STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

NEW MEXICO COALITION OF
PUBLIC SAFETY OFFICERS ASSOCIATION,

Complainant,

PELRB No. 304-12

COUNTY OF SANTA FE,

Respondent.

AMENDED ORDER

THIS MATTER comes before the Board for approval and for ratification of the Hearing Officer's Report and Recommended Decision on a Representation Petition filed on March 27, 2012 by the New Mexico Coalition of Public Safety Officers-Communication Workers of America, Local 7911 ("NMCPSO" or "Union") seeking to accrete of Sergeants, Medical Personnel (RNs, LPNs, Pharmacy Techs), and Booking Clerks employed by the Santa Fe Corrections Department into an existing bargaining unit represented comprising Detention Officers, Corporals, Teachers, Therapists, Case Managers, Senior Case Managers/Electronic Monitoring, Case Managers/Electronic Monitoring, Life Skills Workers I, Life Skills Workers II, YDP Assistant Shift Supervisors, and excluding all supervisory, managerial, and confidential employees.

Upon a 2-0 vote at the Board's September 27, 2012 meeting (Vice-Chair Bingham having recused himself) the Board approved and ratified the Report and Recommended Decision of the Hearing Officer with respect to accretion of the

Sergeants and Booking Clerks into the bargaining unit but did not accept and ratify the Recommended Decision with regard to the accretion of the medical personnel.

IT IS HEREBY ORDERED that the Sergeants and Booking Clerks shall be accreted into the bargaining unit, but not the Medical Personnel.

Date: 12-5-12

Duff Westbrook, Chairman
Public Employee Labor Relations Board

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In re:

NEW MEXICO COALITION OF PUBLIC SAFETY OFFICERS ASSOCIATION

Complainant,

PELRB No. 304-12

COUNTY OF SANTA FE,

Respondent

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

STATEMENT OF THE CASE

This matter comes before the appointed Hearing Officer, T. Zane Reeves on a Representation Petition ("Petition") filed on March 27, 2012 by the New Mexico Coalition of Public Safety Officers-Communication Workers of America, Local 7911 ("NMCPSO" or "Union"). The Union seeks accretion of all Sergeants, Medical Personnel (RNs, LPNs, Pharmacy Techs), and Booking Clerks employed by the Santa Fe Corrections Department into an existing bargaining unit represented by the NMCPSO. The current Collective Bargaining Agreement (CBA) between the Parties (June 28, 2011-June 28, 2014), includes the positions of Detention Officer (DO), Corporal, Teacher, Therapist, Case Manager, Senior Case Manager/Electronic Monitoring, Case Manager/Electronic Monitoring, Life Skills Worker I, Life Skills Worker II, YDP Assistant Shift Supervisor; it excludes all supervisory, managerial, and confidential employees. The predecessor CBA (March 25, 2008-June 30, 2011) also included/excluded the same positions.

The Hearing Officer reviewed the signed representation cards submitted by the designated employees on June 8, 2012. Of these, twenty (20) of the twenty-six (26) employees requested exclusive collective bargaining representation by NMCPSO, which is seventy-six (76)

percent of the total number. The Parties were unable to resolve the remaining issues and a representational hearing was scheduled.

A representation hearing was convened in this matter on July 16, 2012 at the PELRB office in Albuquerque and on July 26, 2012 at the Santa Fe County Building Conference Room. The Union was represented by William Tryon, Attorney at Law, and the County was represented by Rachel A. Brown, Deputy County Attorney. Pursuant to NMAC 11.12.1.20, the Parties exchanged witness lists and exhibits prior to the hearing. Pursuant to NMAC 11.21.1.22(A),"in a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit shall, have the burden of proof and the burden of going forward with the evidence" and the Hearing Officer "shall have the responsibility of developing a fully sufficient record for a determination to be made" [by PELRB].

JURISDICTION

The Parties stipulate the County is a public employer under §10-7E-4(S) of PEBA; and the Union is a labor organization under §10-7E-4(L) of PEBA. Accordingly, the PELRB has jurisdiction to decide this matter.

POSITIONS OF THE PARTIES

The Union

The Union contends that Sergeants do not meet the PEBA criteria for "supervisors", especially with the current understaffing at the Detention Center, which results in Sergeants frequently performing the same routine duties and responsibilities as Detention Officers and Corporals. Sergeants do not meet the criteria for supervisory duties; they do not devote a majority of their time to supervisory duties. Sergeants are primarily engaged in many of the same routine, clerical duties as their subordinates, and, in fact, are lead employees rather than supervisors. They do not

exercise any significant amount of independent judgment. Sergeants, like Detention Officers and Corporals, are non-exempt from the Fair Labor Standards Act and are paid overtime.

The County

The County contends that Sergeants at the Adult Detention Center, perhaps unlike some other detention centers in the state, perform a majority of the work of supervisors and should not be included within the existing bargaining unit. Sergeants were originally proposed for inclusion into the bargaining unit in 2005 and the Parties ultimately agreed to a consent election excluding Sergeants from the bargaining unit. Therefore, this issue already has been resolved by *res judicata* based on proceedings that took place at the time the bargaining unit was formed. Secondly, there has not been a "change of circumstances" since the time of the bargaining unit creation to justify accretion of the Sergeants. The County also asserts that correctional medical personnel do not share a professional "community of interest" with Detention Officers and Corporals already represented by the NMCPSO.

WITNESSES

For the Union

1. Danny Ray Campos, Sergeant
2. Martha Tapia, Sergeant
3. Steve Harvey, Executive Director, NMCPSOA
4. Joey Romero, Corporal and Union Local President

For the County

1. Lisa Leiding, Nurse Administrator
2. Wade Ellis, Lieutenant
3. Nelson Abeyta, Interim Major
4. Bernadette Salazar, County HR Director

EXHIBITS

For the Union

1. Cibola County Collective Bargaining Agreement (in part)

For the County

1. Job Descriptions for various positions at the Adult Detention Facility
2. Documentation of disciplinary actions initiated by Sergeants
3. Organizational charts for County Detention Centers
4. Classification and Compensation Plan
5. Supervisory training logs
6. Supervisory inspection logs
7. Card Check Recognition Petition PELRB Case no. 308-06
8. Santa Fe County Pre-Hearing Brief filed in PELRB Case no. 308-06
9. Collective Bargaining Agreement between County and NMCPSO, 2011-2014

A. Facility Diagram drawn by Lt. Wade Ellis

FINDINGS OF FACT

Based on the evidence presented, the Hearing Officer finds the following facts by a preponderance of evidence:

Whether Sergeants are supervisors

A "supervisor" is defined by the Public Employee Bargaining Act (10-7E-4.U) as:

> "U. "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, and discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisor or directory role or whose duties are substantially similar to those of his subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs."

1. Sgt. Danny Campos testified that as a unit manager he reports to the Major and makes recommendations, yet the Major may not accept his recommendations. Campos supervises four officers and considers his role as a "second level boss." However, Campos does not schedule officers in his unit or determine what posts they hold. He does not evaluate, hire or fire employees.

Campos documents infractions and conducts hearings for inmates and a corporal may replace him when he is absent on leave.

2. Sergeant Martha Tapia testified that she works with female inmates and supervises two floor officers in their duties; she sometimes helps Detention Officers with their duties. Tapia stated that she does not create schedules or staffing assignments. She does not hire or terminate officers and gives only informal feedback in performance evaluation. Tapia indicated she can recommend that discipline be taken against an officer, but not specific disciplinary actions. She said that Detention Officers do not assume her duties when she is on leave.

3. Lieutenant Wade Ellis testified that the Adult Detention Center has the following types of Sergeants:

- *Shift Sergeant,* who has responsibility to handle posts and enforce policies, conduct an investigation, initiate write-ups on staff and to recommend discipline to the Major;
- *Housing Sergeant,* each housing unit has a sergeant assigned to it in order to ensure routines are scheduled. Ellis stated that these sergeants "create consistency" on the floors;
- *Subject matter Sergeant,* who works in areas such as: training, security Threat Intelligence Unit, monitoring gang activity, contraband, key control, armory, and grievance handling.

Lt. Ellis testified that he believes sergeants should devote a "majority of time to supervision of other officers" and that most of the time they exercise "independent judgment." Sergeants conduct independent investigations and fill for Lieutenants on leave. However, because of on-going staffing shortages, sergeants are spending more time helping out with Detention Officer duties

and responsibilities. Even so, Lt. Ellis stated that a Corporal or Detention Officer would never fill in for a Sergeant on leave.

4. Lt. Nelson Abeyta testified that a Sergeant serves on the Classification Committee, which also includes a Case Manager and Mental Health provider. It is the Sergeant who has final authority to classify an inmate's risk status as "high," "medium," or "low," which determines placement in the facility. Lt. Abeyta stated that sergeants do not provide food trays or janitorial duties on a daily basis and "even when a sergeant helps out with DO duties, he/she is still a supervisor." In addition, Abeyta testified that sergeants are involved in disciplinary decisions of inmates and make recommendations for disciplinary actions on Detention Officers and Corporals. Sergeants also conduct shift briefings as well as monitor entries made in the shift log by Detention Officers and Corporals. When a Sergeant serves as an Acting Lieutenant and the Major is out, he/she will assume the responsibility for overseeing the entire facility.

5. Corporal Joey Romero, who also is President of the Local #7911, testified that the Detention Center is understaffed on a daily basis, which causes sergeants to conduct much of the daily routines performed by Detention Officers and Corporals. Often times there is only one DO reporting to a Sergeant, who may work sixteen (16) hour days and lots of overtime.

6. Human Resources Director Bernadette Salazar testified that "Sergeants are definitely supervisors, not lead workers." Ms. Salazar offered the following support for her assertion:

- Sergeants assign work, prepare schedules, develop performance information, and initiate disciplinary recommendation up the chain-of-command;
- Sergeants are required to attend a series of "supervisory skills" training sessions for all county supervisors that include such topics as: performance evaluation, FMLA, FLSA, collective bargaining, HIPPA, and documentation;

- Sergeants are paid at much higher grade (#20) than Detention Officers (#12) or Corporals (#14) because their responsibilities are greater.

Ms. Salazar also explained that the County voluntarily "elected" to pay Sergeants overtime and categorize this rank as "FLSA non-exempt," even though the US Department of Labor "test" classifies them as supervisors and therefore exempt from overtime payment. Ms. Salazar stated that overtime pay is considered to be a "retention tool" in order to remain competitive in the job market.

7. The official job description for the County "Adult Detention Facility Sergeant" states that the "primary purpose" of this position is to "…perform[s] *first-line supervision* of corporals and /or subordinate personnel and ensures the Detention Center staff are demonstrating professional conduct and providing a secure, safe, and humane environment for detainees…: [emphasis added]. Three of the "essential job functions" are as follows:

- "Assures that appropriate training is received by subordinate personnel; makes personnel action recommendations; and conducts employee evaluations;
- Reviews all reports or other written documentation prepared by self or subordinates for completeness, accuracy, proper grammar, punctuation and spelling. Responsible for abiding by and instructing in proper department and county policies and procedures. Participate in staff meetings by sharing observations and recommendations regarding the facility, participants, and staff in order to identify and solve problems and functions as a unified team. Maintain confidentiality regarding employees, and participants. Mediates and solves problems between inmates and subordinate staff.

- Convey employee and inmate complaints to superiors; Instruct employees, and provide on-the-job training; Monitor behavior of subordinates to ensure alert, courteous, and professional behavior toward inmates, fellow employees, visitors, and the public."

Whether accretion of Detention Center Sergeants would constitute an "appropriate bargaining unit.

In the event that the Board decides that Sergeants do not meet the PEBA definition of a "supervisor," the issue becomes whether they may be appropriately accreted into the existing bargaining unit, or whether they must be certified as a separate bargaining unit.

In the instant matter, accretion raises three issues under PELRB rules:

- Whether there was "sufficient change of circumstances" from the creation of the original bargaining unit to now warrant a change in that unit;
- Whether a grandfathered bargaining unit may be accreted or clarified at all; and
- Whether accretion is otherwise appropriate, i.e. requiring a community of interest between the new and existing groups of employees (NMAC 11.21.2.38; 11.21.2.37; 11.21. 378. A).

The PELRB in case #308-06 (2006) considered a dispute between the same Parties regarding what constituted an appropriate bargaining unit. In essence, Santa Fe County had terminated its contract with a private firm to manage the Adult Detention Center and run the facility with county employees. Thus, all new county employees, except one Detention Officer, were required to complete a twelve (12) month probationary period. Because PEBA excludes probationary employees from its coverage, Detention Officers, Corporals, and Sergeants were not eligible for inclusion within the proposed bargaining unit. The Board subsequently recognized a "wall-to-

wall" bargaining unit that consolidated occupational groups that included Detention Officers, Teachers, Therapists, Social Workers and others.

Whether accretion of Detention Center medical personnel would constitute an "appropriate bargaining unit.

The Public Employee Bargaining Act sets forth the following "principles" to be followed in determining "Appropriate bargaining units" 10-7E-13:

> A…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. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. 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.

8. Lisa Leiding, Nurse Administrator at the Santa Fe County Corrections Department testified that she currently directs two registered nurses, five LPNs, and a Pharmacy Technician; Leiding described their relationship with Detention personnel as a "team" and "peer relationship" in providing for the medical treatment of inmates. Ms. Leiding admitted that there is some potential for "conflict" with Detention employees because they are on different professional career paths, schedules, and pay rates.

9. Bernadette Salazar, County HR Director, described nurses and detention personnel as "completely different" in compensation, working conditions, and conditions of employment. The medical personnel report to the Medical Administrator, who has no link to the security staff in the Detention facility. The County Corrections Department is divided into two separate chains of command, the Adult Detention Facility and the Medical Division. Also, the County does not train or fund continuing education for nurses and the pharmacy technician, whereas the County

provides training to detention employees. Nurses are responsible for maintaining their own professional licensure and the pharmacy technician's certification. Ms. Salazar stated that the County supplements its nurses with contract employees and nurses work on different shifts than detention employees. For these reasons, Salazar maintains there in no "commonalities of interest" between the two groups of employees.

REASONING AND CONCLUSIONS OF LAW

Whether Detention Sergeants are supervisors.

As indicated, the PEBA definition of supervisor is an employee who:

1. devotes a majority of work time to supervisory duties;
2. customarily and regularly directs the work of two or more other employees;
3. has the authority in the interest of the employer to hire, promote, and discipline other employees or to recommend such actions effectively.

The PEBA excludes an employee as a supervisor who:

1. performs merely routine, incidental or clerical duties;
2. occasionally assume[s] a supervisor or directory role;
3. duties are substantially similar to those of his subordinates;
4. is a lead employee;
5. participates in peer review or occasional employee evaluation programs.

Based on the evidence, the Hearing Officer makes several conclusions regarding whether sergeants employed by the Santa Fe County Adult Detention Facility (SFCADF) meet the PEBA definition of a supervisor. First, the County argues that Sergeants "perform first-line supervision of corporals and/or subordinate personnel" because it is so stated as their "primary purpose" in the official job description for the "Adult Detention Facility Sergeant. The County contends that Sergeants are supervisors because they must attend "supervisory skills" training. However, the

fact that Sergeants are hourly employees who are eligible for overtime undermines the argument that they perform supervisory work.

When analyzing the other criteria for determining whether an employee is a supervisor under PEBA, no evidence was presented to indicate that sergeants exercise any role in making decisions to "hire, promote, and discipline other employees or to recommend such actions effectively." Testimony reflects that, at most, they may recommend that management consider corrective or disciplinary action, but sergeants do not suggest a specific type of disciplinary action. Sergeants do "participate[s] in peer review or occasional employee evaluation programs," but there was no evidence produced to verify that they play a primary role in evaluation or sign off on performance evaluations.

Thirdly, every witness agreed that the Facility is greatly understaffed. As Lt. Abeyta noted, a full staff is twenty-four (24) DOs and Corporals; however, fourteen (14) or fifteen (15) officers reporting for work is not uncommon. As a consequence, there are shifts where there are not two or more other employees for a Sergeant to direct. Testimony supported a work environment wherein sergeants, detention officers, and corporals perform a myriad of tasks, many routine, depending on who shows up for work. In such a situation, it is unlikely that a Sergeant "devotes a majority of work time to supervisory duties." Given Lt. Wade Ellis' testimony that Sergeants may be assigned to shift, housing, or subject matter posts, it is not reasonable to conclude that each assignment involves a majority of work supervision.

Whether accretion of Detention Center medical personnel would constitute an "appropriate bargaining unit.

If the issue involved formation of a bargaining unit comprised of detention security officers together with nurses and a pharmacy tech, obviously there would be no "community of interest"

DECISION

For reasons discussed herein, the Hearing Officer finds and concludes the following:

- Accreting medical personnel at the Detention Center into the existing bargaining unit would constitute an appropriate unit;
- Sergeants at the Detention Center do not meet the criteria for "supervisor" under the Public Employee Bargaining Act ("PEBA") NMSA 1978 §§ 10-7E-1, *et seq.* and are eligible to be accreted into the existing bargaining unit;
- The Parties concur that Booking Clerks at the Detention Center may be accreted into the existing bargaining unit.

Respectfully submitted,

T. Zane Reeves. PhD

Hearing Officer
August 3, 2012