

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

IN THE MATTER OF

*New Mexico Coalition of Public Safety Officers,
Local 7911, Communications Workers of America, AFL-CIO,
Petitioner,*

and

*Town of Bernalillo,
Public Employer.*

DECISION AND ORDER

On May 1, 1997, a hearing officer for the New Mexico Public Employee Labor Relations Board (PELRB or Board) issued a report and recommended decision finding that the unit petitioned-for in Case No. CP 7-97(M) by the New Mexico Coalition of Public Safety Officers, affiliated with Local 7911, Communications Workers of America, was an appropriate unit under the Public Employee Bargaining Act (Act or PEBA), NMSA 1978, 10-7D-1 to 10-7D-26 (Repl. Pamp. 1993). In this regard, the unit is composed of six patrol officers, two corporals, and one animal control officer.

The public employer filed a timely request for review under the Board's rules wherein it excepts to the hearing officer's findings and conclusions that (1) a corporal is not a "supervisor" as defined at PEBA § 4(S) and, therefore, the position is appropriate for unit inclusion and (2) the animal control officer should be included with the other petitioned-for positions in the unit. Petitioner filed an answer to the request for review. The Board exercised its discretion under the rules and permitted oral argument on the exceptions at its June 23, 1997, meeting.

Being fully apprised of all the evidence and arguments, the Board finds that the hearing officer's report and recommended decision is supported by substantial evidence, not arbitrary and capricious, and is in accordance with applicable case law and the Act. Accordingly, we adopt the findings of fact and conclusions of law as the Board's final action and direct an election in the appropriate unit set forth below.

In adopting the hearing officer's report and recommended decision, the Board recognizes that it is not the rank nomenclature (corporal, sergeant, lieutenant, captain, etc.) that is determinative but the facts related to whether the individual functions as a "supervisor" under the

Act.¹ The Board also recognizes that in different factual circumstances an animal control officer may not be appropriate for inclusion in a unit composed of police officers. Under the facts of this case, the inclusion of the animal control officer with patrol officers is appropriate.²

ORDER DIRECTING AN ELECTION

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

Included: Corporal, patrol officer, animal control officer.

Excluded: Chief of Police and all others including management, supervisor, and confidential positions as those terms are defined in the PEBA.

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 the New Mexico Coalition of Public Safety Officers, Local 7911, Communications Workers of America, and "No Representation."

The Board reviewed Case No. CP 7-97(M) during closed and open session at its June 23, 1997, 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. 1993).

For the Board.



Rick Calkins
Chairman

Issued: July 3, 1997

¹See *New Mexico State University*, 1 PELRB No. 13 (June 14, 1995), *aff'd*, Third Judicial District Cause No. CV 95-503 (June 28, 1996)(in discussing job titles and job duties at n. 6, "we examine the actual duties to determine the supervisory status of a position.")

²See *Belen Consolidated Schools*, 1 PELRB No. 2 (May 13, 1994)(weighing the factors for evaluating whether a community of interest is present among different positions at 7, "we recognize the fact-specific nature of appropriate unit determinations and acknowledge that these determinations must be made on a case-by-case basis.")