

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In the Matter of

*New Mexico State University Police
Officers Association
Petitioner,*

and

*New Mexico State University
Public Employer.*

DECISION AND ORDER

On January 22, 1995, an administrative judge issued a Recommended Decision and Direction of Election in *New Mexico State University Police Officers Association and New Mexico State University*, Case No. CP 7-95(O). The petitioner, an affiliate of the Fraternal Order of Police (FOP), filed exceptions to the AJ's recommended decision.

Background

On August 15, 1994, the FOP petitioned-for a bargaining unit consisting of 24 positions within the Police Department at New Mexico State University (NMSU or public employer): sergeants (4), patrol officers (10), investigators (2), telecommunicator supervisor (1), telecommunicator lead (1), telecommunicators (4) and administrative secretaries (2).

The NMSU objected to the inclusion of officers and non-officers in a single unit and asserted that sergeants, telecommunicator supervisor, and telecommunicator lead were supervisors within the meaning of the Public Employee Bargaining Act (Act or PEBA) and therefore not appropriately included in the petitioned-for unit.

Recommended Decision

On October 18, 1994, an administrative judge (AJ) conducted a hearing on the petitioned-for unit. Following receipt of post-hearing briefs, the AJ issued a report and recommended decision wherein the positions of telecommunicator supervisor and sergeant were excluded because they were found to be supervisors as that term is defined under the Act's § 4.S. Also excluded were administrative secretaries because they did not have a community of interest with other petitioned-for positions as contemplated by PEBA § 13.A. to warrant inclusion in the unit.

The AJ further concluded that telecommunicator lead did not satisfy the statutory definition of supervisor and should be included. Finally the AJ concluded that the telecommunicators and other positions were appropriately included in the same unit.

Pursuant to Rule 2.15(a) the petitioner filed a request for review excepting to the exclusion of sergeants, administrative secretaries, and telecommunicator supervisor from the petitioned-for unit.

The NMSU did not file exceptions to the AJ's recommended decision; however, it filed a response to the FOP's exceptions as permitted under Rule 2.15(b). In addition to its response, the NMSU argues that the FOP's exceptions are not appropriately filed under Rule 2.15(a).

PELRB Review of FOP Exceptions and NMSU Response

Pursuant to Rule 2.15(c) the Board has reviewed the whole record in this matter. As a result of that review, we conclude the following.

One, the exceptions are timely and appropriately filed under Rule 2.15(a). NMSU was accorded an opportunity to fully respond to the petitioner's exceptions and memorandum of law and has done so. Furthermore, even in the absence of a request for review, "the Board...shall review any recommended disposition regarding the scope of a bargaining unit made by...a hearing officer." [Rule 2.15(c)]. Since the dispute involves the scope of the bargaining unit, the disposition of those issues are before us as required by the regulation.

Two, we adopt the AJ's recommended decision with respect to the two administrative secretaries and one telecommunicator supervisor. With respect to the former, they do not share community of interest with the other petitioned-for positions and regarding the latter, it is a supervisory position within the meaning of § 4.S.

Three, we adopt the AJ's recommended decision concerning the four telecommunicators. We note that the NMSU initially objected to the inclusion of telecommunicators with patrol officers but did not file exceptions to AJ's recommended decision to consolidate the occupational groups. Since exceptions were not filed, our decision to allow the inclusion of telecommunicators with other positions is without precedent.¹

Four, we reverse the AJ's recommended decision and find that the four sergeant positions are not supervisory but appropriate for inclusion in the unit.

In this regard, the Act defines "supervisor" at § 4.S.:

"supervisor" means an employee who devotes a substantial amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively but does not include individuals who perform merely routine, incidental or clerical duties

¹The NMSU's objection was based on a provision in the National Labor Relations Act (NLRA) which precludes the inclusion of plant security guard positions with other positions in the same bargaining unit. "Where provisions of PEBA are the same as or closely similar to those of the NLRA, we will give great weight to interpretations of such provisions made by the NLRB and reviewing courts." *Santa Fe County*, 1 PELRB No. 1 (1993). PEBA does not contain a plant guard provision. Also, the Act's § 13 permits the consolidation of occupational groups subject to the Board's review that a consolidation results in an appropriate bargaining unit.

or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who participate in peer review or occasional employee evaluation programs.

Determining whether an employee performs the duties of a "supervisor" within the meaning of § 4.S. entails, initially, satisfying all elements of a 3-part test. That is, the employee must (1) devote a substantial amount of work time to supervisory duties; (2) customarily and regularly direct the work of two or more other employees; and (3) have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively.

Should the 3-part test be satisfied, then the analysis continues beyond the initial inquiry with a consideration of the other provisions in the definition. In other words, a determination whether the employee (i) performs merely routine, incidental or clerical duties; or (ii) only occasionally assumes supervisory or directory roles; or (iii) performs duties which are substantially similar to those of his or her subordinates.

The definition concludes by excluding from its grasp--aside from those who may fall within (i) or (ii) or (iii)--those employees who are in a lead role or employees who participate in peer review or occasional employee evaluation programs.

Should a public employer demonstrate that the initial 3-part test is fulfilled, the terms and requirements of the definition reflect that an affirmative response to the remaining provisions result in a determination that an employee is not a supervisor.

Finally, we note that the word "substantial" appearing in the definition is not defined in the Act. We shall construe that term according to its plain and ordinary meaning found in *Webster's New Collegiate Dictionary*: "...considerable in quantity, significantly large, being largely but not wholly that which is specified[.]"

In applying the facts to the definition at § 4.S in PEBA, we find that sergeants are not supervisors because a sergeant does not devote a "substantial amount of work time" to the performance of supervisory duties.

Testimonial evidence from Sergeant Salas demonstrated that a sergeant spends approximately 15 percent of his or her time during a week on supervisory duties. Lieutenant Cabot, the first line supervisor, disagreed with that testimony but did not provide details to clarify his disagreement. We find the following documentary evidence sufficient to clarify the testimony concerning the amount of time devoted to supervisory duties.

In response to a position description questionnaire completed by the sergeants, Sergeant Salas estimated 25 percent or 10 hours a week devoted to supervisory duties. Thereafter, the immediate or first line supervisor (Lt. Cabot), department head or director (Chief of Police), and university vice-president or dean all stated that the "statements included in this position description are complete and accurate." [Resp. Exhs. 10, 16A]

Ten hours a week is not "...considerable in quantity, significantly large" to constitute a "substantial amount of work time [devoted] to supervisory duties." Consequently, the first criterion in the 3-part definitional test is not satisfied. Having found that sergeants do not devote a "substantial amount of work time" to supervisory duties as required by the Act, we conclude they are appropriate for inclusion in the bargaining unit.

Our conclusions on the recommended disposition of the scope of the bargaining unit are reflected in the Order below

ORDER

A secret ballot election(s) shall be conducted among the employees in the following unit:

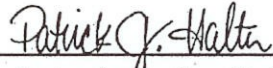
Included: Sergeants, patrol officers, investigators, telecommunicator lead, telecommunicators.

Excluded: All management employees, supervisors, and confidential employees as defined by the Act and all others.

In accordance with the Act and the Board's rules, eligible employees in the unit shall be given an opportunity to vote between representation by NMSU Police Officers Association and "No Representation."

The Board reviewed Case No. CP 7-95(O) during open session at its May 17, 1995, meeting in Santa Fe, New Mexico, following notice and publication of the meetings pursuant to the Open Meetings Act, NMSA 1978, §§ 10-15-1 to 10-15-4 (Repl. Pamp. 1992).

By direction of the Board.



Patrick J. Halter
Director, PELRB

Issued: May 31, 1995
Albuquerque, New Mexico