, PRN employees (PRNs) do not work a regularly scheduled number of hours per week. Instead they “...will work as needed and as budgeted at the discretion of the Unit Director or Staffing department”:

“E. PRN Employee. A person hired for the PRN pool will only be utilized for PTO coverage, FMLA coverage, and increase in census or acuity, training, educational or any other unplanned vacancies. PRN employees typically do not qualify for benefits. PRN employee worked hours cannot exceed an average of 30 hours a week established thru [sic] the Affordable Care Act and the PRN hours worked cannot exceed the established FTE’s within the department budget. PRN staff will work as needed and as budgeted at the discretion of the Unit Director or Staffing department. It is the responsibility of the Unit

Director and the employee to monitor the hours worked in a PRN status.

1. There are three types of PRN employees:
  - Unit Based- Employees who only work in a specific Department and do not float to other areas.
  - Staffing office PRN- Employees who have been trained and can cover two (2) or more Departments/Units, i.e., clinics, Inpatient, Emergency Department, etc....[sic]
  - Specialty PRN: Employees who have a certain skill set that can only be utilized by one department such as rehab, pharmacy, respiratory, and radiology.
2. PRN employees cannot be scheduled as regularly scheduled staff with set schedules.
3. A PRN employee must be available to work a minimum schedule:
  - Inpatient: Employees provide availability for Four (4) shifts or 48 hours per six week schedule. Availability of shifts should include weekends, holidays, days/night shift as applicable by department and by unit specific guidelines.
  - Outpatient and other Departments: Employees provide availability for Four (4) shifts per month. Availability of shifts should include weekends, holidays, day/night shifts as applicable by department and by unit specific guidelines.
4. All PRN staff are considered employees of Sandoval Regional Medical Center and are not contract employees. PRN staff must comply with scheduling provisions, appropriate job description, personnel and administrative policies. The appropriate Unit Director will maintain a system for tracking compliance with all provisions of the PRN policy. Any PRN staff failing to comply with the hospital requirements may be dismissed from the organization.
5. All of the pay schedules which apply to the PRN Pool shall be available in the Human Resources Department.
  - Unit Based PRN employees will be set at a rate.
  - PRN employees within the Resource Team will be set at higher rate due to the established necessity to float to various departments.
6. Scheduling Procedure. Full time and part employees will have scheduling preference within the scheduling system. PRN employees will fill in their availability after and in accordance with the remaining available shifts. Failure to comply with providing availability and adherence to requirements may result in immediate termination.”

2. In accordance with the above-cited Employee Classification, PRN staff must be available to work eight hours per week but may, and according to witness testimony usually do, work more than that. HO Report at 4, ¶ 5 (citing Union Exhibit A at page 18; Testimony of Lilia Avila, Audio Record at 00:30:00; Testimony of Araceli Segura Miller, Audio Record Part 1 at 00:40:00; Testimony of Adrienne Enghouse Audio Record Part 4 at 00:41:15).
3. Shift assignments for the subject employees are based in part on seniority using the Hospital's "shift wizard" software with full-time employees choosing their shifts first, part-time employees choosing second and PRNs choosing last. HO Report at 4, ¶ 6 (citing Testimony of Pam Demarest, Audio Record Part 3 at 00:37:40).
4. PRN employees schedule their shifts based upon what is available after full time and part-time employees choose their shifts in order to provide staffing during any periods when there are insufficient FTE and PTE employees to fully staff a shift, floor or unit as needed. HO Report at 4, ¶ 7 (citing Testimony of Lilia Avila, Audio Record Part 1 at 00:16:30; Testimony of Araceli Segura-Miller Audio Record Part 1 at 00:38:35 -00:40:31).
5. PRNs do not have a set schedule like a full-time or part-time regular employee. HO Report at 4, ¶ 7 (citing Testimony of Lilia Avila, Audio Record Part 1 at 00:14:30 and 00:15:10).
6. When asked to fill in for an absent employee at the last-minute, a PRN is not obligated to accept the assignment if it is not within the days or times the PRN has committed to be available for work. HO Report at 5, ¶ 8 (citing Testimony of Lilia Avila, Audio Record Part 1 at 00:15:40 - 00:41:12).
7. A PRN is able to substitute for a regular employee for part of a shift. For example, if a regular employee has a doctor's appointment, Ms. Avila can work a short period to allow for the person to attend their appointment and come back to the hospital. HO Report at 5, ¶ 9 (citing Testimony of Lilia Avila, Audio Record Part 1 at 00:15:50 to 00:16:45).

8. PRNs provide their availability to SRMC and if SRMC needs them to fill-in for an FTE or PTE on leave or otherwise absent during the period a PRN is available, that PRN is called to work. If there is no such FTE or PTE absence, the PRN is not scheduled to work. HO Report at 5, ¶ 10 (citing Testimony of Coreen Bales, Audio Record Part 1 at 1:03: 1:05:05).
9. Because the person a PRN fills in for is an employee whose position has been counted for staffing levels, PRNs are used to maintain those staffing levels. HO Report at 5, ¶ 11 (citing Testimony of Coreen Bales, Audio record Part 1 at 1:02:20; 1:41:00; and 1:46:00).
10. PRNs are evaluated in the same manner and on the same criteria as other employees. HO Report at 5, ¶ 11 (citing Testimony of Pam Demarest, Audio Record Part 3 at 00:39:10; 00:43:25).
11. As stated in SRMC's Employee Classification Union Ex. A, Section 5 (AFT 021-22) PRNs generally do not qualify for employee benefits. However, PRNs may qualify for health insurance, but only if the PRN employee works the requisite hours under the Affordable Health Care act. (Testimony of Bales, Pt. 1 at 1:11:26 to 1:11:38).
12. Among the employee benefits that PRNs are not eligible to receive are paid time off (PTO), Career Advancement Program (CAP) incentive payments or tuition reimbursement. HO Report at 5-6, ¶ 11 (citing Testimony of Lilia Avila, Audio Record Part 1 at 00:17:18 to 00:18:26), see also Testimony of Correen Bales, Pt. 1 at 1:06:38 - 1:13:25); Educational Leave, (Union Exhibit B at ATF 088); Employee Medical Crisis Leave, (Union Exhibit B at ATF 112), Employee Crisis Leave, (Union Exhibit B at AFT 157); Group Health, Dental or Life, (Union Exhibit B at AFT 161); Paid Bereavement Leave, (Id. at AFT 173); Paid Jury Duty Leave, (Id. at AFT 182); Paid Parental Leave, (Id. at AFT 189); Personal Leave, (Id. at AFT 212).



13. Except for the “PRN” designation, the Hospital’s form offer of employment to a PRN is the same as that for all other employees. HO Report at 6, ¶ 15 (citing Hospital Exhibit 5).
14. PRNs attend New Employee Orientation and must meet all of the other qualification requirements, e.g. criminal background check, drug screen and immunization records, as other employees do. HO Report at 7, ¶ 16 (citing Hospital Exhibit 5).
15. Hospital Director of Human Resources Correen Bales testified that the Hospital has never operated without PRNs. (citing Test. of Correen Bales, Audio Record Part 1, at 1:33:06.)

**I. A PREPONDERANCE OF THE EVIDENCE SUPPORTS A CONCLUSION THAT THE PRN EMPLOYEES SHARE SUFFICIENT COMMUNITY OF INTEREST IN EMPLOYMENT TERMS AND CONDITIONS AND RELATED PERSONNEL MATTERS SO THAT THEIR INCLUSION IN A SINGLE UNIT WITH OTHER EMPLOYEES FOUND BY THIS BOARD TO BE AN APPROPRIATE COLLECTIVE BARGAINING UNIT, WOULD NOT RENDER THE UNIT INAPPROPRIATE.**

In addition to the essential factors of include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act delineated in NMSA 1978, § 10-7E-13 (2020), I also weigh, as this Board has historically done, the factors outlined in *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Those are:

- (1) method of wages or compensation;
- (2) hours of work;
- (3) employment benefits;
- (4) separate supervision;
- (5) job qualifications;
- (6) job functions and amount of time spent away from employment situs;
- (7) regularity of contact with other employees;

(8) level or lack of integration<sup>1</sup>.

I address each in order:

1. **Method of Wages or Compensation.** The parties have stipulated that the PRNs share a common method of wages and compensation with others in the proposed unit and that they are paid “comparatively” on the same pay scale, out of the same source of funds. The commonality in the method of wages and compensation among PRNs and others in the bargaining unit weighs in favor of including PRNs in the unit.

2. **Hours of Work.** The difference in schedules and hours worked by PRNs compared with other employees recognized by the PELRB is perhaps the most significant contrast. It is certainly the most obvious. For example, PRNs schedule their shifts based upon what is available after FTE and PTE employees are scheduled. As such, their schedules vary. A PRN may be asked to fill in at the last-minute to cover an unscheduled FTE and PTE absence, even if only for part of a shift, but is not obliged to accept any shift for which the PRN has not previously committed to be available. Essentially, PRNs are in an “on-call” status in this regard. As PRN Lilia Segura-Miller testified, she provides her supervisor the days she can work and she is called upon to work as needed by the Hospital (Audio Record Pt. 1 at 40:31). PRNs can switch their schedules freely from day to night shift. (Testimony of Correen Bales, Pt. 1, 1:20:00 to 1:20:58).

SRMC argues that the “differences in hours” (which I have already posited are significant) “make the inclusion of PRNs in a unit of regular full-time and part-time unit inappropriate” but does not explain *why* their inclusion would render the unit inappropriate for that reason. SRMC speculates that “[t]hese differences are not minimal and may cause conflict between groups and an inefficient

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<sup>1</sup> The history of collective bargaining is a factor to be considered under both NMSA 1978, § 10-7E-13 (2020) and *Kalamazoo Paper Box Corp.* As it was called out as one of the statutory factors, I did not repeat it as one of the *Kalamazoo* factors.

function of SRMC” but does not give me the benefit of any analysis that might persuade me to agree with that conclusory proposition.

The Union does not dispute that upon these facts, PRNs do not have a set schedule as FTE and PTE employees do. Rather, the Union argues that while PRN employees do not have schedules similar to non-PRN employees, they work identical *shifts* when called upon to work. That is largely true but there is an arguable exception whenever a PRN is called upon to work *part* of an FTE or PTE employee’s shift. Rather than analyze the work hours factor as a dispute over scheduled hours, hours worked and scheduled shifts, I am guided by the analysis of the NLRB in *Newton-Wellesley Hospital*, 219 NLRB 699 (1975) wherein on-call nurses working on a *regular, though unscheduled, basis covering most pay periods* during the year and performing the same tasks, in the same areas as the FTE and PTE RNs who are included in the unit, were found to share “a strong community of interest with them”. Under such circumstance the NLRB found on-call nurses to be regular part-time registered nurses and therefore, included in the unit. Adopting this analysis is consistent with the Board’s Order 26-PELRB-2022 reversing my Recommended Decision issued August 23, 2022 with respect to its conclusion that “SRMC employees employed on a per diem or ‘PRN’ basis are not ‘regular’ employees” for the purposes of the PEBA. Accordingly, I conclude that under the facts of this case, this factor supports a conclusion that a community of interest exists among PRN and non-PRN workers.

**3. Employment Benefits.** I disagree with the Union’s argument that this factor, overall, supports finding a community of interest because “PRNs are considered ‘employees’ by UNM SRMC.” To the contrary, eligibility for employee benefits by PRNs vastly differs from other employees in the proposed unit. As a point of departure, PRNs generally do not qualify for employee benefits. Union Ex. A, Section 5 Employee Classification, AFT 021. PRNs only qualify for health insurance if they work the requisite hours under the Affordable Health Care Act. I have not

been given the benefit of payroll records showing that a substantial number of PRNs meet that criterion. PRNs do not receive paid time off, Career Advancement Program incentive payments, tuition reimbursement, Educational Leave, Employee Medical Crisis Leave, Employee Crisis Leave, Group Health, Dental or Life Insurance, paid Bereavement Leave, paid Jury Duty Leave, paid Parental Leave, or Personal Leave. I do not find anything at p. 703 of *Newton-Wellesley Hospital* case to support the Union's argument that this factor supports finding a community of interest between the two groups. However, what I *do* find at p. 703 of *Newton-Wellesley Hospital* is a conclusion that differences in employee benefits that are substantially the same as those present in this case "... have been found by the Board to be insufficient to warrant the unit exclusion of part-time employees who would otherwise qualify for inclusion in the unit."

**4. Separate Supervision.** As found above, PRN staff are employees of SRMC, not contract employees. PRN staff must comply with scheduling provisions, appropriate job description, personnel and administrative policies. The appropriate Unit Director will maintain a system for tracking compliance with all provisions of the PRN policy. Any PRN staff failing to comply with the hospital requirements may be dismissed. PRN employees "fill in" shifts not taken by full-time or part-time employees, therefore assuming the same responsibilities as those employed by the Hospital on a full-time basis for whom they are filling in. Although floating PRNs may have various supervisors based on what position and unit they fill in for, the designated supervisor for those positions and units is the same as for the FTE or PTE usually holding that position.

Because the PRNs are functionally equivalent to the non-PRN employee they are filling in for, must follow the same policies and job descriptions as the non-PRN employees whose position they are assuming and are evaluated on the same criteria and by the same method, a reasonable inference may be drawn that there is no difference between the supervision PRNs receive and that the non-PRN coworkers receive. Certainly, neither party has posited a separate supervision track exists for

the PRNs while working in any position or unit or produced evidence of a separate supervisory chain.

To the extent it has any relevance to the issue being briefed<sup>2</sup> SRMC's reliance on *In Re: United Steelworkers of America and Gila Regional Medical Center*, 1 PELRB No. 14, 13 (Nov. 17, 1995) for the proposition that PRNs being subject to the same policy manual, employee handbook, and evaluation criteria are commonalities shared by all hospital employees and not unique to the group the Petitioner seeks to unionize, weighs in favor of finding an identical chain of supervision comparing PRNs with other in the appropriate unit. The absence of separate supervision supports a conclusion that PRNs share a community of interest with others in the bargaining unit.

5. **Job Qualifications.** The parties agree that PRNs must hold the same qualifications and skills and any required licensing as the full-time and part-time regular employees they fill in for and are required to perform the same duties while on shift as their non-PRN counterparts. PRNs attend New Employee Orientation and must meet all of the other qualification requirements, e.g. criminal background check, drug screen and immunization records, as other employees do. Therefore, this factor supports finding a shared community of interest.

6. **Job Functions and Amount of Time Spent Away From Employment Situs.**

Because PRNs fill in for non-PRN staff, they perform the same work under the same supervision and pursuant to the same policies. All of the work is performed at the same job situs as the person

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<sup>2</sup> The *United Steelworkers of America and Gila Regional Medical Center* case primarily concerned whether the County or Gila Regional Medical Center was the public employer subject to the Act. The part of the Hearing Examiner Decision underlying the Board's Order in that case concerned its exclusion of OR Techs from a bargaining unit consisting of service, maintenance and clerical workers, based on their unique training and skills and the requirement that they remain on call for emergency surgeries after work hours and on weekends that distinguished them from the other employees sought by the Petitioner in that case. At page 30 of the Hearing Examiner's decision he noted, as distinguished from others in the proposed unit, "OR Techs are certified, this position requires extensive on-the-job training in instrumentation for hundreds of surgical procedures, aseptic technique and comprehensive knowledge of physiology and anatomy. Achieving the OR Tech classification takes at least one to one and a half years of training. Also, OR Techs are required to maintain Cardio Pulmonary [sic] Resuscitation (CPR) certification." No similar distinguishing factors are alleged to be at issue in this case.

for whom the PRN is filling in. SRMC makes a category error (sometimes referred to as a “distributive fallacy”) by arguing that “...a PRN’s “function is to fill the hospital’s need to maintain staffing levels.” That argument confuses the properties of the whole (job function) with the properties of a part (job purpose) – a category error. It is clear that the *purpose* of employing PRNs to fill in for FTE and PTE employees, but their *function* is the performance of the duties of the position they are temporarily filling. The Compact Edition of the Oxford English Dictionary (Volume I, A-O) defines “Function” at note 3 as “The special kind of activity proper to anything; the mode of action by which it fulfils its purpose.” Accordingly, PRNs perform the same function as the non-PRN employees they temporarily replace and all of their work is performed at the same job situs as the person for whom the PRN is filling in works. This factor weighs in favor of finding a shared community of interest.

7. **Regularity of Contact With Other Employees.** It is undisputed that by the nature of PRNs work, they must necessarily work alongside non-PRN employees on shift with them doing the same work when they are called upon to work. There is nothing to suggest that when they perform their work, that they do so in isolation apart from other SRMC employees. That PRNs may be assigned to varying shifts or departments is irrelevant to the question because the regularity of contact with other employees relates to SRMC employees in general, not to a specific employee or group of employees. There is no evidence on the record from which I could reasonably conclude that floating PRNs or those assigned to varying units have any less frequent contact with other employees. SRMC argues that this Board should consider the amount of time away from work, when PRNs are not scheduled to work, when considering the regularity of their contact with other employees. SRMC cites no authority for that rather novel approach and I decline to adopt it here. This factor pertains to time spent on the job and I conclude that PRNs have regular contact with

other non-PRN employees during their work hours and this factor supports finding a shared community of interest.

8. **Level or Lack of Integration.** It is inherent in the purpose for which PRN positions exist that they are functionally integrated into the unit with non-PRN staff. They exist for the purpose of maintaining minimal staffing levels so that they must be fully prepared and qualified to step into a vacant position and perform all of the functions of that position when called upon to do so. They are employees of Sandoval Regional Medical Center, not independent contractors. PRN staff must comply with all of SRMC scheduling provisions, applicable job descriptions, personnel and administrative policies. The PRNs and non-PRNs share a common method of wages and compensation, are paid “comparatively” and are on the same pay scale. These facts weigh in favor of a conclusion that the PRNs are functionally integrated into SRMC’s operations.

SRMC’s argument that PRNs ability to set their own schedules or application of SRMC’s Reduction in Force policy means that PRNs are not fully integrated, does not persuade me. I have addressed the issue of their schedules in the “Hours of Work” section, *supra*. In regard to the RIF policy, the same distinction in greater or lesser degree may be applied to positions already found to be in the bargaining unit. For example, the RIF policy applies in the following order:

1. First, temporary (including casual pool/per diem) employees
2. Regular part-time employees
3. Regular full-time employees.

Even if the PRN, FTE and PTE are not immediately fungible, I do not consider that aspect to mean there is no basis upon which the positions may be otherwise functionally integrated. See 66-PELRB-2021, (*In re: United Electrical, Radio and Machine Workers of America & UNM*; PELRB 307-20) (August 17, 2021). (Because the various graduate assistants’ specific work duties varied from department to department, it is reasonable to infer that those variances render employees in the putative unit less than fully integrated. However, the fact that graduate assistants move from one type of assistantship

to another or hold more than one kind of assistantship at a time lends itself to a conclusion that some measure of integration exists that weighs in favor of finding an appropriate unit.)

Therefore, I conclude that the Integration factor weighs in favor of finding a community of interest exists among PRNs and the non-PRN employees in this case.

9. **The History of Collective Bargaining.** The parties substantially agree that there is no history of collective bargaining pertaining to the putative unit. Therefore, I can draw no conclusions for or against finding the petitioned-for unit be appropriate based on that factor. There is collective bargaining history generally related to PRN employees of Hospitals in the private not-for-profit setting, but I do not rely on that history in my construction of this factor.

10. **Principles of Efficient Administration of Government and the Assurance of the Fullest Freedom in Exercising the Rights Guaranteed by the Public Employee Bargaining Act to Public Employees.**

As stated herein, I include the Board's preference against over-fragmentation of bargaining units expressed in *NEA-Belen & Belen Federation of School Employees & Belen Consolidated Schools, supra* to weigh in favor of finding a single bargaining unit in this case. Segregating the PRNs into their own separate, small unit risks jurisdictional disputes, interference with health care team-work, and excessive administrative costs when the workers in the two units perform the same functions.

This Board's anti-fragmentation policy is premised on its desire to avoid such needless deleterious effects on the efficient administration of government with simultaneous negative consequences for management, labor, and the community at large.

Separating out the PRN and non-PRN staff into different bargaining units is completely within the Board's discretion as long as there is a rational basis for that exercise of discretion. Application of this Report and Recommended Decision, for the reasons stated herein, would serve the statutory mandate espoused in NMSA 1978, § 10-7E-13, of assuring public employees of the fullest freedom in exercising rights guaranteed by PEBA.



**DECISION:** For the foregoing reasons, and in consideration of the efficient administration of government; the absence of any history of collective bargaining and assurance to public employees of the fullest freedom in exercising rights guaranteed by PEBA, I conclude that the PRNs at issue in this case share a community of interest with others in the petitioned-for unit so that it is appropriate to recognize a single bargaining unit that includes them. The Executive Director will proceed with a card-check as required by PEBA.

Issued, Friday, January 13, 2023.



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Thomas J. Griego  
Hearing Officer  
Public Employee Labor Relations Board  
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Albuquerque, New Mexico 87102